

IN THE MATTER OF

HOSPITAL CORPORATION OF AMERICA

FINAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 9161. Complaint, July 30, 1982—Final Order, Oct. 25, 1985

This final order requires the nation's largest for-profit hospital chain, based in Nashville, Tenn., to divest North Park Hospital and Diagnostic Center Hospital, both in Hamilton County, Tenn., and any medical office buildings associated with the hospitals. The divestitures must be to different acquirers and obtain Commission approval. Respondent is also required to terminate its management contract with Downtown General Hospital, also in Hamilton County, and divest related real estate to a Commission-approved acquirer. Further, respondent is required to obtain FTC approval for any future acquisitions of certain hospitals in the Chattanooga, Tenn., area or any hospital meeting conditions specified in the order.

Appearances

For the Commission: *M. Elizabeth Gee, Toby G. Singer, Garry R. Gibbs, Oscar M. Voss and Erika Wodinsky.*

For the respondents: *Peter J. Nickles, William D. Iverson, K. Gregory Tucker and Michael A. Roth, Covington & Burling, Washington, D.C. and Margaret C. Mazzone, John W. Wade, Jr., Donald W. Fish and Jean L. Byassee, in-house counsel, Nashville, Tenn.*

COMPLAINT

The Federal Trade Commission having reason to believe that Hospital Corporation of America, a corporation subject to the jurisdiction of the Commission, has acquired the stock or assets of corporations subject to the jurisdiction of the Commission, hereinafter described, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and having further reason to believe that respondent has engaged in unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to the provisions of Section 11 of the aforesaid Clayton Act, as amended, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

1. For the purposes of this complaint, the following definitions shall apply:

(a) *Acute care hospital*, hereinafter sometimes referred to as *hospital*, means an inpatient facility that furnishes care in connection with services of physicians for conditions for which nursing, medical or surgical services would be appropriate for care, diagnosis, or treatment, not including a facility specially intended for use in treatment of mental illness, emotional disturbance or substance abuse.

(b) The *Health Service Area*, hereinafter referred to as *HSA*, means the 13-county area encompassing the southeastern Tennessee counties of Hamilton, Bradley, [2] Marion, Sequatchie, Rhea, Meigs, McMinn, Bledsoe, Grundy and Polk, and the northern Georgia counties of Catoosa, Dade and Walker.

(c) *Hamilton County* means Hamilton County, Tennessee, the county in which the city of Chattanooga is located.

(d) The *Chattanooga Standard Metropolitan Statistical Area*, hereinafter referred to as *SMSA*, means the federally designated six-county area encompassing the southeastern Tennessee counties of Hamilton, Marion and Sequatchie, and the northern Georgia counties of Catoosa, Dade and Walker.

(e) A *managed hospital* means a hospital in which the owner (individual, corporate or public body) has contracted with a management company for that company to be responsible for the day-to-day operations of the hospital.

II. THE RESPONDENT

2. Respondent Hospital Corporation of America, hereinafter "HCA" or "respondent," is a corporation organized and existing under the laws of the State of Tennessee, with its principal executive offices at One Park Plaza, Nashville, Tennessee.

3. HCA is primarily engaged in the operation and management of proprietary hospitals in the United States and in foreign countries. It is the largest proprietary hospital chain in the United States and owns and operates acute care hospitals and psychiatric hospitals in 41 states throughout the country, including Tennessee. In HCA's Fiscal Year 1981, it had total revenues of approximately \$2.3 billion in connection with these hospitals.

4. At all times relevant herein, the respondent has been and is now engaged in or affecting commerce within the meaning of Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. HCA

does business in a number of states and foreign countries. HCA and its hospitals in Hamilton County, the SMSA and the HSA, among other things: [3]

(a) purchase substantial amounts of supplies, equipment and medicines in interstate commerce from sources outside of the State of Tennessee;

(b) receive substantial revenues in interstate commerce from private and governmental insurers located outside of the State of Tennessee; and

(c) treat a substantial number of patients who travel from or reside outside the State of Tennessee.

5. Until the acquisitions described in Section III below, HCA owned only one acute care hospital, Parkridge Hospital, in Hamilton County and the SMSA and only three acute care hospitals, Parkridge Hospital, Athens Community Hospital and Cleveland Community Hospital, in the HSA. Until the acquisitions described in Section III below, HCA's psychiatric facilities in the HSA consisted only of one psychiatric unit in an acute care hospital, Cleveland Community Hospital.

III. THE ACQUISITIONS

Hospital Affiliates International, Inc.

6. On August 26, 1981, HCA purchased Hospital Affiliates International, Inc. ("HAI"). In consideration thereof, HAI's parent corporation received approximately \$425 million in cash and approximately \$225 million in HCA voting stock.

7. Prior to its acquisition by HCA, HAI was a wholly owned subsidiary of INA Health Care Group, a wholly owned subsidiary of INA Corporation. HAI was a corporation organized and existing under the laws of Delaware, with its executive offices in Tennessee. HAI owned, operated, and managed acute care hospitals and psychiatric hospitals in 33 states and several foreign countries. For its Fiscal Year 1980, HAI's revenues derived from its acute care and psychiatric hospitals were over \$513 million. HAI owned or managed three hospitals in Hamilton County: it owned Diagnostic Hospital; it managed Downtown General Hospital and Red Bank Community Hospital. HAI owned or managed five hospitals in the SMSA and the HSA: it owned Diagnostic Hospital and Sequatchie General Hospital; it managed Downtown General Hospital, Red Bank Community Hospital and South Pittsburg Municipal Hospital.

8. At all times relevant herein, HAI was engaged in or affecting commerce within the meaning of Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and was a corporation whose business was in or affecting commerce within the meaning of Section 5 of the Federal

Trade Commission Act, as amended, 15 [4] U.S.C. 45. HAI did business in a number of states and foreign countries. HAI and its hospitals in Hamilton County, the SMSA and the HSA, among other things:

(a) purchased substantial amounts of supplies, equipment and medicines in interstate commerce from sources outside of the State of Tennessee;

(b) received substantial revenues in interstate commerce from private and governmental insurers located outside of the State of Tennessee; and

(c) treated a substantial number of patients who travel from or reside outside the State of Tennessee.

Health Care Corporation

9. On December 11, 1981, HCA purchased Health Care Corporation ("HCC"), for which it paid HCC's owners approximately \$30 million, including approximately \$20 million in HCA stock, and assumption of approximately \$10 million of HCC liabilities. HCC became a wholly owned subsidiary of HCA.

10. Prior to its acquisition by HCA, HCC was a corporation organized and existing under the laws of Tennessee, with its executive offices in Chattanooga, Tennessee. HCC owned or managed acute care and psychiatric hospitals in three states. In Hamilton County, the SMSA and the HSA, HCC owned one acute care hospital, Medical Park Hospital, and one psychiatric facility, Valley Psychiatric Hospital. In 1980, HCC's gross revenues from its operations were approximately \$9.8 million.

11. At all times relevant herein, HCC was engaged in or affecting commerce within the meaning of Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and was a corporation whose business was in or affecting commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. HCC did business in at least three states. HCC and its hospitals in Hamilton County, the SMSA and the HSA, among other things:

(a) purchased substantial amounts of supplies, equipment and medicines in interstate commerce from sources outside of the State of Tennessee;

(b) received substantial revenues in interstate commerce from private and governmental insurers located outside of the State of Tennessee; and [5]

(c) treated a substantial number of patients who travel from or reside outside the State of Tennessee.

