



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 21, 2025

Timothy W. Gregg
Maynard Nexsen PC

Re: Encompass Health Corporation (the "Company")
Incoming letter dated December 31, 2024

Dear Timothy W. Gregg:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Physicians Committee for Responsible Medicine for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal asks the board to commission a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to the Company's ordinary business operations. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Anna Herby
Physicians Committee for Responsible Medicine



Timothy W. Gregg
Direct: 205-254-1212
tgregg@maynardnexsen.com

Rule 14a-8(i)(7)

December 31, 2024

VIA ELECTRONIC SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Stockholder Proposal of the Physicians Committee for Responsible Medicine Submitted to Encompass Health Corporation

Ladies and Gentlemen,

On behalf of Encompass Health Corporation (the “Company”), we are respectfully submitting this letter pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude from its proxy statement and form of proxy for its 2025 annual meeting of stockholders (the “2025 Annual Meeting,” and such materials, the “2025 Proxy Materials”) a stockholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) submitted to the Company by the Physicians Committee for Responsible Medicine (the “Proponent”). We also request confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend to the Commission that enforcement action be taken if the Company omits the Proposal from its 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) promulgated by the Commission under the Exchange Act (“Rule 14a-8(i)(7)”), on the basis that the Proposal relates to, and does not transcend, the Company’s ordinary business operations.

We are submitting this letter and the exhibits attached hereto electronically to the Staff through the online shareholder proposal portal no later than eighty (80) calendar days before the Company intends to file its definitive 2025 Proxy Materials with the Commission. In accordance with Exchange Act Rule 14a-8(j), we are simultaneously sending a copy of this letter and the exhibits hereto to the Proponent as notice of the Company’s intent to omit the Proposal from the 2025 Proxy Materials. Likewise, we take this opportunity to inform the Proponent that if the Proponent elects to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company pursuant to Exchange Act Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008).

THE PROPOSAL

The Proposal sets forth the following resolution and supporting statement, which the Company received on November 12, 2024:

RESOLVED:

Encompass Health Corporation “exist[s] to provide a better way to care that elevates expectations and outcomes.” The American Medical Association and other medical professionals recognize that plant-based diets offer patients a variety of health benefits, including lower risks of cardiovascular disease, type 2 diabetes, obesity, certain cancers, and even severe COVID-19. We urge the board to fulfill its commitment to elevating health outcomes by commissioning a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings. The report should also address the health risks of continuing to serve patients known carcinogens, such as processed meat.

SUPPORTING STATEMENT:

In 2017, the American Medical Association called on U.S. hospitals to improve patient health by providing a variety of healthful food, including plant-based meals and meals that are low in fat, sodium, and added sugars; eliminating processed meats from menus; and providing and promoting healthful beverages. Subsequently, NYC Health + Hospitals, the country’s largest municipal health care system, began serving plant-based meals as the default lunch and dinner option for inpatients at its 11 public hospitals. In announcing the new meal program, NYCHH’s president stressed “the importance of a healthy diet and how it can help fend off or treat chronic conditions like type 2 diabetes, high blood pressure, and heart disease.”

It is well-established that plant-based dietary patterns reduce the risk of cardiovascular disease and type 2 diabetes and are particularly effective in the prevention and treatment of overweight and obesity, as well as body weight maintenance. Large prospective cohort studies, such as the EPIC study (European Prospective Investigation into Cancer and Nutrition), the Adventist-Health Study, the Nurses’ Health Study, and the Health Professionals Follow-Up Study, have repeatedly demonstrated these benefits.

In 2015, the World Health Organization’s International Agency for Research on Cancer classified processed meat—bacon, sausage, hot dogs, and other meat products preserved with additives or otherwise manipulated to alter color, taste, and durability—as carcinogenic to humans. Investigators in the EPIC study, which followed 448,568 people, relatedly discovered an 11 percent increased risk of dying from cancer with the consumption of 50 grams of processed meat per day. In contrast, substitution studies have found that replacing one serving of processed meat per day with nuts decreased risk for disease by 19 percent and replacement with legumes decreased risk by 10 percent. IARC also classified red meat as probably carcinogenic to humans.

Diabetes and cancer rates are on the rise. With more than 400,000 patients served each year, Encompass is positioned to improve public health nationwide. Serving healthful food helps patients get well and stay well, creating a teachable moment in which patients learn which foods help treat and prevent chronic disease.

Encompass commits to providing a better way to care for its patients. We urge shareholders to support this resolution for a feasibility report on serving plant-based meals as the primary option for patients.

A full copy of the Proposal and relevant correspondence between the Company and the Proponent is attached hereto as Exhibit A.

On November 30, 2023, the Proponent requested that the Company include a substantially similar proposal (the “Prior Proposal”) in its proxy materials for its 2024 annual meeting of stockholders (the “2024 Proxy Materials”). The Company subsequently informed the Staff of its intention to omit the Prior Proposal from the 2024 Proxy Materials, and the Staff agreed that the Proposal was excludable under Rule 14a-8(i)(7) because it “[sought] to micromanage the Company.” *Encompass Health Corporation* (March 21, 2024).

The Prior Proposal stated that the Company “will make healthful, plant-based meals the default option in all food service settings, other than for patients who have special dietary exclusions.” The Proponent, in hopes of a different response from the Staff, has now submitted a revised version of the Prior Proposal. Neither the framing of the Proposal as a request for a “feasibility report” on the subject nor its generalized references to public health benefits of certain dietary practices removes the Proposal from the ordinary business of the Company. As was the case with the Prior Proposal, the Proponent’s ultimate goal is to compel the Company to make the plant-based foods already served at its hospitals “primary” or “default” food options. But, as recognized by the Staff with respect to the Prior Proposal, decisions regarding the Company’s meal service operations, including the type of food offered and the manner in which it is offered, relate to the Company’s ordinary business operations. Therefore, as discussed more fully below, the Company believes it may properly omit the Proposal from its 2025 Proxy Materials pursuant to Rule 14a-8(i)(7).

BASIS FOR EXCLUSION

The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because It Deals with Matters Relating to the Company’s Ordinary Business Operations.

A. Background of the Ordinary Business Exclusion.

Rule 14a-8(i)(7) permits a company to exclude a stockholder proposal from the company’s proxy materials if the proposal “deals with a matter relating to the company’s ordinary business operations.” According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” refers to matters that are not necessarily “ordinary” in the common meaning of the word, but instead the term “is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”). The Staff stated in the 1998 Release that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how

to solve such problems at an annual shareholders meeting,” and that this underlying policy rests on two central considerations that form the basis of the Commission’s application of the ordinary business exclusion.

The first consideration relates to the subject matter of a proposal. The 1998 Release recognizes that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” Examples of such tasks cited by the Staff in the 1998 Release include “management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers.” The Staff explained in the 1998 Release, however, that a proposal relating to a company’s ordinary business operations is nonetheless generally not excludable if the proposal focuses on “sufficiently significant social policy issues (e.g., significant discrimination matters)” that “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” In determining whether a proposal presents a policy issue that transcends the ordinary business of the company, the Staff noted in Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“[SLB 14L](#)”) that it will focus on “whether the proposal raises issues with a broad societal impact” and on the related “social policy significance,” regardless of whether a nexus exists between the policy issue and the company.

Shareholder proposals that are cast as requests for the board of directors to commission or issue a report are excludable pursuant to Rule 14a-8(i)(7) if “the underlying subject matter of the report . . . relates to ordinary business.” Staff Legal Bulletin No. 14E (Oct. 27, 2009) (citing Exchange Act Release No. 34-20091 (August 16, 1983)); see also *Johnson Controls, Inc.* (Oct. 26, 1999) (“[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under Rule 14a-8(i)(7).”), and *CitiGroup Inc.* (Mar. 8, 2024) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company “prepare a report on the feasibility of offering customized proxy voting preferences for Citi clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities”).

The second consideration relates to the degree to which the proposal seeks to “micro-manage” the company by “probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The Staff explained in [SLB 14L](#) that, when evaluating whether a proposal seeks to micromanage a company, it “focuses on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” The Staff continued that this approach is “consistent with the Commission’s views on the ordinary business exclusion, which is designed to preserve management’s discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters.”

