

June 25, 2020

Mr. Scott Chan
Deputy Attorney General
California Department of Justice
Office of the Attorney General
Charitable Trusts Section
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94012-7004

Via US MAIL & Electronic Mail to Scott.Chan @doj.ca.gov

RE: Proposed Acquisition of Saint Francis Medical Center by Prime Healthcare Services, Inc.

Dear Deputy Attorney General Scott Chan:

SEIU United Healthcare Workers – West (“SEIU-UHW”) represents more than 97,000 healthcare workers in California, including about 1,000 employees at St. Francis Medical Center (“SFMC”) in Lynwood, California. We write to you out of concern for the public health and well-being of the population SFMC serves. As you are aware, Prime Healthcare Services, Inc. (“Prime”), Verity Health System of California, Inc., and Verity Holdings, LLC (collectively, “Verity”) have entered into an Asset Purchase Agreement (“APA”) for the sale of SFMC to Prime in bankruptcy proceedings.

SFMC, a 384-bed general acute care hospital, is a critically important provider of healthcare to the community of Southeast Los Angeles and a key safety-net provider in an area designated as a Medically Underserved Area and a Health Professional Shortage Area. The hospital serves 1.7 million residents and operates one of the busiest emergency trauma centers in Los Angeles County. SFMC treats a substantially higher number of patients covered by Medi-Cal relative to hospitals in both Los Angeles County and California overall.¹ SFMC has reported positive net income for the past four fiscal years, ranging from \$70.4 million in FY 2015 to \$18.7 million in FY 2019.

Your Office maintains “discretion to consent to, give additional consent to, or not consent to any agreement or transaction described in subdivision (a) of Section 5914.”²

¹ For example, in FY 2019, SFMC reported that patients covered under Medi-Cal (Medi-Cal Managed Care and Medi-Cal Traditional) accounted for 63.3% of inpatient discharges. Compare this to the latest available data (FY 2018) for Los Angeles County and statewide: Medi-Cal patients accounted for 34.3% of inpatient discharges in Los Angeles County and 30.3% in California overall. See JD Healthcare, “Effect of the Asset Purchase Agreement between Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center and Prime Healthcare Services, Inc. on the Availability and Accessibility of Healthcare Services to the Communities Served by St. Francis Medical Center” (“2020 JD Healthcare Report”), <https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/nonprofithosp/verity-his-060420.pdf?>, pg. 51.

² Corp. Code § 5917.



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Corp. Code § 5917 provides, “[i]n making the determination, the Attorney General shall consider any factors that the Attorney General deems relevant...”³ In addition, there are several statutory factors that we believe should serve as the primary guide for your review of this proposed transaction. Specifically, your Office should consider whether the transaction (1) “is consistent with the charitable trust on which the assets are held”; (2) “may create a significant effect on the availability [and] accessibility of healthcare services to the affected community”; and (3) “is in the public interest.” Corp. Code § 5917(e),(h),(i). Also of importance is whether the Attorney General “has been provided, pursuant to Section 5250, with sufficient information and data by the nonprofit corporation to evaluate adequately the agreement or transaction or effects thereof on the public,”⁴ in light of ongoing litigation and open complaints, including a recently unsealed whistleblower complaint and recently filed complaints with the Office of Inspector General of the Department of Health and Human Services, as further described below.

Based on the information in the public record and our own analysis, as summarized below and in information already provided to the Attorney General,⁵ we ask that the Attorney General deny consent to the sale pursuant to Corporations Code section 5917, because the sale is not in the public interest and may have a negative impact on the availability and accessibility of health care in the community. SEIU-UHW strongly opposes Prime’s acquisition of SFMC, as Prime’s troubling record makes it a poor fit to run a leading safety net hospital.⁶

I. The Attorney General Should Reject Prime’s Acquisition of SFMC, Based on Concerns About Use of Charitable Trust Assets, Impact on the Availability and Accessibility of Services, and the Impact on the Public Interest.

A. Past Prime Transactions Regulated by the Attorney General Raise Troubling Concerns

Your Office has previously denied approval of hospital sales to Prime in some instances, as with Anaheim Memorial Medical Center in 2008 and the Victor Valley Community Hospital 2011. The letter denying consent to the sale of Victor Valley stated that the Attorney General had considered

³ Corp. Code § 5917; *see also* 11 Cal. Code Regs. § 999.5(e)(6) (providing that the health impact statement relevant to whether the transaction may significantly affect the availability or accessibility of health care services shall include assessment of the effect of the transaction on the following: emergency services, reproductive health services and any other health care services, the level and type of charity care, the provision of health care services to Medi-Cal patients, community benefit programs that the hospital has funded or operated, staffing for patient care areas, retention of employees, and rights of employees, among others); 11 Cal. Code Regs. § 999.5(f).

⁴ Corp. Code § 5917(g).