IV. COUNT I: ACUTE CARE HOSPITAL SERVICES MARKET

Trade and Commerce

12. For purposes of this complaint and this count, the relevant product market is acute care hospital services, or any submarkets thereof, excluding psychiatric services,

13. For purposes of this complaint and this count, the relevant geographic market is Hamilton County, the SMSA, or the HSA or any submarkets thereof.

14. Prior to the acquisitions of HAI and HCC, the acute care hospital services market in the geographic market was concentrated. Two-firm concentration was approximately 57–59% in Hamilton County, approximately 46–49% in the SMSA, and approximately 40–42% in the HSA. Four-firm concentration was approximately 84–88% in Hamilton County, approximately 75–78% in the SMSA, and approximately 65–68% in the HSA.

15. Barriers to entry are high in the acute care hospital services market in Hamilton County, in the SMSA and in the HSA. These barriers include, among others, substantial capital costs, and the health planning laws, especially given the number of existing beds in the geographic market.

Effects of the Acquisitions

16. As a result of its acquisition of HAI, HCA increased its market share of acute care hospital services in Hamilton County from approximately 16–18% to approximately 27–29%, in the SMSA from approximately 13–15% to approximately 28–30%, and in the HSA from approximately 16–17% to approximately 28–30%. Two-firm concentration increased in Hamilton County from approximately 57–59% to approximately 65–66%, in the SMSA from approximately 46–49% to approximately 59–61%, and in the HSA from approximately 40–42% to approximately 53–54%. Four-firm concentration increased in Hamilton County from approximately 84–88% to approximately 91–95%, in the SMSA from approximately 75–78% to approximately 85–90%, and in the HSA from approximately 65–68% to approximately 73–78%.

17. As a result of its acquisition of HCC, HCA increased its market share of acute care hospital services in Hamilton County from approximately 27–29% to approximately 31–32%, in the SMSA from approximately 28–30% to approximately 32–33%, and in the HSA from approximately 28–30% to approximately 30–32%. Two-firm [6] concentration increased in Hamilton County from approximately 65–66% to approximately 69–71%, in the SMSA from approximately 59–61% to approximately 62–64%, and in the HSA from approxi-

mately 53-54% to approximately 55-56%. Four-firm concentration increased in Hamilton County from approximately 91-95% to approximately 96-98%, in the SMSA from approximately 85-90% to approximately 88-93%, and in the HSA from approximately 73-78% to approximately 75-80%.

18. Through its acquisitions of HAI and HCC, HCA acquired direct and actual competitors in the market for acute care hospital services in Hamilton County, in the SMSA and in the HSA.

19. The effects of the HAI and HCC acquisitions by HCA, individually and together, may be substantially to lessen competition or tend to create a monopoly in the relevant product and geographic market in the following ways, among others:

- (a) actual and potential competition has been eliminated among some acute care hospitals;
- (b) concentration in the market has been substantially increased;
- (c) patients and physicians may be denied the benefits of free and open competition based on price, quality, and service;
- (d) competition among hospitals for patients and physicians may be substantially impaired;
- (e) competition among some hospitals for patient referrals may be diminished or eliminated;
- (f) Medicaid patients may be foreclosed from use of some hospitals now controlled by HCA; and
- (g) collusion or artificial price increases may be facilitated, and the risk of collusion will be aggravated.

Violation Charged

20. The acquisitions of HAI and HCC, individually and together, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. [7]

V. COUNT II: PSYCHIATRIC SERVICES MARKET

Trade and Commerce

21. For purposes of this complaint and this count, the relevant product market is inpatient psychiatric treatment services excluding substance abuse treatment services and long-term treatment of chronic mental illness, hereinafter "psychiatric services," or submarkets thereof.

22. For purposes of this complaint and this count, the relevant geographic market is the HSA.

23. Prior to the HCC acquisition the market was highly concentrated with a two firm concentration ratio of 93% and a three firm con-

centration ratio of 100%. There were only two private firms in the market providing psychiatric services.

24. Barriers to entry are high in the market. These barriers include, among others, substantial capital costs and the health planning laws, especially given the number of existing beds in the market.

Effects of the HCC Acquisition

25. As a result of HCA's acquisition of HCC, HCA has increased its share of the market for psychiatric services in the HSA from approximately 7% to approximately 38%. Two-firm concentration is now 100%, and there is now only one private firm in the market providing psychiatric services.

26. Through its acquisition of HCC, HCA has acquired a direct and actual competitor in the market.

27. The effects of the acquisition of HCC by HCA may be substantially to lessen competition or tend to create a monopoly in the relevant product and geographic market in the following ways, among others:

(a) actual and potential competition between HCA and HCC in the provision of psychiatric services has been eliminated;

(b) concentration in the market has been substantially increased;

(c) patients and physicians may be denied the benefits of free and open competition among psychiatric facilities based on price, quality and service; and [8]

(d) HCA may have secured the power to raise prices, and its incentives to provide high quality psychiatric treatment services may be reduced.

Violation Charged

28. The acquisition of HCC constitutes a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

INITIAL DECISION BY

LEWIS F. PARKER, ADMINISTRATIVE LAW JUDGE

OCTOBER 30, 1984

I. HISTORY OF THE PROCEEDING

On July 30, 1982, the Federal Trade Commission issued a complaint charging that Hospital Corporation of America ("HCA") had violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by purchasing two corporations, Hospital Affiliates International, Inc. ("HAI") and Health Care Corporation ("HCC").

According to the complaint, HCA, a Tennessee corporation, is the largest operator and manager of acute care and psychiatric hospitals in the United States. Prior to their acquisitions by HCA, HAI and HCC also owned, operated and managed acute care and psychiatric hospitals in several states of the United States, but the complaint challenges only the acquisitions of hospitals or contracts to manage hospitals within: (1) the "Health Service Area," a 13-county area in southeastern Tennessee and northern Georgia; (2) Hamilton County, the county in which the city of [2] Chattanooga, Tennessee is located; (3) the Chattanooga Standard Metropolitan Statistical Area ("SMSA"); and (4) any submarkets within these markets.

Count I of the complaint defines the relevant product market as acute care hospital services, or any submarkets thereof, excluding psychiatric services. The alleged relevant geographic markets are described above.

Count II of the complaint defines the relevant product market as inpatient psychiatric treatment services excluding substance abuse treatment services and long-term treatment of chronic mental illness, or submarkets thereof. The relevant geographic market in Count II is claimed to be the HSA.

Count I alleges that as a result of the challenged acquisitions, HCA acquired direct and actual competitors in the acute care hospital services market in Hamilton County, the SMSA and the HSA or submarkets thereof and that the effect of these acquisitions in the relevant product and geographic markets may be substantially to lessen competition or tend to create a monopoly in the following ways:

(a) actual and potential competition has been eliminated among some acute care hospitals;

- (c) patients and physicians may be denied the benefits of free and open competition based on price, quality, and service;
- (d) competition among hospitals for patients and physicians may be substantially impaired;
- (e) competition among some hospitals for patient referrals may be diminished or eliminated;
- (f) Medicaid patients may be foreclosed from use of some hospitals now controlled by HCA; and
- (g) collusion or artificial price increases may be facilitated, and the risk of collusion will be aggravated.

Count II alleges that as a result of its acquisition of HCC, HCA acquired a direct and actual competitor in the psychiatric services market and that the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in the relevant product and geographic market in the following ways: [3]

- (a) actual and potential competition between HCA and HCC in the provision of psychiatric services has been eliminated;
- (b) concentration in the market has been substantially increased;
- (c) patients and physicians may be denied the benefits of free and open competition among psychiatric facilities based on price, quality and service; and
- (d) HCA may have secured the power to raise prices, and its incentive to provide high quality psychiatric treatment may be reduced.

