

I.

1. Defendants have responded to Plaintiffs motion by not responding to argument at all.

2. Instead, Defendants assert to the Court that the documents at issue are variously protected from public disclosure based on proprietary interests, market niche, competition and/or trade secret.

3. Defendants hope to prevail on this disingenuous argument by offering the hearsay affidavit of in-house counsel for Prime Healthcare Services, Inc. who essentially asserts that Defendants simply want to keep the details of this transaction away from the very public most impacted by it.

II.

4. Defendants offer to provide the relevant documents at issue for the purpose of this litigation subject to an onerous protective order drafted specifically to hamstring Plaintiffs from answering public inquiry about the transfer of the City's largest charitable gift to a California entity with a history of overcoding, allegations and lawsuits involving HIPPA violations and Medicare fraud, default on municipal bonds, layoffs, discontinuance of medical services, release of physicians who failed to yield desired patient net service revenues, payments of public funds to the for profit entities by the not-for-profit entities to manage those hospitals and other abuses.¹

5. Defendants cannot attempt to keep the citizens of Weslaco, whose health, safety and medical interests are represented in this lawsuit, in the dark about what has happened to their hospital.

¹ Plaintiffs rely on and incorporate by reference the exhibits heretofore on file among the Court's papers in this matter, as well as the exhibits attached hereto.

III.

6. Plaintiffs reply that Defendants are entitled to no protection of the documents at issue preventing public disclosure of the terms of the transaction for the following reasons:

- Prime Foundation is allegedly a not-for profit and is thus not subject to protection of its financial, “proprietary” documents.
- The Texas Public Information Act provides no protections to the documents obtained by the City of Weslaco in discovery that are not otherwise protected under the Rules.
- All of the documents at issue fall within the categories that require public disclosure under Ch. 552.002.
- While the Court *may* issue a protective order, it is under no duty to do so and may not issue such order if the documents are subject to disclosure pursuant to Ch. 552.002 and not otherwise confidential.

7. Plaintiffs contend that the citizens of Weslaco have a right to know what these documents reveal:

- Approximately seventy-five percent (75%) of the patients who seek health and emergency care from KNAPP MEDICAL do so through federal Medicaid or Medicare health programs.
- A portion of KNAPP MEDICAL’S operation and capital improvements of the Hospital Property were financed with proceeds of Weslaco Hospital Authority Hospital Revenue Bonds. Prime (*see*, Exhibit “A”, incorporated by reference herein) acquired other hospitals which also had bonds, did not pay the bonds and forcing the taxpayers to assume those debts.
- The restrictive covenants prohibit the sale of Knapp to a for-profit entity. The documents and attached exhibit “B” incorporated by reference demonstrate that Prime’s nonprofits are managed by Prime for profit. Prime owns the for-profit hospital, Harlingen Medical Center, creating competitive for those same patients.
- The hospital was not sold to a “healthcare delivery system” as required but by a ledger created and funded by the for-profit.
- Knapp’s value was \$200 million dollars yet Prime has paid out of pocket some \$23 million. The other \$80 million dollars Prime claims in this transaction were

assets transferred from Knapp Medical Center to Knapp Community Cares which is owned by Prime.

- If Knapp remained a not-for profit hospital, why – after the transaction – would there be only one admitting physician group who were selected because their patients comprised greater than 10% of the Medical Centers’ net patient service revenues?
- The Texas Business Organizations Code §§ 22.353 and 22.355(2) require corporations who seek out/rely on donations from the public (like Knapp) are to be held accountable to that same public by keeping and making available financial records.
- §§ 22.352 and 22.353 were created “to require non-profit organizations soliciting funds from the public to keep adequate records showing how the funds were actually being used.” Senate Comm. on Bus. and Indus., Bill Analysis, Tex.S.B. 857, 65th Leg., R.S. (1977).
- Access by the public to a non-profit hospital’s records, books and reports under section 22.353(b) would be beneficial if the hospital were trying to hereafter ripen itself for sale as Prime has done with other non-lucrative hospitals it assumed.
- Defendants claim concerns that hospitals (“economic competitors”) will gain an “unfair competitive advantage” if they are forced to make the documents available. “Economic competitors” is a strange way for a non-profit hospital to refer to other hospitals.
- Concerns over economic competition must be secondary to accountability and transparency of non-profit hospitals to the public which they rely upon for donations and exist to serve.
- Public policy demands an even higher burden of accountability for nonprofit hospitals.
- Hospitals exist to serve the health, safety and well-being of the individuals in their communities. The citizens of Weslaco are savvy health-service consumers as many rely on government subsidization. They have a right to be fully informed of terms impacting hospital services and ownership.
- Non-profit hospitals receive various tax-exemptions from federal, state and local governments to provide benefits to the community. Transparency promotes quality patient care and accountability. Every employee of and patient treated at a hospital is affected by the management decisions made by those in charge. Financial misdeeds by hospital leadership are paid for by patients and employees. Patient safety is compromised when hospitals do not use their financial resources to further quality of care. The public cannot act on what it does not know.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing document has, on this the 4th day of June, 2014, been forwarded to the following Counsel of Record:

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/s/ Mary J. Ibarra-Myers
Mary J. Ibarra-Myers

EXHIBIT “A”

EXHIBIT “B”

EXHIBIT “C”

EXHIBIT "A"

Jo Ciavaglia's portfolio

Stories written by Jo Ciavaglia, award-winning multimedia newspaper reporter at the Bucks County Courier Times in Bucks County, a suburb of Philadelphia, Pa. For more information about Jo, check out her Linked-in profile, as well as her Facebook page and Google+ 1.

Monday, September 3, 2012

The \$14 million question: Who pays off Lower Bucks Hospital's loan

Posted: Sunday, September 2, 2012

A \$14 million question is looming over the pending sale of Lower Bucks Hospital to a for-profit health care system: Will Bucks County remain on the hook for the money it borrowed to help the hospital emerge from bankruptcy?

As of last week, county officials — including the head of the agency that owns the hospital — didn't have firm answers.

"It is a very complicated situation that will have to be resolved before the (Bucks County Redevelopment) Authority board votes to approve the sale," said Robert White, the authority's director.

The \$14 million bond is the result of an agreement between the county's redevelopment authority and Lower Bucks Hospital to allow the hospital to exit Chapter 11 bankruptcy earlier this year. Under the agreement, the redevelopment authority would have to approve any sale of the Bristol Township hospital.

In 2010, the Bucks County commissioners approved the redevelopment authority borrowing the money by issuing bonds secured by the county and the hospital's dedicated .05 percent from Pennsylvania table games revenue at Parx Casino in Bensalem, which is estimated to be \$750,000 to \$1 million a year.

Under the agreement, the redevelopment authority took title to the hospital property as collateral, and leased it back to Lower Bucks Hospital. In exchange, the hospital committed all its rights to future gaming revenue to pay the debt service on the bond.

The hospital agreed to repay the loan with interest over 20 years and buy back the property. The total amount the hospital promised to repay would be almost \$30 million.

But now that the hospital is slated to be sold to Prime Healthcare Services, a California-based, for-profit chain of 18 mostly West Coast hospitals, some are wondering if the county will be stuck paying off a loan for the new for-profit owner.

White said that there are "no simple answers" to questions regarding the bond and its repayment with the pending sale. He added that the redevelopment authority has not received any "official" notification about a sale.

If the \$14 million is not carried as a liability on the hospital's balance sheet, then it is unclear as to how the debt would be satisfied, said Robert Hill, director of business and financial practices for Health Strategies & Solutions Inc., a Philadelphia-based national health care strategy consultant firm.

Lower Bucks Hospital CEO and President Albert Mezzaroba said that the new owner would not be responsible for the debt service on the loan.

"The short answer is no, there is nothing in the lease, or any other document that would require a new owner to ... pay the debt service," he said.

Rather, Mezzaroba said the new owner would step into the current lease agreement that exists between Lower Bucks Hospital and the redevelopment authority; if the sale is approved, Prime Healthcare would have the same responsibilities as Lower Bucks Hospital including operating the property as a health care center.

Bucks County Commissioner Diane Marsegla expressed frustration at the lack of answers.

"I am mystified as to why (the commissioners) are in the dark," she said.