As discussed below, and consistent with Commission rulemaking and Staff guidance, including no-action letter precedent, the Proposal is excludable because it implicates both of the central considerations underlying the ordinary business exclusion. The subject matter of the Proposal deals with issues that are “fundamental to management’s ability to run the company on a day-to-day basis,” and it does not focus on sufficiently significant social policy issues that transcend day-to-day business matters. Further, the Proposal seeks to micromanage the Company by “probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.”

B. The Subject Matter of the Proposal Relates to the Company's Ordinary Business of Providing Meal Service to Patients.

As an operator of inpatient healthcare facilities, the Company must provide daily meals that appropriately address each patient's healthcare needs, requiring a complex, nimble and resilient meal service operation, while delivering the primary service of individualized intensive rehabilitation according to that patient's individualized plan of care. The Proponent, citing generalized statistics concerning health outcomes of certain dietary practices, would prefer that the Company alter its food service operations. Despite the exclusion of the Prior Proposal last year pursuant to Rule 14a-8(i)(7) because it amounted to micromanagement of the Company by seeking to compel the Company to make plant-based meals the default option at all food service settings, *Encompass Health Corporation* (Mar. 21, 2024), the Proponent has this year submitted a narrower and even more technical request relating to the same underlying subject matter. The Proposal requests that the Company's board of directors "commission[] a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings." As described below, and in accordance with historical Staff decisions on the excludability of proposals addressing the same and similar topics, decisions with respect to the Company's food service operations are "fundamental to management's ability to run [the Company] on a day-to-day basis," and stockholder proposals relating to this topic are therefore excludable under Rule 14a-8(i)(7).

The Staff has repeatedly concurred with companies intending to exclude proposals that would direct management's decision-making with respect to menu items and food options because the proposals relate to ordinary business operations. In 2024, the Staff concurred with eight companies, comprising five healthcare companies and three airlines, that Rule 14a-8(i)(7) supported exclusion of proposals submitted by the Proponent relating to the meal options provided by such companies (such proposals, collectively, the "2024 PCRM Proposals"); see the table on **Appendix A** hereto summarizing the details of the 2024 PCRM Proposals and the Staff's granting of relief. With respect to seven of the 2024 PCRM Proposals, the Staff stated its view that the proposals related to ordinary business matters of the company at issue, and with respect to the Prior Proposal, the Staff expressed the view that the proposal sought to micromanage the Company within its ordinary business operations. The 2024 PCRM Proposals encompass all of the proposals submitted by the Proponent in 2023–2024 proxy season for which no-action relief was sought, and all were excluded from the respective recipient companies' proxy statements.

Likewise, in 2023, three healthcare companies relied on Rule 14a-8(i)(7) in excluding proposals requesting that the companies' boards "require their hospitals to provide plant-based food options to patients at every meal, within vending machines and in the cafeterias used by outpatients, staff and visitors," and the Staff concurred with the companies in each instance. See *UnitedHealth Group Incorporated* (Mar. 16, 2023), *HCA Healthcare, Inc.* (Mar. 6, 2023), and *Elevance Health, Inc.* (Mar. 6, 2023). These companies emphasized that decisions with respect to the food and drink options offered to individual patients at their facilities are the sort of highly detailed and complex decisions that are not appropriately subjected to direct stockholder oversight. *Id.*

More broadly, the Staff has recognized that decisions relating to the products and services offered by a company, including decisions about the development of certain products, are part of a company's ordinary business operations. In *Papa John's International Inc.* (Feb. 13, 2015), the Staff concurred with the exclusion of a proposal requesting the company's board "have Papa John's expand its menu offerings to include vegan cheeses and vegan meats." The supporting statement cited studies purporting to show that vegetarians and vegans "enjoy a lower risk of death from ischemic heart disease, lower blood cholesterol levels, lower blood pressure, lower rates of hypertension and type 2 diabetes, and a lower body mass index

as well as lower overall cancer rates” and that “[a]nimal agriculture is a leading contributor to climate change.” Nonetheless, the Staff concurred with the proposal’s exclusion under Rule 14a-8(i)(7), stating that “the proposal relates to the products offered for sale by the company and does not focus on a significant policy issue.”

The Staff has reached similar conclusions with respect to numerous proposals concerning the sale of particular products and services, as decisions on such matters are within the management function of a company and too detailed to be delegated to stockholders. See *The TJX Companies* (Apr. 16, 2018); *The Home Depot, Inc.* (Mar. 21, 2018); *Wal-Mart Stores, Inc.* (Mar. 24, 2008); *PetSmart, Inc.* (Apr. 14, 2006); and *McDonald’s Corp.* (Mar. 24, 1992) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company “offer [a low-fat] burger, switch to an all-vegetable cooking oil and offer salads . . . in keeping with enlightened medical research findings and nutritional practice”).

Here, the underlying subject matter of the report requested by the Proposal (addressing the feasibility of serving plant-based meals as the primary options for patients in all food-service settings) relates directly to a core function of the Company’s business operations: providing meal service to its patients on a daily basis in the context of and in coordination with each patient’s individualized plan of care. The Company owns and operates 166 inpatient rehabilitation hospitals in 38 states and Puerto Rico, managing the food and beverage offerings available to patients at 148 of those hospitals. Decisions regarding food and beverage service operations and individual patient food and beverage menu choices are made at the hospital level by hospital-based nutrition service managers and dietitians with direction and input from physicians and other clinicians in many cases. Ultimately, menu options are tailored at the hospital level to meet the energy and nutrition needs of the Company’s patients, who must complete intensive therapy during their stay. On an individual patient level, the specific health conditions presented may dictate the meal choices available to that patient at any given time. It is also standard practice to present a number of menu options to patients for each meal, subject to clinically dictated dietary instructions. Likewise, the cafeterias operated by the Company, which serve employees, visitors, and patients, provide varied menus developed by registered dietitians. Those menus always offer plant-based entrée and side item options. The Company also develops menu options consistent with applicable standards of The Joint Commission, the Academy of Nutrition and Dietetics, the American Diabetes Association and state and local regulatory agencies.

The hospital-level decision-making behind the food and beverage operations includes conducting nutritional screenings, creating patient-specific care plans, consulting with medical staff, addressing patient nutritional concerns, and assessing drug–nutrient interaction risks. This level of individualized care can only be effectively managed at the hospital level and cannot feasibly be dictated by stockholders. Each hospital is optimally equipped to provide food that is safe, nutritious, of high quality and tailored to each patient’s unique needs, because food plays a crucial role in the recovery process. For instance, patients relearning how to eat and swallow require a dedicated dietary team and specific types and consistencies of food, determined on an individual and daily basis. A new food policy could limit food recovery options for patients struggling with eating, potentially hindering their recovery. Daily meticulous planning is required to accommodate the diet prescriptions ordered by physicians as well as patient culinary, cultural and religious preferences so that meals are healthy, safe and appealing to the patients. Furthermore, the management’s ability to adapt food services to changing patient needs, regulatory guidelines, and operational circumstances is crucial for the smooth running of the Company’s hospitals and daily operations. The needs of each hospital can vary as well depending on patient population.

Additionally, the Company's menus are affected from time to time by changing supply chain and sourcing issues that must be resolved by management on a timely basis. Assessing these and the many other factors that influence nutrition and purchasing decisions for the Company's hospitals requires the real-time judgment of the management and employees at the corporate, regional, and hospital levels, who, unlike the Company's stockholders or even its board of directors, are well-positioned, and have the necessary knowledge, information and resources, including knowledge of the dietary needs of patients and local preferences, to make informed decisions on such nutritional and operational matters.

Because of this complex nature of the Company's meal-service operation, the underlying subject matter of the report requested by the Proposal—the feasibility of providing plant-based meals as the primary options for patients in all food-service settings—is inseparable from day-to-day decision making activities that are “fundamental to management's ability to run” the Company and is not an appropriate matter for a stockholder vote. 1998 Release. Thus, consistent with Staff precedent, the Proposal, by requesting a report focusing on the food that the Company offers and the manner in which it is offered, addresses issues that are ordinary business matters for the Company and is properly excludable under Rule 14a-8(i)(7).

C. The Proposal Does Not Focus on Any Significant Social Policy Issue That Transcends the Company's Ordinary Business Operations.