The relief sought in the complaint is an order:

- (a) Divesting in whole or in part the assets and contracts acquired by HCA from the HAI and HCC acquisitions in the market, so as to form independent viable entities;
- (b) Prohibiting HCA in some or all markets from making any future acquisition of any acute care hospital or psychiatric facility, or any contract for the management thereof, in competition with any other hospital it owns or manages, without prior Commission approval, for a period of years;
- (c) Requiring HCA to file compliance reports with the Commission and to give prior notice of any changes in corporate form or organization which would affect compliance obligations under the order entered; and
- (d) Containing other provisions reasonable and appropriate to correct or remedy the alleged anticompetitive practices engaged in by HCA.

On June 9, 1983, upon motion of complaint counsel who asserted that the possible relief for the violation alleged in Count II would not justify the expenditure of resources necessary fully to litigate the

issues raised by it, I dismissed that count. Thus, this initial decision deals only with the factual and legal issues raised in Count I. [4]

After extensive discovery, hearings began in Washington, D.C. on November 28, 1983, continued in Chattanooga, Tennessee, and concluded in Washington on May 31, 1984. The record was not closed, however, until July 13, 1984 because the parties offered some documents into evidence in subsequent written motions. The parties filed their proposed findings of fact, conclusions of law and proposed orders on July 23, 1984. Answers were filed on August 6, 1984. At my request, the Commission granted me an extension of time to November 5, 1984 to file this initial decision.

This decision is based on the transcript of testimony, the exhibits which I received in evidence, and the proposed findings of fact and answers thereto filed by the parties. I have adopted several of the proposed findings verbatim. Others have been adopted in substance. All other findings are rejected either because they are not supported by the record or because they are irrelevant.

II. FINDINGS OF FACT

A. *The Nature of HCA's Business*

1. HCA is a corporation organized and existing under the laws of the State of Tennessee, with its principal executive offices at One Park Plaza, Nashville, Tennessee (Cplt. ¶ 2; Ans. ¶ 2).¹ HCA is primarily engaged in the operation and management [5] of proprietary acute care and psychiatric hospitals² in the United States and in several foreign countries, both for its own account and for other owners (Ans. ¶ 3). It is the largest proprietary hospital chain in the United States (Cplt. ¶ 3; Ans. ¶ 3; CX's 427N, 13D).

2. HCA was founded in 1968 by Jack C. Massey, Thomas Frist, M.D. and Thomas Frist, Jr., M.D. with one health care facility in Nashville, Tennessee (CX 9A). By 1973, HCA owned 51 hospitals (CX 9A), and

¹ The following abbreviations are used in this decision:

- CX - Commission exhibit
- RX - Respondent's exhibit
- CPF - Section number and finding in complaint counsel's proposed findings of fact
- CB - Complaint counsel's brief in support of their findings of fact
- CAB - Complaint counsel's answering brief
- RPF - Respondent's proposed findings of fact
- RB - Respondent's brief in support of its findings of fact
- RAB - Respondent's answering brief
- F - Finding number in this decision
- Cplt. - Complaint
- Ans. - Answer

² The complaint defines an acute care hospital as an inpatient facility that furnishes care in connection with services of physicians for conditions for which nursing, medical or surgical services would be appropriate for care, diagnosis, or treatment, not including a facility specially intended for use in treatment of mental illness, emotional

by 1978, it owned or managed under contract 100 hospitals and had grown to 28,000 employees with more than 5,000 shareholders (CX 9B). From 1978 through 1982, HCA increased the number of hospitals it owned and managed by more than 200%. Approximately 80% of this growth resulted from acquisitions (CX 13I). HCA operates 390 hospitals around the world (Tr. 3238), and it owns or leases approximately 200 hospitals and manages 170 in the United States (Tr. 3737; CX 13I).

3. Prior to HCA's acquisition of HAI and HCC, as of December 30, 1980, it owned 114 hospitals in the United States and provided management services to 56 hospitals in this country. In 1980, HCA had total assets worth \$1,610 million and had earned \$81 million on revenues of \$1,429 million (CX 8B, V).

4. Prior to the challenged acquisitions, HCA owned one hospital in Chattanooga, Parkridge Hospital, and two hospital facilities in outlying southeast Tennessee communities: Cleveland Community Hospital in Cleveland, Tennessee and Athens Community Hospital in Athens, Tennessee (Cplt. ¶ 5; Ans. ¶ 5; Stipulation, November 3, 1983).

B. *The Challenged Acquisitions*

1. The HAI Acquisition

5. HAI was a proprietary hospital management company organized and existing under the laws of the State of Delaware and was a wholly-owned subsidiary of INA Health Care Group, Inc. which was a wholly-owned subsidiary of INA Corporation, whose primary line of business is insurance (CX 272B). [6]

6. At the time of the acquisition in August 1981, HAI owned or leased 57 hospitals and managed 78 hospitals nationwide (CX's 6E, 8K). In 1980, it had total assets worth \$509 million and had earned \$29 million on revenues of \$704 million (CX 272K, M). In August 1981, HCA acquired HAI for approximately \$650 million in a stock transaction (Cplt. ¶ 6; Ans. ¶ 6; CX's 8Z-13, 13N, 535, p. 3).

2. HCA's Acquisition of HAI's Chattanooga Area Acute Care Hospitals

7. Prior to its acquisition by HCA, HAI owned or managed five acute care hospitals in the Chattanooga area, and HCA acquired ownership or management of these hospitals when it acquired HAI (Cplt. ¶ 7; Ans. ¶ 7). Three of the hospitals, Diagnostic (owned) Downtown (managed) and Red Bank (managed) are located in Chattanooga or its suburbs (CX's 50A, 51A, 56A, 27D). The other two, Sequatchie (owned) and South Pittsburg (managed) are located in counties adjacent to Hamilton County, the county in which Chattanooga is located.

3. The HCC Acquisition

8. At the time of the acquisition, HCC, a psychiatric hospital management company, owned three psychiatric hospitals located in Texas and Tennessee, and a single acute care hospital, Medical Park Hospital in Chattanooga (CX 10P, Z-3). In a December 1981 stock transaction, HCA acquired HCC for approximately \$30 million (Cplt. ¶ 9; Ans. ¶ 9).

4. HCA's Acquisition of HCC's Chattanooga Area Acute Care Hospital

9. Medical Park, which HCC owned, was an 83-bed general acute care hospital located in downtown Chattanooga (CX 10P, Z-3).

C. Acute Care Hospitals In Chattanooga And The Surrounding Area

1. The Chattanooga Area

10. The city of Chattanooga, Tennessee, situated in Hamilton County in southeast Tennessee on the state boundary with northwest Georgia (RX 1079 (3); CX 15, p. 14), has a population [7] of 170,000 according to the 1980 census (RX 920 (9)). Hamilton County has a population of approximately 288,000 (CX 15, p. 16). Chattanooga is the major city in two federally-designated geographic areas: the Metropolitan Statistical Area ("MSA") and the Georgia-Tennessee Health Service Area ("HSA").

11. An MSA is a large population nucleus, together with adjacent communities which have a high degree of economic and social integration with that nucleus (45 Fed. Reg. 956 (1980)). The Chattanooga MSA is a six-county area consisting of the Tennessee counties of Hamilton, Marion, and Sequatchie and the Georgia Counties of Walker, Dade, and Catoosa (CX's 484L, 32Z-118). It has a population of approximately 426,540 (CX 15, p. 16).

12. An HSA is the area designated by the Department of Health and Human Services as a region in which state and local health planners are to assess and identify the health needs of the population in that region (42 U.S.C. 3001(a) (1982)).