She said her inquiries with county financial people confirm one possible scenario is that the county would be required to keep paying the bonds using the casino revenue until they reach maturity in 15 to 20 years.

The other scenario, Marsegla said, is that the new owner pays off the bond debt or agrees

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to pay off the bonds over the next 15 to 20 years from its profits.

If the new owner pays off the bond, the county could reap up to an additional \$1 million a year in gaming revenue, Marseglia said.

That's because Prime Healthcare is a for-profit group, which means it is not entitled to receive the table gaming revenue under state law. Instead, the money will go to the county.

If the bond is paid off at the time of the sale, the county could use the table game revenue for other purposes, such as to offset tax increase or make infrastructure repairs, Marseglia said. Otherwise, the county cannot use the gaming revenue until the bond is repaid.

Lower Bucks Hospital would be the second Pennsylvania hospital in Prime Healthcare's growing portfolio; in February it bought the financially struggling Roxborough Memorial Hospital in Philadelphia.

The company specializes in financially challenged hospitals that treat mostly low income patients and rely heavily on government reimbursement, according to published reports.

In January, Prime Healthcare Services was recognized one of the top 15 U.S. health systems by Thomson Reuters, a business data provider.

In formally announcing the sale last week, Lower Bucks Hospital said that as part of the sale agreement Prime Healthcare had agreed to a list of conditions, including:

Maintain all services, including emergency departments.

Provide access to a \$3 million loan for working capital, with plans to invest up to \$10 million for needed capital improvements.

Hire all employees and maintain all collective bargaining agreements.

Assume all health care contracts and liabilities.

Provide the same level of charity care for indigent and low-income patients.

Pennsylvania regulators could require the new owners to fulfill those promises, too, said Health Strategies & Solutions' Hill, who has worked on a number of hospital sales.

With hospital sales, the state will develop and impose a set of conditions on the buyer and monitor to make sure the conditions are adhered to, Hill said. That said, the employees could be terminated for cause and the new owner could request state permission to terminate a service.

Nonprofit community hospitals, such as Lower Bucks Hospital, generally have higher levels of charity care than for-profit hospitals because they offer a wider array of services, some of which require they accept low-income patients, Hill said.

Increasingly nonprofit hospitals are finding access to capital more difficult because of the challenging credit markets, nonprofits tend to run on tighter margins, which makes lenders more reluctant to approve loans, Hill said.

As a result, more for-profit health care groups, such as Healthcare Services — which has substantial capital reserves — are buying up nonprofit hospitals. The attraction for the for-profit groups is that a nonprofit hospital is still a money generator — and a good investment, Hill said.

Often for-profit health care companies will buy struggling hospitals, invest in infrastructure and services, and improve the economies of scale so they can buy things at better prices — then once the portfolio is in a good financial position, they sell them, Hill said. Typically the turnaround process is five to 10 years, he said.

The biggest downside to for-profits, Hill said, is that the organization likely doesn't have that same community commitment and roots. Also there is a loss of local control of what many people consider a critical community asset.

For-profit owners might be more inclined to terminate select services that they deem unprofitable.

Posted by Jo Ciavaglia at 7:27 PM

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Prime Healthcare acknowledges it faces federal investigations

Desert Valley Hospital owner discloses probes in filing with Rhode Island health department

February 06, 2013 5:54 PM

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LANCER WILLIAMS, FOR The Orange County Register

The parent company of Desert Valley Hospital has acknowledged that it is the target of two federal investigations: a U.S. Justice Department probe of its Medicare billings and an inquiry into alleged violations of patient confidentiality laws.

Prime Healthcare Services disclosed the investigations in a Jan. 2 filing with the state health department in Rhode Island, where Prime hopes to buy its 22nd hospital.

The San Bernardino County-based company's filing marked the first time the company has said it is facing a federal investigation. Until now, the company has steadfastly denied being the subject of any such probes.

Prime claims its Medicare billings are legal and proper, and the company shows little sign of backing away from the kind of aggressive billing practices that have made it the focus of official scrutiny.

As California Watch has reported, Prime hospitals have billed Medicare for treating extremely high rates of some difficult medical conditions, including septicemia, or blood poisoning, and kwashiorkor, a form of malnutrition seen among children in African families. The billings have made Prime eligible for millions of dollars in Medicare bonus payments, according to federal records.