The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues.” Specifically, the Staff noted that focusing on such significant social policy issues “generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a stockholder vote.” 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers “both the proposal and the supporting statement as a whole.” Staff Legal Bulletin No. 14C (June 28, 2005).

The Proposal, however, fails to focus on a sufficiently significant social policy issue that transcends the ordinary business of the Company. See, e.g., the eight No-Action Letters issued in 2024 with respect to the 2024 PCRM Proposals (listed on **Appendix A**) (permitting exclusion under Rule 14a-8(i)(7) of proposals that either requested healthcare companies implement policies or programs for providing healthful foods or requested airline companies to ensure that in-flight meals meet certain dietary standards); *UnitedHealth Group Inc.* (Mar. 16, 2023), *HCA Healthcare, Inc.* (Mar. 6, 2023) and *Elevance Health, Inc.* (Mar. 6, 2023) (in each case, permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company's board of directors require the company's hospitals to provide plant-based food options to patients, staff and visitors, “[g]iven the impact of nutrition on a patient's recovery process and overall health”); *McDonald's Corp.* (Mar. 24, 1992) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company “offer [a low-fat] burger, switch to an all-vegetable cooking oil and offer salads . . . in keeping with enlightened medical research findings and nutritional practice”); *Papa John's International Inc.* (Feb. 13, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company offer vegan meats and cheeses to expand the company's healthier options).

The Supporting Statement's references to health benefits of plant-based diets and reduced intake of processed meats do not elevate the Proposal above the ordinary day-to-day management of the Company. The Staff has long distinguished between proposals that focus on a significant social policy issue and those that contain references to a significant social policy issue but are actually directed at a company's ordinary business matters. Proposals with references to topics that might raise significant social policy issues—but that do not focus on or that have only tangential implications for such issues—are not transformed from

ordinary business proposals into ones transcending ordinary business, and as such, they remain excludable under Rule 14a-8(i)(7). See, e.g., the eight No-Action Letters issued in 2024 with respect to the 2024 PCRM Proposals (listed on **Appendix A**); *UnitedHealth Group Inc.* (Mar. 16, 2023); *HCA Healthcare, Inc.* (Mar. 6, 2023); *Elevance Health, Inc.* (Mar. 6, 2023) (in each case, permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company's board of directors require the company's hospitals to provide plant-based food options to patients, staff and visitors, despite the proponent's references to health and educational benefits realizable from healthful food options and habits); *Amazon.com, Inc.* (Apr. 8, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting reports concerning the distribution of stock-based incentives to employees and related EEO-1 employee classification data, despite the proponent's assertion that the proposal focused on wealth inequality and other equity issues); and *Amazon.com, Inc.* (Apr. 7, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on risks to the company related to staffing of its business and operations, despite the proponent's assertion that the proposal focused on human capital management).

Here, the Proposal would not directly implicate a significant social policy issue. Although the Staff has indicated, in Staff Legal Bulletin No. 14C (June 28, 2005) ("SLB 14C"), that proposals that "focus on the company minimizing or eliminating operations that may adversely affect the environment or the public's health" are not excludable under Rule 14a-8(i)(7), the Proposal is not focused on such matters. Rather, the Proposal would, at best, affect the health only of the Company's patients, not the broader public. The Proponent asserts that, because the Company serves "more than 400,000 patients" each year, the Proposal relates to a matter of public health, but this inaccurate assertion glosses over the significant difference between, on one hand, the Company's treatment of patients in a specialized setting and, on the other, the public health concerns invoked by SLB 14C.¹ The example provided by SLB 14C of a non-excludable proposal involved a request for a report on potential environmental damage resulting from drilling for fossil fuels in protected areas. Unlike the broad, negative externalities targeted by that example proposal in SLB 14C, the positive health outcomes of the Company's patients are a fundamental objective of the Company's day-to-day business and therefore a matter best addressed by management. Furthermore, the Supporting Statement's description of health benefits associated with plant-based diets suggests that such benefits are the result of *long-term* dietary habits, not the result of short-term care of the type provided at the Company's facilities. For 2023, the average age of the Company's 229,480 patients was approximately 76, and the average length of stay for those patients was less than 13 days. Additionally, the Company currently offers plant-based menu options in all hospitals where it manages food service operations. Given these facts, the Proposal cannot reasonably be expected to implicate or mitigate the public health concerns asserted by the Proponent.

And despite references in the Supporting Statement to health benefits, the operative provisions of the Proposal call only for a feasibility study, which would necessarily focus on day-to-day operational concerns, such as supply chain maintenance, and would not "minimiz[e] or eliminat[e] operations that may adversely affect . . . the public's health." The direct result of the Proposal's implementation would be a redundant evaluation of the process by which the Company feeds its patients. Such a process is a fundamental business matter for the Company that is not appropriate for submission to stockholder vote.

¹ The Company acknowledges that the Staff's application of the ordinary business exclusion has changed since SLB 14C was published. Nonetheless, the Company believes that the example of a proposal not excludable under Rule 14a-8(i)(7) provided therein is helpful to illustrate the distinction between the issues presented by the Proposal addressed in this letter and the sort of significant environmental and public health issues that may trigger the significant social policy exception to exclusion under Rule 14a-8(i)(7).

D. The Proposal Would Permit Stockholders to Micromanage the Company's Ordinary Business Operations.

The Proposal, like those addressed in the letters cited in Part B. of this letter, seeks to “prob[e] too deeply into matters of a complex nature” that are not appropriate for stockholder determination. 1998 Release. In SLB 14L, the Staff outlined its view of the “micromanagement” prong of the Rule 14a-8(i)(7) exclusion, indicating that it “will take a measured approach to evaluating companies’ micromanagement arguments” and “will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” Since the publication of SLB 14L, the Staff has concurred that proposals, like the Proposal, that probe too deeply into matters of a complex nature attempt to micromanage a company and therefore may be excluded in reliance on Rule 14a-8(i)(7). See, e.g., *Verizon Communications Inc.* (Mar. 17, 2022) (concurring in exclusion of a proposal requesting, among other things, that the company commission a workplace discrimination audit and publish a report on the same on the basis that the proposal “micromanages the company by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the company’s employment and training practices”); *American Express Co.* (Mar. 11, 2022) (same); and *Deere & Co.* (Jan. 3, 2022) (same).

When assessing whether a proposal seeks to micromanage a company’s ordinary business operations, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company’s activities and management discretion. See *Deere & Co.* (Jan. 3, 2022) and *The Coca-Cola Co.* (Feb. 16, 2022), each of which involved a broadly phrased request but required detailed and intrusive actions to implement.

While the Proposal does not expressly require disclosure of the findings of the requested feasibility report, the preparation of such a report would necessarily probe deeply into matters of a complex nature. Many factors requiring analysis of constantly changing information to which the Company’s stockholders do not have access are considered by corporate, regional and hospital management in connection with their respective decisions about food operations and menu options. These factors include, in addition to those noted in the discussion above, cost, supply, demand, and other dietary restrictions.

Instead of “providing high-level direction on large strategic corporate matters,” the feasibility report requested by the Proposal would be forced to grapple with granular details concerning the ability of the Company’s hospitals to adapt to constantly changing circumstances, which the Company’s stockholders may not be aware of, related to individual dietary needs and preferences of their unique hospital populations or to the Company’s supply chain or vendor management, and to address the varying and transient needs and demands of their patients. The Company’s food service operations deal with these issues on a daily basis, and commissioning a report on the feasibility of such matters from a third party would amount to an outsourcing of the Company’s decision-making process involved in planning and establishing meal options available to patients in all food service settings, promoting patient health and satisfaction, and attending to supply chain and vendor management.

Further, a feasibility report concerning the service of plant-based meals as the primary option for patients would necessarily address highly complex details outside the knowledge and expertise of the Company’s stockholders, including what “primary” means in the context of menus that already include plant-based food options. Given the complexity of business functions implicated by the Proposal, decisions with respect to food service operations and the Company’s process for evaluating them cannot properly be submitted to stockholders to micromanage.


Accordingly, the Proposal may be excluded under Rule 14a-8(i)(7) consistent with the precedents discussed above because it is directly related to, and does not transcend, the Company's ordinary business operations and would entail improper micromanagement of the Company's food service operations.