⁵ *See* Exhibit A, April 22, 2020 Letter from C. Worthman on behalf of SEIU-UHW to Deputy Attorney General Scott Chan re: Opposition to Request for Waiver of Attorney General Review of Proposed Sale of St. Francis Medical Center by Verity Health System to Prime Healthcare Services, Inc.; Exhibit B, May 7, 2020 Letter from C. Worthman on behalf of SEIU-UHW to Deputy Attorney General Scott Chan re: Additional Pending Lawsuit Alleging Fraudulent Actions by Prime Submitted in Opposition to Waiver of Full Attorney General Review of Proposed Sale of St. Francis Medical Center, and enclosures submitted therewith; and Exhibit C, June 19, 2020 Letter from C. Worthman on behalf of SEIU-UHW to Lisa M. Re, Deputy Counsel, Office of Inspector General – Department of Health and Human Services and Abraham Meltzer, Assistant U.S. Attorney – Civil Fraud Section, re: Pending Acquisition of St. Francis Medical Center by Prime Healthcare Services, Inc., and appendices thereto.

⁶ While SEIU-UHW believes that Prime’s record justifies outright rejection, if the Attorney General disagrees, in the alternative we believe that the transaction should be subject to strict conditions, including rigorous monitoring by the Attorney General or an independent monitor. *See* Section II, below.

all relevant information and determined that the sale was “not in the public interest and [would] likely create a significant effect on the availability or accessibility of healthcare services in the affected community.”⁷ Prime’s proposed purchase of SFMC raises similar concerns.

Should the Attorney General conditionally approve the sale here, we are concerned about the likelihood that Prime will fail to comply with the conditions your Office may impose to protect the vital services that SFMC provides to its community. For example, in March of 2006, California Attorney General Bill Lockyer filed a lawsuit against Prime alleging the company was involved in “aiding and abetting a violation of a condition.”⁸ Specifically, the complaint alleged that Prime closed the gero-psychiatric unit at Sherman Oaks Hospital in violation of one of the conditions Attorney General Lockyer had imposed on Prime’s acquisition of the Hospital. The parties subsequently reached a settlement agreement.

More recently, in February 2015, your office approved Prime’s proposed acquisition of the Daughters of Charity Health System (which included SFMC). The approval, however, was contingent upon Prime’s acceptance of conditions that were carefully crafted to ensure the continuity of essential healthcare services for the vulnerable communities served at the six Daughters of Charity health facilities.⁹ Prime, however, decided to turn its back on these communities and walk away from the transaction, describing the conditions as too “onerous.”¹⁰

During the Attorney General review process of the Daughters of Charity transaction, SEIU – UHW publicly advocated for your Office to reject the proposed sale, citing major concerns with the company’s business practices, including reducing services after acquiring new hospitals, canceling contracts with insurance providers, unfair treatment of workers and Prime’s troubling track record with government regulators. Sadly, many of these issues remain as relevant today as they were then.

B. Prime’s Business Practices May Put SFMC’s Charitable Assets at Risk.

Prime’s business practices, including numerous allegations of efforts to avoid contractual and legal obligations and frequent disputes with payors about its billing, have garnered the attention of the media and federal and state regulators.¹¹ The multiple examples of such allegations noted here, which are well documented in the public record, underscore concerns about whether the proposed sale would be consistent with the existing charitable purposes for which the assets are held. Where they relate to potential “up-coding,” or overcharging for services, they may also potentially impact the availability and accessibility of healthcare services and thus are relevant to that factor as well.

⁷ See Letter from Kamala D. Harris to Michael Troncoso, re: Proposed Sale of Victor Valley Community Hospital (Sept. 20, 2011).

⁸ *People ex rel. Lockyer v. Prime A Investments, LLC*, Sup. Ct. Los Angeles, Case No. BC349532, Complaint (Mar. 24, 2006).spell

⁹ See Feb. 20, 2015 Conditional Consent to Proposed Change in Governance, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/pdf/ag-decision-daughters.pdf>.

¹⁰ B. Kutscher, “Prime Healthcare nixes Daughters of Charity deal,” *Modern Healthcare* (March 10, 2015), available at <https://www.modernhealthcare.com/article/20150310/NEWS/303109979/prime-healthcare-nixes-daughters-of-charity-deal>.

¹¹ Prime has a history of canceling contracts with insurers and then charging higher-out-of-network fees, as documented most recently in a December 2019 academic study published in the *American Journal of Managed Care*. Melnick, G. & Fonkych, K. An Empirical Analysis of Hospital ED Pricing Power. *Am. J. Manag. Care* 2020;26(3): 105-110. <https://doi.org/10.37765/ajmc.2020.41929>.