13. The HSA that includes Chattanooga is composed of thirteen counties: ten in southeastern Tennessee (Bledsoe, Bradley, Grundy, Hamilton, Marion, McMinn, Meigs, Polk, Rhea, and Sequatchie counties) and three in northwest Georgia (Catoosa, Dade, and Walker counties) (CX 15, p. 1). In 1980, it had a population of approximately 604,498 (CX 15, p. 16).

14. Other cities in the area surrounding Chattanooga include Dal-

a 1980 population of approximately 21,000 (RX 921 (7); Tr. 3296). Dalton is approximately 40 minutes southeast of downtown Chattanooga on Interstate 75 South (RX's 1030 (3); 1089).

15. Cleveland, situated in Bradley County, Tennessee, approximately 40 minutes northeast of downtown Chattanooga on Interstate 24 East (RX's 1030 (2-3), 1089), is an industrialized community with a 1980 population of approximately 26,000 (RX 920 (4); Tr. 3296).

16. South Pittsburg, in Marion County, Tennessee, is on the Tennessee-Alabama state boundary west of downtown Chattanooga across the Tennessee River (RX 1079 (3)). South Pittsburg is approximately 40 minutes from downtown Chattanooga (RX's 1030 (3), 1089). The 1980 population of South Pittsburg was approximately 3,600 (RX 920 (6)).

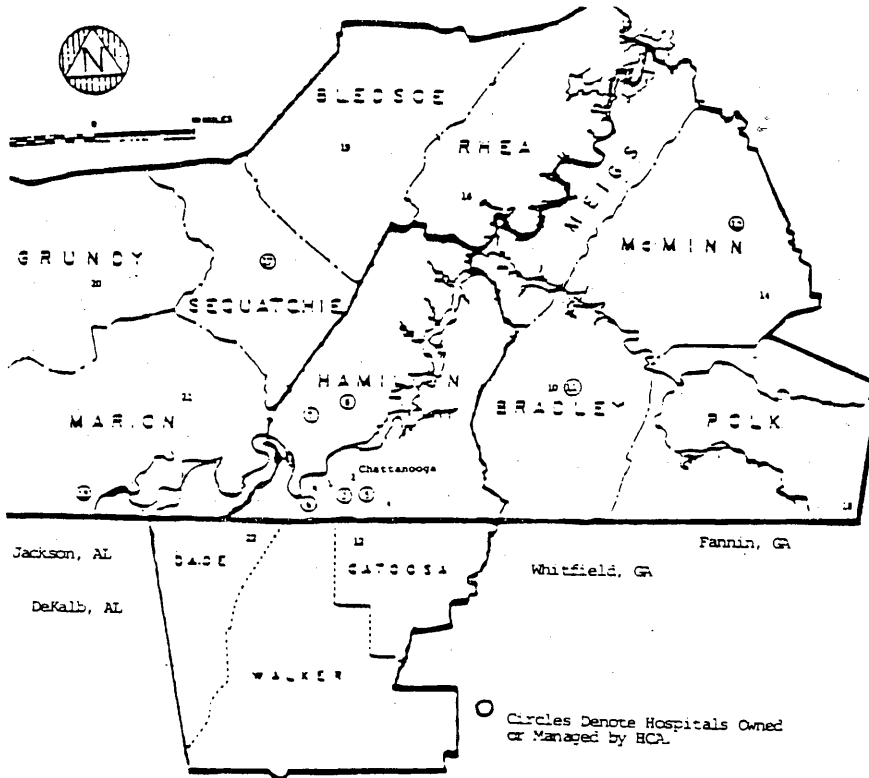
17. Dunlap, in Sequatchie County, Tennessee, is approximately 45 minutes from downtown Chattanooga over Signal Mountain and Walden Ridge (RX's 1030 (4), 1089; CX 15, p. 14). The population of Dunlap in 1980 was approximately 3,700 (RX 920 (8)) [8].

18. Whitwell, in Marion County, is approximately 40 minutes west of downtown Chattanooga over Suck Creek Mountain (RX's 1030 (4-5), 1089, 1079 (3)). The 1980 census for Whitwell showed a population of approximately 1,800 (RX 920 (6)).

19. The largest community in the Tennessee counties of Grundy, Bledsoe, Rhea, Meigs, McMinn and Polk is Athens with a 1980 population of approximately 12,000 (RX 920 (4-8)). Athens is situated just off Interstate 24, north of Cleveland, approximately halfway between Chattanooga and Knoxville (Tr. 282). Dayton, Tennessee in Rhea County had a 1980 population of approximately 6,000 (RX 920 (8)).

2. Hospitals In The Chattanooga HSA

20. The map on the following page shows the approximate locations of the hospitals in the Chattanooga HSA. [9]



Numbers Show the Locations of the Following Hospitals Within Counties in Tennessee and Georgia:

- | | |
|--------------------------------------|--|
| 1. Erlanger Medical Center | 17. John L. Hutcheson Memorial Tri-County Hospital |
| 2. Memorial Hospital | 18. Athens Community Hospital |
| 3. Parkridge Hospital | 19. Woods Memorial Hospital |
| 4. East Ridge Community Hospital | 20. South Pittsburg Municipal Hospital |
| 5. Diagnostic Center Hospital | 21. Rhea County Medical Center |
| 6. Downtown General Hospital | 22. Sequatchie General Hospital |
| 7. Red Bank Community Hospital | 23. Copper Basin Medical Center |
| 8. North Park Hospital | 24. Bledsoe County Hospital |
| 9. Metropolitan Hospital | 25. Grundy County General Hospital |
| 10. Bradley County Memorial Hospital | 26. Whitwell Hospital |
| 11. Cleveland Community Hospital | 27. Wildwood Sanitarium |

[10]3. The MSA

a. *Hamilton County, Tennessee*

21. There are nine general acute care hospitals in Hamilton County, and HCA either owned, or, as a result of its acquisitions became the owner or manager of, five hospitals in this county.

22. *Erlanger Medical Center*, located in downtown Chattanooga on East Third Street near the Tennessee River (RX 1079 (3); CX 66A), is a non-profit teaching hospital owned and operated by the Chattanooga Hamilton County Hospital Authority, a public agency created by state statute in 1976. It is controlled by a politically appointed board of trustees (RX 761 (3); Tr. 90, 109, 3289). Erlanger is a major medical complex with several different hospital buildings, including a general acute care hospital, Baroness Erlanger Hospital, and several other facilities (Tr. 96-97, 107, 489). It provides a wide range of health care services to the community, and it is the only tertiary care referral center in the HSA³ (Tr. 92, 94-95; CX's 15, p. 142; 18Z-44). While it has a certificate of need (F. 252) for 780 beds, only 754 are licensed. Of these 754 [11] licensed beds, only 714 are in actual use (Tr. 130, 132). The full number of certificate-of-need beds is expected to be put into use sometime in 1985 (Tr. 133).

23. Erlanger is required by law to accept all Hamilton County residents needing hospital care, regardless of their ability to pay, and has the image of a "public" hospital (Tr. 110-11; CX 408Z-17). It treats the vast majority of indigent patients in Hamilton County, and at least 100 beds are used for the treatment of these patients⁴ at all times (Tr. 115, 134, 883, 138; CX's 18Z-44, 32Z-8, 38Z-17). Erlanger has several specialized intensive care units including a trauma unit, a neurosurgical intensive care unit, and a burn unit, which are unique and not available anywhere else in the area (Tr. 1374-75, 1408-09; CX 15, pp. 93-94).