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2025 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to tgregg@maynardnexasen.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (205) 254-1212.

Sincerely,



Timothy W. Gregg

Enclosures

cc: Anna Herby, RD, Physicians Committee for Responsible Medicine
Mark Kennedy, Physicians Committee for Responsible Medicine
Patrick Darby, Encompass Health Corporation
Stephen D. Leasure, Encompass Health Corporation

Appendix A

2024 PCRM Proposals

Company / No-Action Letter Date	Shareholder Proposal	SEC Language Granting Relief
Delta Air Lines, Inc. April 22, 2024	“To make air travel more sustainable, achieve significant revenue savings, enhance customer satisfaction, prevent complaints, reduce staff burnout, and bolster its image as a customer service leader Delta Air Lines, Inc. will ensure that all in-flight special meals meet the needs of people seeking gluten-free, vegan, lactose-free, allergen-free, and other diet options.”	“There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to ordinary business matters.”
American Airlines Group, Inc. April 1, 2024	“American Airlines Group Inc. shall achieve significant revenue savings, enhance customer satisfaction, prevent complaints, reduce staff burnout, and bolster its image as a customer service leader by ensuring that all in-flight special meals are free of common allergens and meet the needs of people seeking gluten-free, vegan, lactose-free, and other diet options.”	“There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to ordinary business matters.”
United Airlines Holdings, Inc. April 1, 2024	“United Airlines Holdings, Inc. shall make air travel more sustainable, achieve significant revenue savings, enhance customer satisfaction, prevent complaints, reduce staff burnout, and bolster its image as a customer service leader by ensuring that all in-flight special meals are free of common allergens and meet the needs of people seeking gluten-free, vegan, lactose-free, and other diet options.”	“There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to ordinary business matters.”
Universal Health Services, Inc. March 22, 2024	“Universal Health Services shall achieve significant revenue savings, improve patient satisfaction, improve employee health, reduce absenteeism, and enhance its image as a healthcare leader by adopting the American Medical Association policy for healthful foods for healthcare facilities and implementing the innovative program for healthful hospital food developed by the NYC Health + Hospitals system.”	“There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters.”
Tenet Healthcare Corporation March 22, 2024	“Tenet Healthcare Corporation shall improve patient health, achieve significant revenue savings, enrich employee health, reduce absenteeism, and enhance its image as a healthcare leader by implementing the innovative program for healthful hospital food developed by the NYC Health + Hospitals system.”	“There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters.”

Company / No-Action Letter Date	Shareholder Proposal	SEC Language Granting Relief
<p>Encompass Health Corporation</p> <p>March 21, 2024</p>	<p>“Encompass Health Corporation will make healthful, plant-based meals the default option in all food service settings, other than for patients who have special dietary exclusions.”</p>	<p>“There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal seeks to micromanage the Company.”</p>
<p>HCA Healthcare, Inc.</p> <p>February 21, 2024</p>	<p>“HCA Healthcare, Inc. shall achieve significant revenue savings, improve patient satisfaction, improve employee health, reduce absenteeism, and enhance its image as a healthcare leader by adopting the American Medical Association policy for healthful foods for healthcare facilities and implementing the innovative program for healthful hospital food developed by the NYC Health + Hospitals system.”</p>	<p>“There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters.”</p>
<p>Select Medical Holdings Corporation</p> <p>February 20, 2024</p>	<p>“Select Medical Holdings Corporation shall achieve significant revenue savings, improve patient satisfaction, improve staff health, reduce absenteeism, and enhance its image as a healthcare leader by adopting the American Medical Association policy for healthful foods for healthcare facilities and adopting the innovative program for healthful hospital food developed by the New York Health+ Hospital System.”</p>	<p>“There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters.”</p>

Exhibit A

The Proposal and Relevant Correspondence

PhysiciansCommittee

for Responsible Medicine

PCRM.ORG

5100 Wisconsin Ave. NW, Suite 400 • Washington, DC 20016 • Tel: 202-686-2210 • Fax: 202-686-2216 • pcrm@pcrm.org

November 7, 2024

Via FedEx Express

Corporate Secretary
Encompass Health Corporation
9001 Liberty Parkway
Birmingham, AL 35242

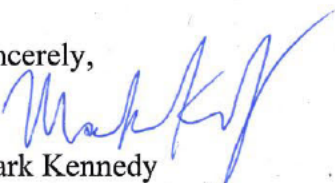
Re: Shareholder Proposal for Inclusion in the 2025 Proxy Statement

Dear Mr. Darby:

Enclosed with this letter is a shareholder proposal submitted by the Physicians Committee for Responsible Medicine (PCRM) for inclusion in the proxy statement for the 2025 annual meeting. Also enclosed is a letter from RBC Wealth Management, PCRM's brokerage firm, confirming PCRM's beneficial ownership of 534 common stock shares, acquired at least one year ago. PCRM has held at least \$25,000 worth of such shares continuously since acquisition and intends to hold at least this amount through and including the date of the 2025 shareholders meeting.

If there are any issues with this proposal being included in the proxy statement, or if you need any further information, please contact PCRM's designated representative, Anna Herby, RD, at 5100 Wisconsin Ave., NW, Suite 400, Washington, DC 20016, [REDACTED] or [REDACTED]@pcrm.org. Ms. Herby, who will appear at the annual meeting to present this proposal, is available to meet via teleconference Mondays, Wednesdays, Thursdays, and Fridays—including during the regulatory period of "no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal"—during the hours of 11 a.m. through 2:00 p.m. CT.

Sincerely,



Mark Kennedy
Senior Vice President of Legal Affairs

Enclosures: Shareholder Proposal
RBC Wealth Management letter

RESOLVED

Encompass Health Corporation “exist[s] to provide a better way to care that elevates expectations and outcomes.” The American Medical Association and other medical professionals recognize that plant-based diets offer patients a variety of health benefits, including lower risks of cardiovascular disease, type 2 diabetes, obesity, certain cancers, and even severe COVID-19. We urge the board to fulfill its commitment to elevating health outcomes by commissioning a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings. The report should also address the health risks of continuing to serve patients known carcinogens, such as processed meat.

SUPPORTING STATEMENT

In 2017, the American Medical Association called on U.S. hospitals to improve patient health by providing a variety of healthful food, including plant-based meals and meals that are low in fat, sodium, and added sugars; eliminating processed meats from menus; and providing and promoting healthful beverages. Subsequently, NYC Health + Hospitals, the country’s largest municipal health care system, began serving plant-based meals as the default lunch and dinner option for inpatients at its 11 public hospitals. In announcing the new meal program, NYCHH’s president stressed “the importance of a healthy diet and how it can help fend off or treat chronic conditions like type 2 diabetes, high blood pressure, and heart disease.”

It is well-established that plant-based dietary patterns reduce the risk of cardiovascular disease and type 2 diabetes and are particularly effective in the prevention and treatment of overweight and obesity, as well as body weight maintenance. Large prospective cohort studies, such as the EPIC study (European Prospective Investigation into Cancer and Nutrition), the Adventist-Health Study, the Nurses’ Health Study, and the Health Professionals Follow-Up Study, have repeatedly demonstrated these benefits.

In 2015, the World Health Organization’s International Agency for Research on Cancer classified processed meat—bacon, sausage, hot dogs, and other meat products preserved with additives or otherwise manipulated to alter color, taste, and durability—as carcinogenic to humans. Investigators in the EPIC study, which followed 448,568 people, relatedly discovered an 11 percent increased risk of dying from cancer with the consumption of 50 grams of processed meat per day. In contrast, substitution studies have found that replacing one serving of processed meat per day with nuts decreased risk for disease by 19 percent and replacement with legumes decreased risk by 10 percent. IARC also classified red meat as probably carcinogenic to humans.

Diabetes and cancer rates are on the rise. With more than 400,000 patients served each year, Encompass is positioned to improve public health nationwide. Serving healthful food helps patients get well and stay well, creating a teachable moment in which patients learn which foods help treat and prevent chronic disease.

Encompass commits to providing a better way to care for its patients. We urge shareholders to support this resolution for a feasibility report on serving plant-based meals as the primary option for patients.