1. Settled Whistleblower Lawsuits and Allegations of Medicare Fraud

In 2018, the United States Department of Justice (“DOJ”) announced that Prime, Prime Healthcare Management, Inc. and CEO Prem Reddy agreed to pay the United States \$65 million to settle allegations that 14 Prime hospitals in California “knowingly submitted false claims to Medicare by admitting patients who required only less costly, outpatient care, and by billing for more expensive patient diagnoses than the patients had, a practice known as ‘up-coding’.”¹² The settlement also resolved allegations that, from 2006 through 2014, Prime “engaged in up-coding by falsifying information concerning patient diagnoses, including complications and comorbidities, in order to increase Medicare reimbursement.”¹³ As a result of these allegations, Prime and the DOJ entered into a Corporate Integrity Agreement (“CIA”) in 2018, under which Prime continues to operate today.¹⁴

In 2019, the DOJ announced that Prime Healthcare Services, Inc and CEO Reddy agreed to pay the United States \$1.25 million to settle allegations that two Prime hospitals in Pennsylvania engaged in similar fraudulent behavior. Prime acquired Roxborough Memorial Hospital on February 22, 2012, and Lower Bucks Hospital on October 3, 2012. The complaint alleged that “from the date that Prime acquired Roxborough and Lower Bucks through September 30, 2013, under Prime management, Roxborough and Lower Bucks hospitals admitted emergency room Medicare patients for costly and medically unnecessary one- and two-day overnight hospital stays.” The complaint also alleged that “from the dates of acquisition through December 31, 2014, the hospitals up-coded inpatient diagnoses (i.e., billed Medicare for more serious medical conditions than the patients actually had) to increase Medicare payments.”¹⁵

2. Recent Complaint Filed with the OIG

We have recently filed a letter with the OIG raising concerns as to Prime’s compliance with the CIA.¹⁶ Your Office has copies of that letter, which requests that the OIG further investigate two potential issues of concern: (1) a judgment that the Chief Medical Officer of Prime Healthcare, Division II, has been found liable for damages for claims for embezzlement and breach of fiduciary duty, including claims that he fraudulently diverted or attempted to divert Medicare reimbursements, and continues to serve in his Chief Medical Officer role and is a Certifying Employee under the CIA, and (2) data that indicates potential up-coding at Prime hospitals throughout the United States, during a time period that does not appear to be covered by the above described settlement with the United States.¹⁷

¹² Department of Justice Press Release 18-1014 (August 3, 2018). Prime Healthcare Services and CEO to Pay \$65 Million to Settle False Claims Act Allegations, <https://www.justice.gov/opa/pr/prime-healthcare-services-and-ceo-pay-65-million-settle-false-claims-act-allegations>, accessed 6/12/20.

¹³ *Id.*

¹⁴ See 2018 Corporate Integrity Agreement Between the Office of Inspector General of the Department of Health and Human Services and Prime Healthcare Services, Inc., et al., https://oig.hhs.gov/fraud/cia/agreements/Prime_Healthcare_Services_Inc_et_al_08032018.pdf, accessed 6/25/2020.

¹⁵ Department of Justice Press Release (February 14, 2019). Prime Healthcare Services and CEO, Dr. Prem Reddy, to Pay \$1.25 Million to Settle False Claims Act Allegations, <https://www.justice.gov/usao-edpa/pr/prime-healthcare-services-and-ceo-dr-prem-reddy-pay-125-million-settle-false-claims-act>, accessed 6/12/20. There was no admission of liability in the terms of the settlement.

¹⁶ See Exhibit C.

¹⁷ See *id.* (noting that CIA was adopted in connection with settlement of claims based on conduct from 2006 – 2014, and providing data of potential up-coding covering the time period 2011 – 2018, which SEIU-UHW believes warrants further investigation).

3. Pending Whistleblower Case Alleging Fraudulent Actions by Prime Healthcare

In June 2019, a whistleblower lawsuit was unsealed in the U.S. District Court for the Central District of California. The whistleblower, Martin Mansukhani, a regional CFO for Prime, was charged with overseeing the financial operations of Desert Valley Hospital, Desert Valley Medical Group, Chino Valley Medical Center, Montclair Hospital and San Dimas Community Hospital. Plaintiff-Relator Mansukhani alleges that Prime, related corporate entities, and CEO Reddy entered into a deal with co-defendant Dr. Siva Arunasalam, whereby Dr. Arunasalam receives remuneration in exchange for referrals to Prime-owned Desert Valley Hospital, a scheme that allegedly results in violations of the federal Anti-Kickback State, the Stark Law, the California False Claims Act, the California Insurance Code, and the California Penal Code. In addition, Plaintiff-Relator alleges that Prime has systematically altered payment records in order to submit inflated claims for medical devices to private insurers and state and federal healthcare programs. Accordingly, Plaintiff-Relator has brought claims under (I) the federal False Claims Act; (II) the California False Claims Act; and (III) the California Insurance Frauds Prevention Act.¹⁸

On April 14, 2020, the Court denied the Defendants' motion to dismiss claims regarding the patient referrals scheme arising under federal law, and granted Plaintiff-Relator leave to amend his complaint with respect to the patient referrals claims under the California False Claims Act and California Insurance Frauds Prevention Act. The Court also denied Defendants' motion to dismiss the medical device claims against Prime Healthcare Services, Inc. and Prime Healthcare Foundation, Inc., and gave Plaintiff-Relator leave to amend these claims as to Dr. Reddy. Plaintiff-Relator has amended his complaint and the case is set for trial in February 2021.