24. The Erlanger complex includes a pediatric hospital, T.C. Thompson Children's Hospital (Tr. 96, 107). Children's Hospital is a

³ Hospitals are classified from most basic to most advanced as primary, secondary, or tertiary facilities. A primary hospital generally provides basic acute care services, such as obstetrics (unless such services are organized regionally), surgical services, x-ray, clinical laboratory, and blood services, a minimal level emergency room, pharmacy and anesthesia services, and minimal intensive care capabilities. A secondary level facility generally has the primary services listed above and, in addition, more specialized capabilities such as EEG equipment, diagnostic and therapeutic equipment for cancer patients and 24-hour physician coverage. A tertiary level hospital generally has the same facilities as the other two levels, and is available as a primary level hospital for the majority of its patients, but also has specialized services as are needed in the community, such as open heart surgery capabilities, cardiovascular diagnostic lab, CT scanner, burn-care unit, and oncology (cancer) services (CX 15, pp. 141-42). A referral hospital is one that because of the level of sophistication of its services is able to attract patients from smaller facilities having more limited services and capabilities (Tr. 123, 442, 615, 747, 1507-08, 1967-68, 3277, 1388).

⁴ Indigent patients are economically-disadvantaged individuals who have no form of health insurance coverage and who do not qualify for Medicaid (Tr. 110).

114-bed facility that is used exclusively for pediatric patients (Tr. 100-01, 130).

25. Willie D. Miller Eye Center, a 30-bed specialty eye center, is also a part of Erlanger. It is located adjacent to Baroness Erlanger Hospital and is used exclusively for the treatment of eye diseases (Tr. 107-08, 131).

26. Erlanger also operates a 13-bed emergency psychiatric "holding unit" that is used exclusively to treat patients needing psychiatric care. It is the only psychiatric emergency facility in the area and many of the patients treated there are indigent. It is located in a maximum security wing of the hospital that is not easily accessible. The psychiatric unit is operated by a nursing staff specially trained in the care of psychiatric patients (Tr. 118-20).

27. *Memorial Hospital* is located on Citico Avenue in the downtown area of Chattanooga. It is a non-profit institution which is owned and operated by the Catholic Church (Tr. 1503; CX 53A; RX 1079 (3)). In 1981, Memorial Hospital was authorized by the Tennessee Health Facilities Commission to operate 349 general acute care hospital beds (RX 1092). In 1982, its authorized bed total was increased to 365 (RX 872).

28. Memorial Hospital has secondary capabilities but offers some tertiary services. It offers such sophisticated specialties as cardiovascular catheterization, open heart surgery, nuclear medicine, radiation therapy and neurological procedures. The [12] hospital's emergency room is staffed by physicians on a 24-hour basis (Tr. 1505, 1507, 3291, 136; CX's 15, p. 142, 29Z-5).

29. *Parkridge Hospital*, owned by HCA before the acquisitions, is located on McCallie Avenue in downtown Chattanooga (CX 36A; RX 1079 (3)). It is a medical/surgical hospital which offers diagnostic and therapeutic services usually found in major urban hospitals (Tr. 3276).

30. Parkridge Hospital was in 1981, and is today, authorized by the Tennessee Health Facilities Commission to operate 296 general acute care hospital beds (Tr. 3276; RX 1092). Parkridge is basically a secondary level hospital with some tertiary capabilities (Tr. 127, 276, 686; CX 15, p. 142).

31. *East Ridge Community Hospital* is located in the East Ridge community approximately six miles east of downtown Chattanooga adjacent to the intersection of Interstate 75 and Interstate 24 (Tr. 678, 750; RX 1079 (3)). It is a general acute care hospital authorized by the Tennessee Health Facilities Commission to operate 128 beds (Tr. 680; RX 1092). The hospital offers most of the medical and surgical services commonly found in suburban hospitals of its size, and has an active obstetrical practice in which it provides secondary level care (Tr.

680-81, 146, 3291). East Ridge is owned and operated by Humana, Inc., a large, for-profit hospital chain (Tr. 682; CX 83A, F).

32. *Diagnostic Center Hospital*, an 80-bed facility on McCallie Avenue in downtown Chattanooga, which HAI owned before its acquisition by HCA, specializes in the diagnosis and treatment of cardiopulmonary disease (Tr. 3592). It was established in the late 1950's by the physicians who were the founding members of the Diagnostic Center Medical Group. All of the inpatient admissions to Diagnostic Center Hospital are made by the nine physicians in the Diagnostic Center Medical Group (Tr. 3592-93).

33. Diagnostic Center Hospital has no operating room or other surgical facilities, and the hospital's services are strictly non-invasive (Tr. 3593).

34. *Red Bank Community Hospital* is a 57-bed general acute care hospital located in the Red Bank community north of the Tennessee river, and was managed by HAI prior to the acquisitions (Cplt. ¶ 7; Ans. ¶ 7; Tr. 1171; RX 1079 (3); CX's 38-2-42, 27D, 56A-F). Red Bank is a not-for-profit hospital owned by the Health and Educational Facilities Board of the City of Red Bank and is leased to the Red Bank Hospital Association (Tr. 1171; CX 628).

35. *Medical Park Hospital* (North Park) was in 1981 an 83-bed facility on McCallie Avenue in downtown Chattanooga and was owned by HCC before its acquisition by HCA (Tr. 138; CX 75A; RX's 1092, 1079 (3)). [13]

36. Medical Park was granted a certificate of need by the Tennessee Health Facilities Commission in October 1980 authorizing its relocation to the suburban north Chattanooga community of Hixson (CX 19V; RX 858). North Park Hospital, owned by HCA (CX 895G) and located in the north Chattanooga suburbs, is a new facility opened on November 15, 1982, which replaces Medical Park Hospital (Tr. 3291; CX 504E).

37. North Park does not provide neurological surgery, open heart surgery, major trauma treatment or obstetrics. The hospital administration expects to add obstetric services within the next several years if there is demand for the services and physician support. The new facility has the latest technology available for the medical and surgical specialties and services generally offered in suburban hospitals. It offers primary and limited secondary level services. Because of its suburban setting in the outlying community of Hixson, the hospital emphasizes outpatient procedures (Tr. 137, (Tr. 137, 545-46, 585, 3398; CX's 15, p. 142, 20Z-52).

38. *Downtown General* is a 65-bed urban general acute care hospital which is located in central downtown Chattanooga and was established as a not-for-profit hospital in 1975 (Tr. 1417-23; CX 51A, F, 15,

p. 179). HAI managed Downtown General before its acquisition by HCA (Cplt. ¶ 7; Ans. ¶ 7).

39. *Metropolitan Hospital*, formerly *Tepper Hospital*, is a 64-bed proprietary hospital owned and operated by American Healthcorp, Inc., which purchased the facility in 1982 (Tr. 1045, 1089-90; CX 58A, F). *Tepper* was a pediatric hospital formerly owned by a pediatrician whose four-person physician group practices at the hospital (Tr. 1089-90). *Metropolitan* now provides some diabetes services to adults but still focuses primarily on pediatrics (Tr. 454, 1090-91). Approximately 70% of its patients are pediatric (Tr. 1091), but since 1981, its gynecology, orthopedics, family practice, internal medicine and general surgery services have been expanded (RX 731 (20)).

b. *Other Hospitals In The MSA*

40. There are five hospitals outside of Hamilton County but in the MSA. Two of them are located near Chattanooga, just over the Georgia state line.