From: Mark Kennedy <[REDACTED]@pcrm.org>
Sent: Monday, December 9, 2024 9:52 PM
To: Leasure, Stephen <[REDACTED]@encompasshealth.com>
Subject: RE: Letter re: proposal

Thanks for your patience. We are not inclined to withdraw, but we do appreciate all the time you and your team spent with us last week.

Mark Kennedy, Senior Vice President of Legal Affairs
[Physicians Committee for Responsible Medicine](#)
O: [REDACTED] | [Facebook](#) [Twitter](#) [Instagram](#)

From: Leasure, Stephen <[REDACTED]@encompasshealth.com>
Sent: Monday, December 9, 2024 1:02 PM
To: Mark Kennedy <[REDACTED]@pcrm.org>
Subject: RE: Letter re: proposal

Mark,

Any thoughts on a withdraw of the proposal?

Steve
Stephen D. Leasure
Vice President, Assistant Secretary & Deputy General Counsel*
Encompass Health Corporation
9001 Liberty Parkway
Birmingham, AL 35242
O: [REDACTED] | F: [REDACTED]
[REDACTED]@encompasshealth.com

* Authorized House Counsel licensed to practice
law only in North Carolina, not in Alabama.

From: Mark Kennedy <[REDACTED]@pcrm.org>
Sent: Thursday, November 21, 2024 1:31 PM
To: Leasure, Stephen <[REDACTED]@encompasshealth.com>; Anna Herby <[REDACTED]@pcrm.org>
Subject: RE: Letter re: proposal

Hi Steve,

How about a Wednesday or Thursday in December at 9 am CT or a Thursday at noon? Thanks.

Mark Kennedy, Senior Vice President of Legal Affairs
[Physicians Committee for Responsible Medicine](#)
O: [REDACTED] | [Facebook](#) [Twitter](#) [Instagram](#)

From: Anna Herby <[REDACTED]@pcrm.org>
Sent: Wednesday, December 4, 2024 4:10 PM
To: Leasure, Stephen <[REDACTED]@encompasshealth.com>; Mark Kennedy <[REDACTED]@pcrm.org>
Subject: RE: Letter re: proposal

Hi Stephen,
It was great meeting with you all today. I wanted to share our resources on hospital food: HealthyHospitalProgram.org. This'll take you to the resources tab. If you click over to the On Demand tab, we also have video resources. If you'd like any hard copies of the patient recipe book or other educational materials, we'd be happy to accommodate that as well.

Best,

Anna Herby, DHSc, RD, CDE Nutrition Education Specialist
[Physicians Committee for Responsible Medicine](#)

From: Leasure, Stephen <[REDACTED]@encompasshealth.com>
Sent: Wednesday, December 4, 2024 4:19 PM
To: Mark Kennedy <[REDACTED]@pcrm.org>; Anna Herby <[REDACTED]@pcrm.org>
Subject: RE: Letter re: proposal

Thank you both for taking the time to discuss this topic with us today. We appreciate your perspective and the additional information you provided. I hope we can find some common ground to continue this engagement.

Let me know if you have any additional questions or thoughts.

Best regards,
Steve
Stephen D. Leasure
Vice President, Assistant Secretary & Deputy General Counsel*
Encompass Health Corporation
9001 Liberty Parkway
Birmingham, AL 35242
O [REDACTED] | F [REDACTED]
stephen.leasure@encompasshealth.com

* Authorized House Counsel licensed to practice
law only in North Carolina, not in Alabama.

From: Anna Herby <[REDACTED]@pcrm.org>
Sent: Thursday, November 21, 2024 4:29 PM
To: Leasure, Stephen <[REDACTED]@encompasshealth.com>; Mark Kennedy <[REDACTED]@pcrm.org>
Subject: RE: Letter re: proposal

Either of those are good for me, thanks!

Anna Herby, DHSc, RD, CDE Nutrition Education Specialist
[Physicians Committee for Responsible Medicine](#)

From: Leasure, Stephen <[REDACTED]@encompasshealth.com>
Sent: Thursday, November 21, 2024 5:11 PM
To: Mark Kennedy <[REDACTED]@pcrm.org>; Anna Herby <[REDACTED]@pcrm.org>
Subject: RE: Letter re: proposal

Mark, what about either 12/4 or 12/5 at 9amCT?

Steve

From: Mark Kennedy <[REDACTED]@pcrm.org>
Sent: Thursday, November 21, 2024 1:31 PM
To: Leasure, Stephen <[REDACTED]@encompasshealth.com>; Anna Herby <[REDACTED]@pcrm.org>
Subject: RE: Letter re: proposal

Hi Steve,

How about a Wednesday or Thursday in December at 9 am CT or a Thursday at noon? Thanks.

Mark Kennedy, Senior Vice President of Legal Affairs
[Physicians Committee for Responsible Medicine](#)
O: [REDACTED] | [Facebook](#) [Twitter](#) [Instagram](#)

From: Leasure, Stephen <[REDACTED]@encompasshealth.com>
Sent: Thursday, November 21, 2024 9:48 AM
To: Mark Kennedy <[REDACTED]@pcrm.org>; Anna Herby <[REDACTED]@pcrm.org>
Subject: RE: Letter re: proposal

Mark,

I think it may be worthwhile to have a call so that we can get a better idea of the request and give you a better understanding of our nutrition services program. I've talked to my nutrition and clinic leaders, and they are willing to discuss at some point in the next couple of weeks. If you have a couple of times that work for PCRM, let me know.

Our head of nutrition services will be on the call and, if timing permits, our chief medical officer and VP of nursing operations will join.

Best regards,
Steve
Stephen D. Leasure
Vice President, Assistant Secretary & Deputy General Counsel*
Encompass Health Corporation

9001 Liberty Parkway
Birmingham, AL 35242

O [REDACTED] | F [REDACTED]
[REDACTED]@encompasshealth.com

* Authorized House Counsel licensed to practice
law only in North Carolina, not in Alabama.

From: Mark Kennedy [REDACTED]@pcrm.org>
Sent: Tuesday, November 12, 2024 9:58 AM
To: Leasure, Stephen <[REDACTED]@encompasshealth.com>; Anna Herby <[REDACTED]@pcrm.org>
Cc: Darby, Patrick <[REDACTED]@encompasshealth.com>
Subject: RE: Letter re: proposal

Thank you.

Mark Kennedy, Senior Vice President of Legal Affairs
[Physicians Committee for Responsible Medicine](#)
O: [REDACTED] | [Facebook](#) [Twitter](#) [Instagram](#)

From: Leasure, Stephen <[REDACTED]@encompasshealth.com>
Sent: Tuesday, November 12, 2024 9:51 AM
To: Anna Herby <[REDACTED]@pcrm.org>; Mark Kennedy <[REDACTED]@pcrm.org>
Cc: Darby, Patrick <[REDACTED]@encompasshealth.com>
Subject: Letter re: proposal

Ms. Herby,

Ms. Herby and Mr. Kennedy,

We are in receipt of the attached letter.

Sincerely,
Stephen D. Leasure
Vice President, Assistant Secretary & Deputy General Counsel*
Encompass Health Corporation
9001 Liberty Parkway
Birmingham, AL 35242
O [REDACTED] | F [REDACTED]
[REDACTED]@encompasshealth.com

* Authorized House Counsel licensed to practice
law only in North Carolina, not in Alabama.

PhysiciansCommittee

for Responsible Medicine

PCRM.ORG

5100 Wisconsin Ave. NW, Suite 400 • Washington, DC 20016 • Tel: 202-686-2210 • Fax: 202-686-2216 • pcrm@pcrm.org

January 24, 2025

VIA ONLINE SHAREHOLDER PROPOSAL FORM

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Response to “Stockholder Proposal of the Physicians Committee for Responsible Medicine Submitted to Encompass Health Corporation”

Dear Staff:

I write on behalf of the Physicians Committee for Responsible Medicine (“Physicians Committee”) pursuant to Rule 14a-8(k) in response to a request (“No-Action Request”) by Encompass Health Corporation (the “Company”) that the Staff of the Division of Corporation Finance (“Staff”) concur with its view that it may exclude the Physicians Committee’s shareholder resolution and supporting statement (collectively “Proposal”) from the proxy materials to be distributed in connection with the Company’s 2025 annual meeting of shareholders. The Company seeks to exclude the Proposal pursuant to Rule 14a-8(i)(7). For the reasons set forth below, the Physicians Committee urges the Staff to deny the Company’s No-Action Request.