4. Illegal Conversion of Two Hospitals in Rhode Island

In October 2017, Prime was fined \$1 million for violating a Rhode Island law that required the company to obtain regulatory approval for the conversion of two Rhode Island hospitals into nonprofit entities.¹⁹ According to a Consent Agreement between the Rhode Island Department of Health (RIDOH), Prime Healthcare Services, Inc., and Prime Healthcare Foundation, Inc., Prime submitted applications to RIDOH in December 2016 to convert the hospitals into nonprofits. During the application review process, Prime made multiple misrepresentations to RIDOH suggesting that the conversion of the hospitals had not yet taken place. However, in August 2017, RIDOH obtained copies of Prime Healthcare Foundation, Inc.'s 2016 Audited Financial Statements, which verified that Prime Healthcare had improperly converted the two hospitals to nonprofit entities on December 31, 2016, the same day the company submitted applications requesting approval from RIDOH for the conversion of the hospitals, rather than waiting for approval.²⁰

¹⁸ *United States v. Prime Healthcare Servs., Inc.*, No. 5:18-cv-00371-RGK-SHK (C.D. Cal., filed Feb. 21, 2018), Second Amended Complaint, ECF No. 63 (filed Apr. 24, 2020).

¹⁹ A. Rege, "Rhode Island fines Prime Healthcare \$1M for illegally converting 2 hospitals to nonprofits," *Beckers Hospital Review* (Oct. 31, 2017), <https://www.beckershospitalreview.com/legal-regulatory-issues/rhode-island-fines-prime-healthcare-1m-for-allegedly-illegally-converting-2-hospitals-to-nonprofits.html>.

²⁰ See Exhibit D, Consent Agreement between RIDOH, Prime Healthcare Services, Inc. and Prime Healthcare Foundation.

5. Ongoing Investigation of Tax Issues by the Internal Revenue Service and California Franchise Tax Board

Prime Healthcare Services has disclosed that the company is currently under examination by the IRS for the 2012 tax year and by the California Franchise tax board for the years 2009 to 2016. The disclosures were made in the company's 2018 Audited Financial Statements.²¹

6. Kaiser Billing Dispute

In 2008, Prime Healthcare filed a lawsuit against Kaiser Foundation Health Plan, seeking payment of "underpaid or unpaid claims" for healthcare services provided to Kaiser beneficiaries at Prime hospitals. Kaiser responded by filing a cross-complaint asserting claims that Prime had: (1) improperly determined Kaiser patients were unstable for transfer to a Kaiser facility, (2) improperly coded the claims on the bills, and (3) charged unreasonable amounts.²²

In February 2015, Prime and Kaiser agreed to dismiss their respective lawsuits against each other and resolve their disputes through confidential and binding arbitration. In March 2018, the arbitration panel issued a ruling requiring Prime to pay Kaiser an award of approximately \$42 million. Although Prime contested the arbitration panel's decision and award, in February 2019, the Los Angeles Superior Court confirmed the award and entered judgement requiring Prime to pay Kaiser approximately \$44 million.²³

Prime appealed the judgment and the appeal is currently before the California Court of Appeals. Prime has disclosed that interest in the amount of \$6,000 per day continues to accrue on the judgment until it is either vacated or paid.²⁴

C. Availability and Accessibility of Health Care Services

SEIU-UHW has further concerns as to the impact of Prime's acquisition of SFMC on the availability and accessibility of healthcare in the relevant service area, including based on potential health care service line cuts, as further detailed below.

1. Service Line Cuts

St. Francis is an important provider of maternity care and cancer care to the South Los Angeles community. SEIU-UHW is concerned that these services would be in danger of being rolled back if Prime Healthcare purchases the hospital.

²¹ See Exhibit E, Prime Healthcare Services, Inc. and Subsidiaries Audited Financial Statements, Years Ended December 31, 2018, 2017 and 2016, at p. 16. We ask that your Office consider obtaining additional information from the tax authorities regarding these examinations to determine whether they may be relevant to the factors the Attorney General must consider in assessing the proposed purchase of SFMC.

²² *Prime Healthcare Cases*, JCCP No. 4580, Coordinated Case No. BC390969, Kaiser First Amended Cross-Complaint (Oct. 12, 2010).

²³ *Prime Healthcare Cases*, JCCP No. 4580, Coordinated Case No. BC390969, Judgment (Feb. 26, 2019).