41. *John L. Hutcheson Memorial Tri-County Hospital* (Tri-County), is located in the Ft. Oglethorpe community in the Georgia suburbs just across the state line and about ten miles from Chattanooga, Tennessee (RX 1979 (3)). Tri-County is owned by the Hospital Authority of Walker, Dade and Catoosa Counties (RX 646 (10)), a body "corporate and politic" created pursuant to Georgia statute in 1947 (RX 646 (4-5)). The Authority is [14] controlled by a nine-member Board of Trustees nominated by the County Commissioners of the three Georgia counties (RX 679 (6)).

42. Tri-County is a medical/surgical hospital which provides primary and secondary services comparable in range and sophistication to those of Parkridge Hospital (Tr. 117, 3289). In addition to the services which are also available at Parkridge, Tri-County has a hospital unit dedicated exclusively to pediatric care including pediatric intensive care, and an obstetrics service (CX 106C). Tri-County was authorized by the State of Georgia on September 8, 1981, to operate 237 general acute care hospital beds (RX 911). It provides care for indigents and Medicaid recipients in northwest Georgia (Tr. 116, 685; RX 361 (60)).

43. *Wildwood Sanitarium & Hospital* is a 39-bed facility located in Dade County, Georgia, approximately 10 minutes from Chattanooga (Tr. 3290; CX's 92A-B, 15, p. 142). It is owned by the Seventh Day Adventist Church (Tr. 3290, 692, 150). It provides non-traditional services such as alcohol, diet, and non-smoking programs (Tr. 1511). While its medical services are limited in scope (Tr. 692, 1511), and it is not JCAH accredited,⁵ it does provide general medical services and

obstetrics, surgery, respiratory, therapy, physical therapy, audiology, diagnostic radiology, electrocardiography, cardiac rehabilitation, emergency treatment, and psychiatric care (Tr. 3290; CX 92B, D-E). Wildwood is not considered a competitor by HCA facilities in the Chattanooga area, according to their planning documents (CX's 17Z-35, 18Z-43, 20Z-11, 27I, 28Z-2, 32Z-45, 34E-F, 82Z-11, 235Z-23; see also Tr. 1512).

44. *South Pittsburg Municipal Hospital*, a city-owned facility in South Pittsburg, Tennessee, is managed by HCA pursuant to a long-term contract (CX 21). The hospital was approved for 107 beds in 1981 (RX 1093). It is comparable to the smaller Chattanooga hospitals in terms of quality and range of services (Tr. 690).

45. A drive from downtown Chattanooga to South Pittsburg Municipal Hospital on January 18, 1984 required 41 minutes and 17 [15] seconds by the most direct route under good-to-excellent, non-rush hour driving conditions (RX's 1089, 1030 (3)).

46. *Sequatchie General Hospital* is a small primary care facility in the rural community of Dunlap, Tennessee, situated in Sequatchie County northwest of Chattanooga over Signal Mountain and Walden Ridge (CX 15, p. 14; RX 1079 (3)).

47. Sequatchie General was acquired by HCA as part of the acquisition of HAI in 1981 (Tr. 3253-56; CX 874, pp. 18-19). In December 1982, HCA sold Sequatchie along with 18 other hospitals to Republic Health Corporation in exchange for cash, notes, stock and assumption of debt. As a result of this transaction, HCA obtained ownership of approximately one-third of the common stock of Republic (Tr. 544-45; CX 874, pp. 3, 18-19). A "voting agreement" between HCA and Republic gives HCA the right to elect a majority of Republic's board of directors if Republic fails to meet certain specified conditions (Tr. 545; CX 874, p. 16). HCA currently owns about 20% of Republic's stock (Tr. 3265).

48. *Whitwell Community Hospital* is a 25-bed facility located in Marion County, approximately 18 miles from Chattanooga (CX's 44A, F, 15, p. 142). It is a very old facility with a two-person medical staff (Tr. 617; CX 15, p. 138), and does not meet state codes and standards (Tr. 691). One witness testified that he didn't "think you would call it a general acute care hospital" (Tr. 691), whereas another witness stated that it is more like a "clinic" and is "really not a hospital at all" (Tr. 1511).

49. Whitwell was purchased by Rural Hospital Associates Inc. in

for hospitals in order to improve and to maintain the basic quality of care of their medical staff and facilities (Tr. 741). JCAH accreditation means that a hospital meets certain minimum standards of quality (Tr. 256, 1103-04, 2284; CX's 175, 250C). It is the "Good Housekeeping Seal of Approval" for hospitals. Tennessee accepts JCAH approval as sufficient to receive state licensing approval and hospitals with JCAH approval are deemed qualified to participate in the Medicare program (Tr. 257).

1982 (CX 404B, S; RX 1093). Rural Hospital Associates is now building a new \$5.5 million facility to replace the existing Whitwell facility (CX 404Z-14, Z-20). The certificate-of-need for the 40-bed replacement facility was approved November 1, 1982 (RX 876).

50. A drive from Whitwell Community Hospital to downtown Chattanooga on January 19, 1984, required 39 minutes and 47 seconds by the most direct route under good-to-excellent, non-rush hour driving conditions (RX 1030 (4-5)).

4. Hospitals In The HSA Outside Of The MSA

51. Outside of the MSA, but in the HSA, are eight hospitals, two of which, Cleveland Community Hospital and Athens Community Hospital, are owned by HCA.

52. *Cleveland Community Hospital*, formerly named Cherokee Park Hospital, is a 100-bed full-service community hospital located in Cleveland, Tennessee (CX's 71A, 15, p. 179, 148D), a city which has experienced 50% growth since 1970. It is approximately 30 miles from Chattanooga (CX's 148Z-16, 235Z-[16]14). Cleveland Community Hospital has a 20-bed psychiatric unit located in a separate wing from the rest of the hospital (Tr. 3489-90; CX 15, p. 268; HCA's Response to Interrogatory 18, filed Apr. 20, 1983). This unit is used exclusively for psychiatric patients (Tr. 3490). HCA obtained Cleveland Community Hospital through its 1980 acquisition of General Care Corporation (CX's 546A, 566A, 487A, 11Z-17). The hospital is approximately 41 minutes from downtown Chattanooga by auto (RX's 1098, 1030 (2-3)).

53. As an example of the isolation of the hospital from Chattanooga, Jim Whitlock, administrator of Cleveland Community Hospital, testified that he drives to Chattanooga infrequently and then only to THA district meetings, has no business or personal interests in Chattanooga, is not familiar with hospital facilities and locations in Chattanooga, and does not subscribe to either of the Chattanooga newspapers (Tr. 3476-77).

54. *Athens Community Hospital* is a 118-bed full-service hospital located in McMinn County (CX's 15, p. 179, 17Z-46, 54A, G). It is some 40 miles from Chattanooga in Athens, Tennessee, a small town with a population of approximately 12,000 (CX's 54A, 17Z-28). According to the former administrator of Erlanger, while Athens and other outlying hospitals compete with Erlanger "to a degree," patients who need general medical-surgical care are treated in their own communities (Tr. 148) and patients from the Athens Hospital needing special care would probably be referred to Knoxville, Tennessee (Tr. 282). This is also true of Woods Memorial Hospital (Tr. 283). Athens Hospital is not a member of the Chattanooga Area Hospital District (Tr.

283). Two administrators from urban Chattanooga hospitals who testified in this case were not familiar with the services offered by Athens (Tr. 279, 1603).

55. *Bradley County Memorial Hospital* is in Bradley County. Bradley Memorial is a 251-bed city-owned hospital located in Cleveland, Tennessee, approximately 30 miles north of Chattanooga and three miles from Cleveland Community Hospital (Tr. 136, 685, 3465; CX's 15, pp. 142, 179, 49A, F, 148Z-16). It is a full-service community hospital that provides primary and secondary care and some intensive care services (Tr. 136; CX 15, p. 142). It offers a range and quality of services comparable to many of the hospitals in Chattanooga (Tr. 685; CX 148Z-25). It also operates an 18-bed substance abuse treatment unit (CX 65F; HCA's Response to Interrogatory 18, filed Apr. 20, 1983).