Pursuant to Rule 14a-8(k) and *Announcement: New Intake System for Rule 14a-8 Submissions and Related Correspondence* (Nov. 7, 2023), the Physicians Committee submits this letter electronically and concurrently submits a copy to the Company.

I. The Proposal

The Proposal’s proposed resolution states,

RESOLVED

Encompass Health Corporation “exist[s] to provide a better way to care that elevates expectations and outcomes.” The American Medical Association and other medical professionals recognize that plant-based diets offer patients a variety of health benefits, including lower risks of cardiovascular disease, type 2 diabetes, obesity, certain cancers, and even severe COVID-19. We urge the board to fulfill its commitment to elevating health outcomes by commissioning a report on the feasibility of serving plant-based meals as the primary option for patients in all food

service settings. The report should also address the health risks of continuing to serve patients known carcinogens, such as processed meat.

The Proposal's supporting statement summarizes clinical research studies, discussed in more detail below, establishing that plant-based dietary patterns reduce the risk of cardiovascular disease and type 2 diabetes and are particularly effective in the prevention and treatment of overweight and obesity, as well as body weight maintenance.

The supporting statement also cites a report by the World Health Organization's International Agency for Research on Cancer classifying processed meat—such as bacon, sausage, hot dogs, and similarly prepared menu items—as carcinogenic to humans. The supporting statement also describes a study following 448,568 people in which investigators discovered an 11 percent increased risk of dying from cancer with the consumption of 50 grams of processed meat per day.¹

As noted in the supporting statement, leading medical professional associations and hospital systems are now investigating the benefits of serving plant-based meals in the interest of improving public health.

II. Because the Proposal Focuses on a Significant Social Policy Issue, the Company May Not Exclude the Proposal Pursuant to Rule 14a-8(i)(7)

Rule 14a-8(i)(7) provides that a company may exclude a proposal “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” Only “business matters that are mundane in nature and do not involve any substantial policy or other considerations” may be omitted under this provision. 41 Fed. Reg. 52,994, 52,998 (Dec. 3, 1976).

According to Release No. 40018,

The policy underlying the ordinary business exclusion rests on two central considerations. The first relates to the subject matter of the proposal. Certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.

The second consideration relates to the degree to which the proposal seeks to “micro-manage” the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. This consideration may come into play in a number of

circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.

Exchange Act Release No. 40018 (May 21, 1998) (footnotes omitted).

A proposal relating to a company's ordinary business operations is not excludable if the proposal focuses on "sufficiently significant social policy issues" that "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 40018 (May 21, 1998). "In determining whether the focus of these proposals is a significant social policy issue, [Staff] consider both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). "In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company." Staff Legal Bulletin No. 14L, part B.2 (Nov. 3, 2021).

A. The Proposal Does Not Implicate the Ordinary Business Exception

The Proposal does not implicate Rule 14a-8(i)(7) because it does not pertain to a task that is "fundamental to management's ability to run a company on a day-to-day basis." The Company mischaracterizes the Proposal as seeking "to compel the Company to make the plant-based foods already served at its hospitals 'primary' or 'default' food options," No-Action Request at 3, and to "direct management's decision-making with respect to menu items and food options," *id.* at 5. But the plain language of the Proposal speaks for itself. The Proposal requests only a "report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings." As a result, the Staff decisions regarding menu and product proposals cited by the Company, *see* No-Action Request at 5–6, are inapposite.

B. The Proposal Raises a Significant Social Policy Issue That Transcends Day-To-Day Business Matters

In Staff Legal Bulletin No. 14C, the Staff considered proposals related to the environment and public health, which it had previously found to be significant policy considerations, and advised that "[t]o the extent that a proposal and supporting statement focus on the company minimizing or eliminating operations that may adversely affect the environment or the public's health, we do not concur with the company's view that there is a basis for it to exclude the proposal under rule 14a-8(i)(7)." Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). Thus, there is no question that public health issues involve a "broad societal impact." *See* Staff Legal Bulletin No. 14L, part B.2 (Nov. 3, 2021).

The Company mischaracterizes the Proposal as "fail[ing] to focus on a sufficiently significant social policy issue that transcends the ordinary business of the Company." No-Action Request at 7. But the scientific consensus underlying the Proposal is well established and cited repeatedly in the Proposal's supporting statement.

The American Medical Association ("AMA") is the nation's largest professional association of physicians. Founded in 1847, its mission is "to promote the art and science of medicine and the betterment of public health." AMA, *About*, <https://www.ama-assn.org/about> (last accessed Jan.

16, 2025). To achieve this mission, the AMA’s House of Delegates periodically issues policy statements to serve as guidance for physicians on healthcare issues. These “policies are based on professional principles, scientific standards and the experience of practicing physicians.” AMA, *Developing AMA Policies*, <https://www.ama-assn.org/house-delegates/ama-policies/developing-ama-policies> (last accessed Jan. 16, 2025).

As summarized in the Proposal, AMA policy *H-150.949: Healthful Food Options in Health Care Facilities* “calls on all health care facilities to improve the health of patients, staff, and visitors by: (a) providing a variety of healthy food, including plant-based meals, and meals that are low in saturated and trans fat, sodium, and added sugars; (b) eliminating processed meats from menus; and (c) providing and promoting healthy beverages.” AMA, *Healthful Food Options in Health Care Facilities H-150.949*, <https://policysearch.ama-assn.org/policyfinder/detail/H-150.949?uri=%2FAMADoc%2FHOD.xml-0-627.xml> (last accessed Jan. 16, 2025).

As stated in the Proposal, NYC Health + Hospitals (“NYCHH”), “the country’s largest municipal health care system, began serving plant-based meals as the default lunch and dinner option for inpatients at its 11 public hospitals.” In doing so, NYCHH stated, “Scientific research has shown that plant-based eating patterns are linked to significantly lower risk of cardiovascular disease, type 2 diabetes, obesity, and certain cancers. They can also be effective for weight management as well as treatment of hypertension and hyperlipidemia.” NYCHH, *NYC Health + Hospitals Now Serving Culturally-Diverse Plant-Based Meals As Primary Dinner Option for Inpatients at All of Its 11 Public Hospitals* (Jan. 9, 2023), <https://www.nychealthandhospitals.org/pressrelease/nyc-health-hospitals-now-serving-plant-based-meals-as-primary-dinner-option-for-inpatients-at-all-of-its-11-public-hospitals/>.

Plant-based dietary patterns are particularly effective in the prevention^{2,3,4} and treatment of overweight and obesity,^{5,6} as well as body weight maintenance,⁷ and reduce the risk of cardiovascular disease^{8,9,10} and type 2 diabetes^{11,12} at the same time. These benefits have been repeatedly demonstrated in large prospective cohort studies, such as the EPIC study (European Prospective Investigation into Cancer and Nutrition),^{1,13} the Adventist-Health Study,^{10,11} the Nurses’ Health Study,^{14,15} and the Health Professionals Follow-Up Study.^{16,17}

For type 2 diabetes in particular, the 2020 American Association of Clinical Endocrinologists and American College of Endocrinology’s consensus statement on type 2 diabetes management recommends a plant-based diet.¹⁸ A study published in the *International Journal of Cancer* found that vegetarians have reduced breast cancer risk, compared to meat-eaters, most likely due to the abundance of healthful foods and avoidance of meat throughout their lives.¹⁹

Evidence suggests that the amount of animal-derived foods consumed is an independent risk factor for being overweight, and limiting their consumption is an effective strategy for weight loss and a healthy body composition, as well as for body weight maintenance. Vegetarians typically have lower body mass index values, compared with nonvegetarians.² Body mass index values tend to increase with increasing frequency of animal product consumption. In the Adventist Health Study-2, body mass index values were lowest among vegans (23.6 kg.m⁻²), higher in lacto-ovo-vegetarians (25.7 kg.m⁻²), and highest in nonvegetarians (28.8. kg.m⁻²).^{3,4,11}

The average individual yearly weight gain is reduced when people limit consumption of animal foods.²⁰

In 2015, the World Health Organization’s International Agency for Research on Cancer (“IARC”) classified processed meat—which includes bacon, deli slices, sausage, hot dogs, and other meat products preserved with additives or otherwise manipulated to alter color, taste, and durability—as carcinogenic to humans.²¹ IARC made this determination after assessing more than 800 epidemiological studies investigating the association of cancer with consumption of red meat or processed meat in many countries, from several continents, with diverse ethnicities and diets. Group 1 is the agency’s highest evidentiary classification; other Group 1 carcinogens include tobacco smoking, secondhand tobacco smoke, and asbestos.²² In contrast, substitution studies have found that replacing one serving of processed meat per day with nuts decreased risk for disease by 19 percent and replacement with legumes decreased risk by 10 percent.²³

In light of the overwhelming body of scientific consensus establishing the public health benefits associated with plant-based diets, the Proposal “focus[es] on sufficiently significant social policy issues (e.g., significant discrimination matters)” and “generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” Exchange Act Release No. 40018 (May 21, 1998) (footnote omitted).