²⁴ See Exhibit E, at pp. 47-48.

To illustrate the basis for SEIU-UHW's concern, when Prime purchased Centinela in 2007 it issued the following statement:

Prime Healthcare Services will operate CHMC as an acute-care facility with all services presently provided including Emergency Department services, Medical/Surgical services, Obstetric services and specialty-care services such as orthopedic/sports medicine and cardiovascular services operated as Centers of Excellence.²⁵

However, between 2007, the year Prime bought Centinela, and 2008, the first year Centinela was fully under Prime's ownership, the number of pregnant women admitted to the hospital dropped by one-third, according to an SEIU-UHW analysis of Office of Statewide Health Planning and Development ("OSHPD") Patient Discharge Data (2004-2019).²⁶ During this same time period, pregnant women admitted to hospitals statewide dropped by only three percent.²⁷ In 2019, there were 489 live births at Centinela;²⁸ in 2007 that number was 3,100.²⁹

Similarly, after Prime purchased Montclair Hospital Medical Center in San Bernardino County in 2006, it closed the obstetrics unit at nearby Chino Valley Hospital, claiming it was moving the maternity department to Montclair. However, births had already dropped dramatically at Chino Valley, from 927 in 2004 to 123 in 2006.³⁰ Births have since dropped from 1,239 at Montclair Hospital in 2006 to 243 in 2019.

Overall, at California hospitals owned by Prime between 2011 and 2018, pregnant women treated as hospital inpatients have dropped by 33 percent.³¹ By comparison, statewide, pregnant women treated as hospital inpatients have dropped by only 10 percent.³²

Prime has also failed to maintain cancer care services at several of its hospitals. Inpatients with the principal diagnosis of neoplasm (i.e., tumor) dropped dramatically after Prime purchased 12 out of 13 hospitals. Inpatient cancer patients dropped by 69 percent at Montclair Hospital and by 45 percent at nearby Chino Valley Hospital after Prime took over. At Shasta Regional Medical Center in rural Northern California, cancer inpatients dropped by 70 percent after Prime acquired the hospital, and Centinela saw 35 percent fewer patients.³³ Between 2011 and 2018, cancer inpatients at Prime hospitals have dropped by 33 percent, compared to a 16 percent drop at hospitals statewide.³⁴

²⁵ Oct. 31, 2007 Press Release, "Prime Healthcare Services Acquires Centinela Hospital Medical Center," <https://web.archive.org/web/20120502133934/http://www.primehealthcare.com/Press-Center/News/2007/Prime-Healthcare-Services-acquires-Centinela-Hos.aspx>.

²⁶ OSHPD data for analysis summarized in this section was obtained at <https://oshpd.ca.gov/data-and-reports/healthcare-utilization/inpatient/>.

²⁷ See OSHPD Patient Discharge Data, all patients where principal diagnosis is "Pregnancy."

²⁸ See OSHPD Annual Utilization Report Centinela Hospital, 2019.

²⁹ See OSHPD Annual Utilization Report Montclair Hospital, 2019.

³⁰ See OSHPD Patient Discharge Data, all patients where principal diagnosis is "Births."

³¹ See OSHPD Patient Discharge Data, all patients where principal diagnosis is "Pregnancy."

³² *Id.*

³³ OSHPD Patient Discharge Data, all patients where principal diagnosis is "neoplasm." Percentages calculated using data during year before Prime purchased hospital and year in which hospital was fully under Prime ownership.

³⁴ OSHPD Patient Discharge Data, all patients where principal diagnosis is "neoplasm" in 2011; all patients where principal diagnosis is "cancer" in 2018.

D. Impact on the Public Interest Generally

Moreover, Prime's conduct raises concerns about whether its acquisition of SFMC will harm the public interest. Prime's record of violating workers' rights and recent patient care issues at its facilities are relevant to the Attorney General's consideration of "[a]n assessment of the effect of the agreement or transaction on staffing for patient care areas as it may affect availability of care, on the likely retention of employees as it may affect continuity of care, and on the rights of employees to provide input on health quality and staffing issues." Cal. Code Regs. § 999.5(e)(6)(E).