56. The other five hospitals in the HSA are relatively small facilities located in rural areas (see Tr. 3296).

57. *Woods Memorial Hospital* is a 72-bed county-owned community hospital located in Etowah, Tennessee, approximately 38 miles from Chattanooga (CX's 61A, 17Z-35). Any referrals from Woods Memorial in Etowah would probably go to Knoxville, Tennessee hospitals (Tr. 283). Woods Memorial Hospital is not a [17] member of the Chattanooga area hospital council (Tr. 283), and hospital administrators in the Chattanooga area are not generally familiar with the Woods Memorial facility and services (e.g., Tr. 279). [***]* (RX 1081 (150)).

58. *Copper Basin* is a 44-bed county-owned community hospital located east of Chattanooga near the North Carolina border in Polk County (CX 59A, F, 15, pp. 14, 179; see Tr. 279). It is located in Cooperville, Tennessee approximately 65 miles from Chattanooga (CX 59A). Hospital administrators in the Chattanooga urban area are not familiar with the facilities, location or services of Copper Basin Medical Center (e.g., Tr. 280).

59. The three remaining hospitals, aside from offering only the most basic treatment, are not JCAH-accredited. They are Bledsoe County Hospital, Grundy County Hospital, and Rhea County Medical Center.

60. *Rhea* is a 57-bed primary care hospital owned and operated by the county (CX's 45A, F, 15, p. 142). It is located in Rhea County approximately 25 miles from Chattanooga. [***] (RX 1081). Hospital administrators in the Chattanooga urban area are generally unfamiliar with Rhea County Medical Center (e.g., Tr. 685).

61. *Bledsoe* is a 32-bed general acute care hospital located in Bledsoe County. It provides primary care services (Tr. 150; CX's 64A, F, 15, p. 179), and is a county-owned facility approximately 35 miles from Chattanooga (CX 48A, F). [***] (RX 1081 (160)).

* Throughout this document, [***] refers to *in camera* material that has been excised.

62. *Grundy County General Hospital* is a 27-bed proprietary hospital located in Grundy County (CX's 651A, 15, p. 179). It is owned by Cumberland Heights Hospital, Inc. (CX 99A). Grundy is a small, primary care facility located approximately 36 miles northwest of Chattanooga (CX 15, p. 142). [***] (RX 1081 (165)). Hospital administrators in the Chattanooga urban area are not familiar with the facilities or services of Grundy County General Hospital (e.g., Tr. 281, 1603). [18]

D. Other Health Care Facilities In The Chattanooga Area

63. There are 27 nursing homes in the HSA (CX 15, p. 208), nine of which are located in Hamilton County (CX 15, p. 225).

64. There are two psychiatric hospitals in Chattanooga (CX's 15, pp. 232-33, 131D).

65. At the time of the acquisitions in 1981, there were no emergicenters or independent ambulatory surgicenters in Chattanooga (Tr. 1765-66, 162-64, 167-68, 554-55, 3404, 3340, 468-69).

66. There are currently three free-standing emergicenters in Chattanooga not associated with a hospital (Tr. 469, 554, 3304, 3290, 168).

E. Interstate Commerce

67. Prior to the acquisitions of HAI and HCC, HCA owned or managed over 170 acute care and psychiatric hospitals in more than 25 states (CX 535, pp. 18, 20) and in 1980, it had gross revenues of \$1.4 billion from its interstate operations (CX's 8V, 13Y).

68. HCA's Parkridge Hospital in Chattanooga, Tennessee treated approximately 2,503 patients from outside of Tennessee, and this activity produced a gross revenue of around \$5,230,733 (CX's 36E-G, 497E-G).

69. In 1981, Parkridge received federal Medicare funds of approximately \$8.3 million from the United States Treasury in Washington, D.C. (HCA's Response to Interrogatory 28(q), filed Apr. 20, 1983), and in the same year, it purchased approximately \$883,000 worth of drugs and supplies from out-of-state (HCA's Response to Interrogatory 28(o), filed Apr. 20, 1983).

70. Prior to being acquired by HCA, HAI owned or managed a total of 155 hospitals in 33 states (CX's 535, p. 3, 272B; Ans. ¶ 7). The headquarters for these interstate operations was Nashville, Tennessee (CX 272A). In 1980, HAI had gross revenues of approximately \$573 million from its interstate operations (CX 11Z-17; Ans. ¶ 7).

71. The hospitals owned and managed by HAI in the Chattanooga area, Diagnostic Center Hospital, Downtown General Hospital, Red Bank Community Hospital, Sequatchie General Hospital, and South Pittsburg Municipal Hospital treated approximately 2,304 out-of-

number of patients, produced gross revenues of approximately \$4,878,962 (CX's 16E, G, 23E, G, [19] 30E, G, 37I, M, 67E, G; HCA's Response to Interrogatory 28(m), filed Mar. 10, 1983 and Apr. 20, 1983). In 1981, these hospitals received federal Medicare funds of well over \$6 million from the United States Treasury in Washington, D.C. (HCA's Responses to Interrogatory 28(q), filed Mar. 10, 1983 and April 20, 1983). In 1981, Diagnostic, South Pittsburg, and Sequatchie purchased approximately \$838,251 worth of drugs and supplies from outside Tennessee (HCA's Responses to Interrogatory 28(o), filed Mar. 10, 1983 and Apr. 20, 1983).

72. Prior to being acquired by HCA, HCC owned or managed two general acute care hospitals, three psychiatric hospitals, an outpatient psychiatric clinic, and psychiatric treatment units at two hospitals owned by others, in four states. These interstate operations were headquartered in Chattanooga, Tennessee (CX's 136D, M, 10D, 136D). In 1980, HCC had revenues of approximately \$12 million from these operations (CX 10M; Ans. ¶ 10).

73. In 1981, Medical Park Hospital, HCC's only acute care hospital in the Chattanooga area, treated approximately 409 patients from states other than Tennessee, which, based on the ratio of these patients to its total number of patients, produced gross revenues of approximately \$1,027,209 (CX 75E, G), and it received federal Medicare funds of approximately \$2.6 million from the United States Treasury in Washington, D.C. (HCA's Response to Interrogatory 28(q), filed Apr. 20, 1983). In 1981, Medical Park purchased approximately \$96,804 worth of drugs and supplies from out-of-state (HCA's Response to Interrogatory 28(o), filed Apr. 20, 1983).

74. In some cases, private insurers who provide health insurance for Chattanooga businesses are located in states other than Tennessee (RX's 1001 (2), 1011 (1)), and funds from these insurers that reimburse hospitals in the Chattanooga area for patient care cross state lines.

75. HCA's, HAI's and HCC's total operations at the time of the acquisition were in interstate commerce as were their operations in the Chattanooga area and the acquisitions therefore occurred in, and affected, interstate commerce.

F. *The Relevant Product Market*

1. Acute Care Hospital Services

a. *Expert Opinion*

76. Dr. David S. Salkever, complaint counsel's expert witness, is a professor of health economics at John Hopkins [20] University (Tr. 2264). He testified that the relevant product market in this case should be defined as:

[T]he provision of acute inpatient hospital services and the provision of hospital services to critically ill emergency patients, typically who I suspect would be admitted as inpatients if indeed they survived at the critical episode (Tr. 2280).