C. The Proposal Does Not Seek to Micromanage the Company

The Company incorrectly asserts that the Proposal “seeks to ‘prob[e] too deeply into matters of a complex nature’ that are not appropriate for stockholder determination.” No-Action Request at 9. According to the Staff, a proposal might probe too deeply into matters of a complex nature if it “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” Exchange Act Release No. 40018 (May 21, 1998). At the same time, the Staff “recogniz[es] that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement. Instead, we will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” Staff Legal Bulletin No. 14L, part B.3 (Nov. 3, 2021).

The Proposal does not seek intricate details or to impose complex policies or any specific timeframe. Rather it asks for a feasibility report pertaining to certain Company activities. For example, the Company states that “the cafeterias operated by the Company, which serve employees, visitors, and patients, provide varied menus developed by registered dietitians. Those menus always offer plant-based entrée and side item options.” No-Action Request at 6. Additionally, in a No-Action Request dated January 12, 2024, regarding a prior Physicians Committee proposal, the Company stated that “all of the food service operations managed by the Company’s hospitals offer plant-based menu options for each meal. . . . The Company’s hospitals customarily only have two food service settings, patient room delivery and cafeteria service, both of which offer a variety of plant-based menu options. With respect to patient room delivery, in the ordinary course, Company nutrition ambassadors visit patient rooms daily and present food and beverage options for upcoming meals, and those options include plant-based foods in all cases.”

The Company asserts that “the preparation of such a report would necessarily probe deeply into matters of a complex nature.” No-Action Request at 9. But such an argument, if accepted, could justify the wholesale exclusion of all shareholder proposals requesting the commissioning of a report on nearly any subject.

III. Conclusion

The Physicians Committee respectfully requests that the Staff decline to issue a no-action response and inform the Company that it may not exclude the Proposal in reliance on Rule 14a-8(i)(7) or Rule 14a-8(i)(10). Should the Staff need any additional information in reaching a decision, please contact me at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Kennedy", with a stylized flourish at the end.

Mark Kennedy
Senior Vice President of Legal Affairs
(202) 527-7315
mkennedy@pcrm.org

SCIENTIFIC REFERENCES

- 1 Rohrmann S, Overvad K, Bueno-de-Mesquita HB, et al. Meat consumption and mortality--results from the European Prospective Investigation into Cancer and Nutrition. *BMC Med*. 2013;11:63-75. doi:10.1186/1741-7015-11-63
- 2 Berkow SE, Barnard N. Vegetarian diets and weight status. *Nutr Rev*. 2006;64(4):175-188. doi:10.1111/j.1753-4887.2006.tb00200.x
- 3 Fraser GE. Associations between diet and cancer, ischemic heart disease, and all-cause mortality in non-Hispanic white California Seventh-day Adventists. *Am J Clin Nutr*. 1999;70(3 Suppl):532S-538S. doi:10.1093/ajcn/70.3.532s
- 4 Appleby PN, Thorogood M, Mann JI, Key TJ. The Oxford Vegetarian Study: an overview. *Am J Clin Nutr*. 1999;70(3 Suppl):525S-531S. doi:10.1093/ajcn/70.3.525s
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January 30, 2025

VIA ELECTRONIC SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Reference Number 616901: Stockholder Proposal of the Physicians Committee for Responsible Medicine Submitted to Encompass Health Corporation

Ladies and Gentlemen,

On behalf of Encompass Health Corporation (the “Company”), reference is made to our letter dated December 31, 2024 (the “No-Action Request”), by which we requested that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission” or the “SEC”) concur with our view that the stockholder proposal and supporting statement (the “Proposal”) submitted by the Physicians Committee for Responsible Medicine (the “Proponent”) may be excluded from the proxy materials (the “2025 Proxy Materials”) for the Company’s 2025 Annual Meeting of Stockholders (the “2025 Annual Meeting”).

On January 24, 2025, the Proponent submitted a response (the “Proponent Letter”) to the Commission regarding the No-Action Request. We are submitting this letter in response to the Proponent Letter. The Proposal states: “We urge the board to fulfill its commitment to elevating health outcomes by commissioning a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings. The report should also address the health risks of continuing to serve patients known carcinogens, such as processed meat.” For the reasons set forth in the No-Action Request, as supplemented by the reasons stated herein, we believe the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) promulgated by the Commission under the Securities Exchange Act of 1934, as amended (“Rule 14a-8(i)(7)”).

RESPONSE TO PROPONENT LETTER

I. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because It Relates to the Company’s Ordinary Business Operations, Even Though It Requests Only a Board-Commissioned Report.

The Proponent Letter argues that the Proposal is not excludable under Rule 14a-8(i)(7) because “[t]he Proposal requests only a ‘report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings.’” Proponent Letter at 3. The Proponent’s rationale is that the preparation of such a report “does not pertain to a task that is ‘fundamental to management’s ability to run a company on a day-to-day basis.’” *Id.* But this rationale reflects a misapplication of Rule 14a-8(i)(7). As discussed on page 4 of the No-Action Request, the Staff has indicated that where a stockholder proposal is cast as a request for a report, it is excludable under Rule 14a-8(i)(7) if “the underlying subject matter of the

report . . . relates to ordinary business.” Staff Legal Bulletin No. 14E (Oct. 27, 2009) (“SLB 14E”) (citing Exchange Act Release No. 34-20091 (August 16, 1983) (the “1983 Release”), in which the Commission stated the following: “In the past, the staff has taken the position that proposals requesting issuers to prepare reports on specific aspects of their business or to form special committees to study a segment of their business would not be excludable under Rule 14a-8(c)(7)[, the predecessor rule to Rule 14a-8(i)(7)]. Because this interpretation raises form over substance and renders the provisions of paragraph (c)(7) largely a nullity, the Commission has determined to adopt the interpretative change set forth in the Proposing Release. Henceforth, the staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).”).

Here, the Proposal requests the commissioning of a feasibility report relating to the food service operations of the Company. The subject matter of such a report—assessing the feasibility of serving plant-based meals as the primary option for patients in all food service settings—would pertain specifically to the day-to-day workings of the Company’s nutrition and food service operations. For an operator of inpatient healthcare facilities such as the Company, providing daily meals that appropriately address each patient’s healthcare needs is a matter of ordinary business as contemplated by Rule 14a-8(i)(7). See the No-Action Request at 5. Because the Proposal requests a report addressing subject matter that relates to ordinary business matters of the Company, it may be excluded under Rule 14a-8(i)(7).

II. Exclusion of the Proposal Pursuant to Rule 14a-8(i)(7) Would Not Lead to the Wholesale Exclusion of All Proposals Requesting the Commissioning of a Report.

The No-Action Request explains how the Proposal would amount to micromanagement of the Company by “probing too deeply into matters of a complex nature” that are not appropriate for stockholder determination. See No-Action Request at 9 (quoting Exchange Act Release No. 34-40018 (May 21, 1998)). The No-Action Request recognizes that a feasibility report of the sort requested by the Proposal would require an “analysis of constantly changing information to which the Company’s stockholders do not have access.” *Id.* In response, the Proponent Letter draws the conclusion that excluding the Proposal on this basis would “justify the wholesale exclusion of all shareholder proposals requesting the commissioning of a report.” Proponent Letter at 6.