1. Violations of Workers' Rights

Prime's labor law record and the experience of unions representing its workforce raise serious concerns about the impact of the transaction on employees at SFMC.

a. Unilateral Changes to Healthcare Benefits at Centinela Hospital Medical Center

In December 2015, the NLRB affirmed an Administrative Law Judge's finding that Prime unlawfully implemented changes to its healthcare plan during negotiations with SEIU-UHW.³⁵ Specifically, SEIU-UHW members were forced to enroll in a new EPO plan and pay healthcare premiums for a plan that was previously offered at no cost. For example, employees previously enrolled in a fully paid family healthcare HMO plan were suddenly required to pay nearly \$4,000 a year in healthcare premiums.

b. Noncompliance with Contractually Mandated Wage Increases at Garden Grove Hospital Medical Center and Encino Hospital Medical Center

In October 2016, the NLRB adopted an Administrative Law Judge's finding that Prime Healthcare unlawfully stopped providing contractually mandated wage increases to SEIU-UHW members working at Garden Grove Hospital Medical Center and Encino Hospital Medical Center.³⁶

c. Unilateral Removal of Reserve Sick Pay at Garden Grove Hospital Medical Center

In August 2011, The NLRB adopted an Administrative Law Judge's decision, finding that Prime Healthcare unlawfully rescinded a reserve sick leave benefit to which SEIU-UHW members at Garden Grove Hospital Medical Center were entitled under their Collective Bargaining Agreement.

d. Aggressive Legal Tactics Against Unions

In response to SEIU-UHW's campaign to win a contract for members working at Centinela Hospital Medical Center, Encino Hospital Medical Center, and Garden Grove Hospital Medical Center, Prime Healthcare filed a burdensome lawsuit against the union alleging antitrust violations.

³⁵ *Prime Healthcare Centinela, LLC d/b/a Centinela Hospital Medical Center* (31-CA-030055, et al.; 363 NLRB No. 44) Inglewood, CA, November 24, 2015.

³⁶ *Prime Healthcare Services-Encino, LLC d/b/a Encino Hospital Medical Center and Prime Healthcare Services-Garden Grove, LLC d/b/a Garden Grove Hospital & Medical Center* (21-CA-080722, 31-CA-066061, 31-CA-070323, and 31-CA-080554; 364 NLRB No. 128)

The lawsuit was dismissed by the District Court; however, Prime appealed to the Ninth Circuit Court of Appeals which upheld the District Court's decision.³⁷ Prime filed a petition for writ of certiorari with the U.S. Supreme Court, which was denied in June 2016.³⁸

e. Refusal to Recognize RN Unionization Vote at Chino Valley Medical Center

In April of 2010, 125 Registered Nurses at Prime's Chino Valley Medical Center voted overwhelmingly to unionize with the United Nurses Association of California/Union of Healthcare Professionals. Rather than recognizing the outcome, Prime filed multiple appeals to delay the process of negotiating with the newly unionized workers. Ultimately, Prime was compelled to negotiate after a decision issued by the D.C Circuit Court of Appeals. The nurses won their first contract in December 2019 after holding a three-day strike, nearly 10 years after voting to form a union.³⁹

2. Quality of Care Concerns

Prime's record on quality of care is also relevant to the Attorney General's consideration of the impact of the transaction is in the public interest, including "[a]n assessment of the effect of the agreement or transaction on emergency services, reproductive health services and any other health care services that the hospital is providing." Cal. Code Regs § 999.5(e)(6)(A).

a. Healthcare-Associated Infections

The California Department of Public Health's Healthcare-Associated Infections ("HAI") program is responsible for overseeing the prevention, surveillance, and reporting of HAI and antimicrobial resistance (AR) in California's hospitals and other healthcare facilities. CDPH publishes HAI data annually to provide vital information about the quality of hospital care and monitor prevention progress.⁴⁰

A review of data obtained from the HAI Program⁴¹ indicates that Prime has infection control problems at many of its California hospitals. For instance, eight of 15 Prime hospitals in California reported as "not on track" to meet 2020 HAI prevention goals for central line-associated bloodstream infections, which are associated with thousands of deaths annually and millions in costs to the U.S. health care system.⁴² The HAI data also reflects that nine of the 15 Prime hospitals were not on track to meet 2020 prevention goals for MRSA, and four were not on track to meet *C. diff* prevention targets.

³⁷ *Prime Healthcare Servs., Inc. v. Serv. Employees Int'l Union*, 642 F. App'x 665 (9th Cir. 2016).

³⁸ *Prime Healthcare Servs., Inc. v. Serv. Employees Int'l Union*, 136 S. Ct. 2532 (2016).

³⁹ https://www.championnewspapers.com/community_news/article_742294dc-1dd5-11ea-b2d4-4f7bd009cc11.html

⁴⁰ <https://www.cdph.ca.gov/Programs/CHCQ/HAI/Pages/AnnualHAIReports.aspx>

⁴¹ https://www.cdph.ca.gov/Programs/CHCQ/HAI/CDPH%20Document%20Library/HAI_AnnualReport2017_FinalPublished10.24.18.pdf.