77. Dr. Salkever's definition excludes from an acute care hospital's business its outpatient business, except for outpatients who are subsequently admitted (Tr. 2281). The reason for limiting the market to inpatient services provided by acute care hospitals is that these services are typically needed by and consumed by patients in combination (Tr. 2283) and can therefore be offered only by acute care hospitals (Tr. 2284).

78. Dr. Salkever's definition also excludes providers of inpatient services other than acute care hospitals, such as psychiatric hospitals and nursing homes because they provide a different type of service, *i.e.*, longer-term care, and are not equipped to treat patients who need acute care (Tr. 2285). His definition also excludes free standing surgery facilities, emergency centers and doctor's offices, even though they offer some of the services provided by a hospital's outpatient clinics because, if they are included, one would be given "a very misleading picture of the structure of the market for the hospital's principal line of business, namely, inpatient services and care of critically ill emergency patients" (Tr. 2287). Finally, he would exclude from the market the pediatric facilities at T.C. Thompson Children's Hospital primarily because the beds in that facility could not easily be converted to use by adult patients (Tr. 2288).

79. Dr. Jeffrey E. Harris, HCA's expert, is a physician on the staff of Massachusetts General Hospital and is an associate professor of economics at MIT (Tr. 3806). He disagreed with Dr. Salkever's proposed product market because, in his view, it is too narrow (Tr. 3942-43). In his opinion, the product market should include outpatient care (Tr. 3943) because the portion of hospital business devoted to such care has increased over time as a result of advances in medical technology which permit outpatient treatment for conditions which were formerly treated on an inpatient basis (Tr. 3943-44). Another reason for inclusion of outpatient net revenues (his preferred unit of measurement) in the acute care hospital market is that outpatient facilities are frequently a feeder for inpatient facilities (Tr. 3945, 3950-51). Dr. Harris also believes that outpatient providers such as emergenciers and multiple diagnostic services [21] and hospices are competing more and more with acute care hospitals (Tr. 3952-53).

b. Inpatient Services Offered By Acute Care Hospitals

80. Representatives of health care providers in the Chattanooga area generally agreed that there is an essential core of services pro-

vided by acute care hospitals. These include medical and surgical beds, 24-hour observation, nursing services, laboratory and x-ray, intensive and coronary care, and ancillary support services (Tr. 93, 463-64, 552, 1396, 1401, 1514, 1762; CX 895E).

81. This range of services must be provided by all acute care hospitals because patient treatment often requires consumption of these services in combination (Tr. 2283), and because hospitalized patients are often unable to travel to another facility for treatment (Tr. 1763). Adding to the need for acute care hospitals to offer a range of services is the variability and uncertainty of illness (Tr. 3856).

c. State Requirements For Acute Care Hospitals

82. Under Tennessee law, a general hospital must be able to provide to its patients diagnosis, treatment and care of acute illness, injury, or infirmity for a period exceeding 24 hours, and it must provide an organized staff, a laboratory, x-ray facilities, surgery, obstetrics, an isolation unit, a kitchen, and an emergency department (Tenn. Admin. Comp. ch. 1200-8-1-.02(3); see also Tenn. Code Ann. § 68-11-201(j) (1983). The state requires acute care hospitals to offer all the services enumerated in the regulations (Tenn. Admin. Comp. ch. 1200-8-1-.02(3)); if any of these services are not provided, a waiver of the regulations must be obtained (see Tenn. Code Ann. § 68-11-209 (1983); Tr. 3616). The 1981-1986 *Health Systems Plan*, which describes the health care system in the Chattanooga area (see CX 15, p. 1), also identifies basic acute care hospital services, including, among other things, obstetrics (unless offered elsewhere in the region), surgery, x-ray and laboratory services, blood services, pharmacy, pathology laboratory, respiratory therapy, and intensive care capabilities (CX's 15, p. 141, 169, pp. 181-82; see also 1983-1986 *Tennessee State Health Plan*). To be eligible for accreditation as an acute care hospital by the Joint Commission on Accreditation of Hospitals, an establishment must have facilities, beds, and services available over a continuous period, 24 hours a day, seven days a week; it must have an organized medical staff and nursing service; its primary function must be the diagnosis, treatment, and/or rehabilitation [22] of the acutely ill; and it must provide dietetic, emergency, nuclear medicine, pathology, laboratory, pharmacy, radiology, and respiratory services (CX 174, p. xviii).

83. Chattanooga area acute care hospitals provide all or almost all of the services identified above, as indicated in reports filed with the states of Tennessee and Georgia and the American Hospital Association (CX's 62B-C, 63E, G, I, L (Memorial), 63B-C, 654C-E (East Ridge), 65B-C, 633C-F (Bradley), 66B-C, 638C-F (Erlanger), 67B-C, 24E, G, I (Red Bank), 68B-C, 637E, G, I, K (Metropolitan), 69B-C, 634E, G, I, K

(Woods), 70B-C, 632C-F (Copper Basin), 72B-C, 635E, G, I, K (Rhea), 99B-C (Grundy), 496B-C, 643C-F (Diagnostic),⁶ 497B-C, 644C-F (Parkridge), 498B-C, 641E, G, I, K (Downtown), 499B-C (North Park), 500B-C, 640C-F (Sequatchie), 501B-C, 642E, G, I, K (South Pittsburg), 502B-C, 645B-D (Athens), 503B-C, 639E, G, I, K (Cleveland Community), 657F, H, 106C-F (Tri-County)).

d. *Industry Recognition Of Acute Care Hospitals
As Distinct From Other Providers*

84. The state of Tennessee licenses "general hospitals" separately from specialty health care facilities such as psychiatric hospitals (Tenn. Admin. Comp. ch. 1200-8-1-.02(3)), as does the state of Georgia (Ga. Admin. Comp. ch. 290-5-6-.03(3)). Acute care hospitals are treated separately from other health care facilities in the *Health Systems Plan* (CX 15, pp. 137-90), and the Tennessee and Georgia state health plans devote separate chapters to acute care hospitals (CX's 169, pp. 179-277, 288, pp. 414-47). General medical and surgical (*i.e.*, acute care) hospitals have a separate Standard Industrial Classification ("SIC") code (8062) from other health care facilities (OMB *Standard Industrial Classification Manual* ("1972 SIC Manual") (1972)).

85. The Joint Commission on Accreditation of Hospitals has a separate set of eligibility criteria for acute care hospitals as distinguished from specialty or long-term facilities (Tr. 2284; CX 174, p. xviii) and the American Hospital Association has separate classifications for acute care psychiatric hospitals and nursing homes (Tr. 2285).

86. Hospital administrators also regard the services provided by acute care hospitals as distinct from those of other facilities (Tr. 93, 1514, 3339). Health economists, as reflected in studies and other health economics literature, perceive acute [23] care hospitals as different from other health care providers such as psychiatric hospitals and nursing homes (Tr. 2285-86).

87. When they discuss competition in their planning documents, Chattanooga area acute care hospitals list only other acute care hospitals (CX's 17Z-35 through Z-37 (Athens), 18Z-43 through Z-44, 38Z-39 through Z-43 (Parkridge), 20Z-26 through Z-27 (North Park), 28Z-15 (Downtown), 32Z-40 through Z-45, 29Z-5 through Z-7 (Diagnostic), 34E-F, 157Z-4 through Z-5 (Sequatchie) 82Z-19 (South Pittsburg), 235Z-23, 148Z-25 through Z-26 (Cleveland Community), 611Z-55 (East Ridge)).

88. Although some Chattanooga area hospital administrators perceive competition from other health care providers, it is limited (Tr. 168, 769, 1517, 3287, 3340, 3402-03, 3475, 3492-94). Their only signifi-