Contrary to the Proponent’s assertion, exclusion of the Proposal on the basis that it amounts to micromanagement would not justify the exclusion of all proposals requesting the commissioning of a report. The No-Action Request does not argue that any proposal requesting the commissioning of a report is excludable under Rule 14a-8(i)(7) solely because it requests a report. Rather, as described in the No-Action Request, the Proposal would amount to micromanagement due to the highly detailed and nuanced issues implicated by a feasibility report concerning the Company’s nutrition and food service operations across 166 hospitals and serving over 240,000 patients in the twelve months ended September 30, 2024. It does not follow that the Company’s exclusion of this particular Proposal would result in a blanket exclusion of any proposal requesting the commissioning of a report.

Instead, the Proponent is advocating for an unduly narrow reading, explicitly rejected by the Commission in the 1983 Release, of the ordinary business exclusion by arguing that a stockholder proposal can avoid exclusion so long as the proposal is framed as a request for a report, without consideration of the underlying subject matter of the requested report or its relationship to the ordinary business matters of the recipient company. The Proponent’s argument specifically disregards Staff guidance and no-action letter precedent, which make it clear that, when assessing the excludability under Rule 14a-8(i)(7) of a proposal requesting a commissioned report, the focus is on the underlying subject matter of the report. If the


underlying subject matter relates to ordinary business matters, the proposal is excludable. See the 1983 Release; SLB 14E; *Johnson Controls, Inc.* (Oct. 26, 1999); and *CitiGroup Inc.* (Mar. 8, 2024) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company “prepare a report on the feasibility of offering customized proxy voting preferences for Citi clients that seek to maximize portfolio-wide returns by pursuing voting strategies designed to push certain companies to address social and environmental externalities”).

CONCLUSION

For the foregoing reasons and those set forth in the No-Action Request, the Company requests your confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from the 2025 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to tgregg@maynardnexsen.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (205) 254-1212.

Sincerely,



Timothy W. Gregg

cc: Anna Herby, RD, Physicians Committee for Responsible Medicine
Mark Kennedy, Physicians Committee for Responsible Medicine
Patrick Darby, Encompass Health Corporation
Stephen D. Leasure, Encompass Health Corporation



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February 18, 2025

VIA ELECTRONIC SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Reference Number 616901: Stockholder Proposal of the Physicians Committee for Responsible Medicine Submitted to Encompass Health Corporation

Ladies and Gentlemen,

On behalf of Encompass Health Corporation (the “Company”), reference is made to our letter dated December 31, 2024 (the “No-Action Request”), by which we requested that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission” or the “SEC”) concur with our view that the stockholder proposal and supporting statement (the “Proposal”) submitted to the Company by the Physicians Committee for Responsible Medicine (the “Proponent”) may be excluded from the proxy materials (the “2025 Proxy Materials”) for the Company’s 2025 Annual Meeting of Stockholders pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and to our subsequent letter dated January 30, 2025 (together with the No-Action Request, the “Prior Company Letters”) sent to the Staff in response to a letter submitted by the Proponent on January 24, 2025 (the “Proponent Letter”).

On February 12, 2025, the Staff published Staff Legal Bulletin No. 14M (“SLB 14M”), in which the Staff rescinded Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”) and clarified the Staff’s views on the scope and application of two bases for exclusion of a stockholder proposal under Rule 14a-8, including the “ordinary business” exclusion provided for by Rule 14a-8(i)(7). The Prior Company Letters referenced certain aspects of the interpretive guidance contained in the now-rescinded SLB 14L in connection with the Company’s arguments for exclusion under Rule 14a-8(i)(7). Consistent with Frequently Asked Question No. 2 set forth in SLB 14M, we are submitting this supplemental letter to address the changes to the Staff’s application of Rule 14a-8(i)(7) announced in SLB 14M, which we believe strengthen the case for excluding the Proposal from the 2025 Proxy Materials.

The Proposal states: “We urge the board to fulfill its commitment to elevating health outcomes by commissioning a report on the feasibility of serving plant-based meals as the primary option for patients in all food service settings. The report should also address the health risks of continuing to serve patients known carcinogens, such as processed meat.” For the reasons set forth in the Prior Company Letters, as amended and supplemented by the reasons stated herein, we believe the Proposal may be excluded from the 2025 Proxy Materials pursuant to the “ordinary business” exclusion provided by Rule 14a-8(i)(7).

SUPPLEMENT TO NO-ACTION REQUEST

Under Rule 14a-8(i)(7), as Interpreted by SLB 14M, the Proposal May Be Excluded Because It Relates to, and Does Not Transcend, the Company's Ordinary Business Operations.

The policy underlying the “ordinary business” exclusion rests on two “central considerations”: the subject matter of a proposal and the degree to which the proposal seeks to “micromanage” the recipient company. SLB 14M (citing Release No. 34-40018 (May 21, 1998) (the “1998 Release”)). The following material supplements the Prior Company Letters with respect to the first of these two considerations, due to adjustments in the Staff’s interpretation thereof announced in SLB 14M, under which the Proposal remains excludable pursuant to Rule 14a-8(i)(7).

SLB 14M has not altered the basic framework for assessing the first central consideration of the “ordinary business” exclusion: a proposal that relates to the ordinary business operations of the recipient continues to be excludable under Rule 14a-8(i)(7) unless the proposal focusses on a policy issue so significant that it transcends the company’s day-to-day business matters. However, the analysis of whether a policy issue raised by a proposal “transcends” ordinary business has been revised to follow a “company-specific approach,” effectively reverting to the analysis prior to the publication of SLB 14L. SLB 14M at Section C.2 (citing to Staff Legal Bulletin No. 14H (Oct. 22, 2015) and Staff Legal Bulletin No. 14E (Oct. 27, 2009)). Under this analysis, in order to avoid exclusion under Rule 14a-8(i)(7), a proposal relating to a company’s ordinary business must raise a significant policy issue with a “sufficient nexus” to the recipient company.

Applying the Staff’s Rule 14a-8(i)(7) framework to the Proposal, it is not even necessary to reach the “sufficient nexus” analysis. As explained in the Prior Company Letters, the subject matter of the Proposal relates to the ordinary business of the Company, and it does not raise a transcendent social policy issue at all, No-Action Request at 5–8, let alone a transcendent policy issue with a “sufficient nexus” to the Company.

The Proponent suggests that the Proposal raises significant policy issues relating to “the public health benefits associated with plant-based diets.” Proponent Letter at 5. However, in granting no-action relief with respect to multiple similar proposals submitted by the same Proponent to several companies during the 2024 proxy season, the Staff recognized that even under the non-company-specific approach of SLB 14L’s significance analysis, proposals that seek to advance the “public health benefits of plant-based diets” do not raise a significant social policy issue that transcends ordinary business operations. No-Action Request at 7–8 and Appendix A thereto.

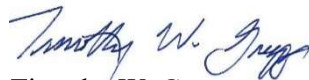
Under SLB 14M’s company-specific approach to Rule 14a-8(i)(7), the Proposal remains excludable. The Company already provides plant-based menu options for patients in all Company-managed facilities. No-Action Request at 6. Decisions regarding the manner in which such menu options are presented are ordinary business decisions best left to management. Moreover, the policy issue of “the public health benefits associated with plant-based diets” does not have a “sufficient nexus” with the Company’s business. The Proponent traces these public health benefits to long-term dietary habits and cites to “large prospective cohort studies” for support. See the Proponent Letter at 4. The Company, however, typically treats patients for only a short period of time—in 2023, the average length of a patient’s stay was shorter than 13 days, and the average age of the Company’s 229,480 patients in 2023 was approximately 76. Any connection between the benefits of plant-based diets described by the Proponent and the acute rehabilitative care operations of the Company is remote at best, and therefore does not present a “sufficient nexus” that would support inclusion of the Proposal in the Company’s 2025 Proxy Materials.

CONCLUSION

For the foregoing reasons and those set forth in the Prior Company Letters, the Company requests confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from the 2025 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to tgregg@maynardnexsen.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (205) 254-1212.

Sincerely,



Timothy W. Gregg

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