⁴² <https://www.healthypeople.gov/2020/topics-objectives/topic/healthcare-associated-infections>.

b. CDPH Deficiencies and State Enforcement Actions

CDPH issues penalties to hospital operators in the event of severe deficiencies which have impacted or would be likely to impact the health and safety of patients.⁴³ Our initial review of recent survey deficiencies at Prime hospitals revealed the following concerning events:

- Garden Grove Medical Center was issued state penalties twice, for adverse events in 2016 and 2014 in which 2 patients died after having C-sections;⁴⁴
- Huntington Beach Hospital was penalized in 2019 for failure to timely report an allegation of sexual assault;⁴⁵
- San Dimas was cited in 2019 for failure to report hospital-acquired pressure ulcer;⁴⁶
- Shasta Regional Med Center was penalized in 2017 for an instrument left inside patient after surgery;⁴⁷
- Sherman Oaks was cited after CDPH found the hospital failed to report a patient death which occurred within 24 hours of surgery in 2016;⁴⁸ and
- Centinela Hospital was issued a survey deficiency this year after CDPH found that a patient who was scheduled to be discharged to a shelter was instead left at another location, a policy violation CDPH noted risked the patient's safety.⁴⁹

II. In the Alternative, If the Attorney General Consents to the Sale, It Should Impose Meaningful Conditions Including Possible Appointment of an Independent Monitor.

In light of the concerns summarized in this letter, SEIU-UHW believes that the Attorney General should refuse consent to the SFMC transaction. Prime is not an appropriate operator for this important safety net hospital.

However, if the Attorney General consents to the proposed sale, we ask that consent be conditional, and that at minimum the conditions be no less rigorous than those established in 2015 when the Attorney General conditionally consented to the proposed change in governance of the

⁴³ Penalties can be issued in an amount of up to \$75,000 for a first deficiency constituting an immediate jeopardy (IJ) to the health and safety of a patient, up to \$100,000 for the second subsequent IJ deficiency, and up to \$125,000 for a third and every subsequent IJ deficiency. Health and Safety Code § 1280.3.

⁴⁴https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/STATE_PENALTY_2567.aspx?citation_number=060013360.

⁴⁵https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/STATE_PENALTY_2567.aspx?citation_number=060014826.

⁴⁶https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/STATE_PENALTY_2567.aspx?citation_number=930015454.

⁴⁷https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/STATE_PENALTY_2567.aspx?citation_number=230013739.

⁴⁸https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/STATE_PENALTY_2567.aspx?citation_number=930012289.

⁴⁹https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/ASPEN_STATE_2567.aspx?EventID=5TGS11

Daughters of Charity Health System, a transaction that included SFMC.⁵⁰ In particular, we ask that the Attorney General require Prime to:

- Maintain SFMC as a Trauma II center for 10 years, or upgrade to a Trauma I center;
- Maintain the current level of cancer services at SFMC for 10 years, including radiation oncology services, in light of the fact that SFMC is an important provider of oncology services to community residents and there are limited accessible alternatives for these services in the surrounding area;⁵¹
- For five years, maintain services at the three clinics identified in the 2019 conditions the Attorney General imposed on the planned sale of SFMC to Strategic Global Management, Inc. (“SGM Conditions”)⁵² or ensure that if the clinics are sold or operated by a third party, service levels are maintained for five years;⁵³
- Maintain SFMC’s current level of charity care for 10 years, and consider imposing other charity care protections such as improving the charity care policy and disclosure requirements as proposed in the 2020 JD Healthcare Report (*see* p. 104); and
- Transfer St. Francis Foundation charitable assets to the California Community Foundation consistent with the terms of the 2015 Transaction and SGM Conditions, as appropriate.

In addition, we propose that the Attorney General either establish a rigorous monitoring program to be conducted by the Office, or appoint an independent monitor to oversee operations at St. Francis for a period of 10 years in order to ensure Prime complies with the Attorney General’s conditions and that in operating SFMC it serves the public interest and does not negatively impact the availability and accessibility of health care services in the community, as well as to supervise billing arrangements and ensure compliance with relevant state and federal laws.⁵⁴ The Attorney General’s oversight authority regarding sales of nonprofit hospitals includes the authority to contract with experts or consultants in order to “monitor effectively ongoing compliance with the terms and conditions of any sale” of a hospital that is subject to the Attorney General’s review.⁵⁵ Costs are to be borne by either the selling or the acquiring corporation.⁵⁶

The Attorney General has appointed independent monitors in circumstances that require ongoing oversight to guarantee that charitable assets are properly managed or that the interests of

⁵⁰ See Dec. 3, 2015 Conditional Consent to Proposed Change in Governance of Daughters of Charity Health System, <https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/pdf/chs.pdf>.

⁵¹ 2020 JD Healthcare Report, p. 98.

⁵² Sept. 25, 2019 Conditional Consent to Proposed Transfer of Proposed Transfer St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center, <https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/nonprofitosp/ag-decision-verity-village-092519.pdf>.

⁵³ The three clinics are the Children’s Counseling Center, 4390 Tweedy Ave, South Gate, California; Wound Care Center, 3628 E. Imperial Highway, Suite 103, Lynwood, California; and an orthopedic clinic at 3628 E. Imperial Highway, Suite 300, Lynwood, California. Prime has previously refused to accept the SGM Conditions as to the Children’s Counseling Center and Wound Care Center. See Verity Waiver Request, Ex. D, p. 227, 235; *see also* 2020 JD Healthcare Report, p. 23.

⁵⁴ See Corporations Code §§ 5917(h)-(i), 5919(d); 11 Cal. Code Regs. § 999.5(g).

⁵⁵ Corporations Code § 5919(d)(1); *see also* 11 Cal. Code Regs. § 999.5(g)(2).

⁵⁶ Corporations Code § 5919(d)(2)-(3); 11 Cal. Code Regs. § 999.5(g)(3).

consumers, including patients, are protected. For instance, in 2006, Attorney General Lockyer appointed an independent monitor to oversee reforms at the Getty Foundation in order to ensure proper use of the Foundation's charitable assets.⁵⁷ In 2012, Attorney General Harris appointed an independent monitor to ensure California banks complied with the terms of a national settlement regarding mortgage servicing and foreclosure misconduct.⁵⁸ And in 2013, Attorney General Harris appointed an independent monitor to oversee a nursing home chain's compliance with staffing and quality improvements required by a settlement between the State and the nursing home company.⁵⁹

In addition, regulators in other states have relied upon independent monitors or auditors to oversee hospital transactions or conduct. For example, in approving a 2016 affiliation agreement between two hospital networks, the Connecticut Office of Healthcare Access appointed an independent monitor empowered to limit price increases and ensure the hospital network met requirements for maintaining services and making capital investments.⁶⁰ Similarly, North Carolina's Attorney General appointed an independent monitor in 2019 to oversee the merger of for-profit HCA and non-profit Mission Health.⁶¹

We believe an independent monitor would help ensure Prime adheres to the conditions the AG may impose on the sale, and in particular will ensure that any problems with compliance surface quickly and are addressed promptly. In our view, the independent monitor's responsibilities and authority should include:

- Verifying Prime's ongoing compliance with the AG's conditions and submitting annual reports to the AG;
- Fully investigating concerns related to compliance with the AG's conditions, including conducting inquiries requested by the AG as well as those raised by community members;
- Monitoring Prime's billing and pricing practices, particularly practices relevant to potential "up-coding," cancellation of commercial contracts as a method of increasing revenues,⁶² and other practices that have been the subject of past allegations of misconduct;
- Monitoring staffing levels and safety practices at SFMC to ensure adequate quality of care and worker protections are maintained;
- Making recommendations to the AG regarding mitigation measures if Prime is found to be out of compliance with the AG's conditions or in danger of noncompliance;

⁵⁷ "Report on the Office of the Attorney General's Investigation of the J. Paul Getty Trust," available at https://oag.ca.gov/system/files/attachments/press_releases/06-085_0a.pdf.

⁵⁸ "Attorney General Kamala D. Harris Appoints Independent Monitor to Protect Interests of Homeowners in \$18 Billion California Commitment" (Mar. 16, 2012), available at <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-appoints-independent-monitor-protect-interests>.

⁵⁹ "Attorney General Kamala D. Harris Announces Settlement Requiring Improved Staffing Levels at Nursing Home Chain" (Feb. 13, 2019), available at <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-settlement-requiring-improved>.

⁶⁰ J. Benson, "Independent monitor to oversee L+M-Yale New Haven affiliation" (Sept. 19, 2016), *The Day*, available at <https://www.theday.com/article/20160909/NWS01/160909267>.

⁶¹ N. Cotiaux, "Independent monitor for hospital merger going public in a big way" (Jan. 24, 2020), *Carolina Public Press*, available at <https://carolinapublicpress.org/29749/independent-monitor-for-hospital-merger-going-public-in-big-way/>; see also Gibbins Advisors' official independent monitor website, <https://www.independentmonitormhs.com/>.

⁶² See Melnick, G. & Fonkych, K. An Empirical Analysis of Hospital ED Pricing Power. *Am. J. Manag. Care* 2020, 26(3), <https://doi.org/10.37765/ajmc.2020.41929>.

- Maintaining public access to information collected by the AG and the independent monitor;
- Conducting regular public hearings regarding quality, health care access, and worker issues following the sale; and
- Before the conclusion of the 10-year monitoring period, making a recommendation to the AG regarding whether continued monitoring or other conditions are advisable in order to ensure the community's interests are protected.

III. Conclusion

In sum, we believe that the current public record supports the Attorney General denying consent to the SFMC transaction with Prime based on concerns about the availability and accessibility of healthcare services, and the negative impact on the public interest. Or, at minimum, we suggest that the Attorney General look further into the pending issues that have emerged such as the unsealed whistleblower complaint, and impose strict conditions as well as appoint a monitor to oversee compliance with those conditions.

We would be happy to provide any further information or analysis that the Attorney General would find helpful in making its decision.

Sincerely,



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