In June, the Justice Department subpoenaed documents concerning Prime's billings for septicemia and malnutrition, the company said in the Rhode Island filing.

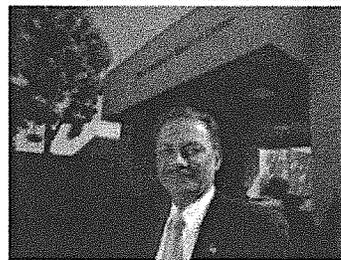
In a letter in response to California Watch's request for comment, Prime lawyer Anthony Glassman said the company had been targeted for federal investigation because of "false allegations" made by the Service Employees International Union, which represents many Prime workers and has butted heads with the company over labor contracts.

He suggested the probe began because the union in 2010 distributed an analysis showing Prime's septicemia rates were triple the national average. Citing the analysis, two California congressmen — Rep. Henry Waxman, D-Los Angeles, and then-Rep. Forney "Pete" Stark, D-Fremont — asked Medicare to investigate Prime for possible Medicare fraud, records show.

California Watch previously reported that FBI agents had interviewed former Prime employees about Medicare billing issues.

Prime also said it is being investigated by the U.S. Department of Health and Human Services' Office for Civil Rights. That probe concerns Prime's 2011 disclosure of the medical files of a patient who was treated for complications of diabetes at a Prime hospital in Redding.

MEDICARE BONUS PAYMENT



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Orange County Register

Prime Healthcare founder Prem Reddy talks to the press in this Orange County Register file photo.

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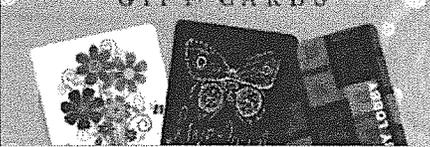
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Federal records show Prime obtained a Medicare bonus payment of more than \$6,000 after reporting it had treated the patient for kwashiorkor, a form of malnutrition that usually afflicts children in sub-Saharan Africa.

Over two years, the hospital claimed to have treated more than 1,000 Medicare patients for the ailment, records show — a rate more than 60 times the state average.

In an interview with California Watch, the patient denied being malnourished and said she was never treated for kwashiorkor. In an attempt to rebut a California Watch news story about the issue, Prime officials shared the patient's medical files with the local newspaper and with hundreds of hospital employees, records show.

In November, California regulators fined Prime \$95,000 for violating state confidentiality laws in the case. Disclosing a patient's medical records without consent also violates federal law. The chain denies wrongdoing and is confident it will win on appeal, wrote Glassman, Prime's lawyer. He also contended that the SEIU had urged the patient to complain about her diagnosis.

As late as last March, Prime said it was unaware of any federal probes. In 2011, it threatened to sue California Watch for defamation for reporting that the company was facing a federal probe. Prime threatened to sue because the company did not yet know it was "being unfairly targeted by government agencies," Glassman wrote.

Prime's disclosure about the investigation was attached to its application to buy Landmark Medical Center, a 214-bed hospital in the Rhode Island town of Woonsocket. The filing was marked confidential, but it can be downloaded from the health department's website.

RECORDING OF PRESENTATION

Soon after Prime made the filing in Rhode Island, the company's founder gave a presentation to doctors at a south Texas hospital that Prime's nonprofit foundation recently acquired. A person who was present made a one-hour recording of the session and shared it with California Watch.

According to the recording, Dr. Prem Reddy, Prime's CEO and the foundation's president, told the doctors how to boost the hospital's Medicare payouts by employing some of the same billing strategies now being investigated.

In the meeting at Knapp Medical Center in Weslaco, Texas, Reddy encouraged the doctors to augment their patients' charts with multiple secondary diagnoses that would qualify for Medicare treatment bonus payments.

Reddy also urged the doctors to find reasons to admit Medicare patients to the hospital rather than treating them as outpatients, saying the Medicare payouts would triple.

Reddy told the Texas doctors that Medicare's billing rules were a game "devised by bureaucrats." Physicians need to "understand the rules of the game and improve our scores," he said.

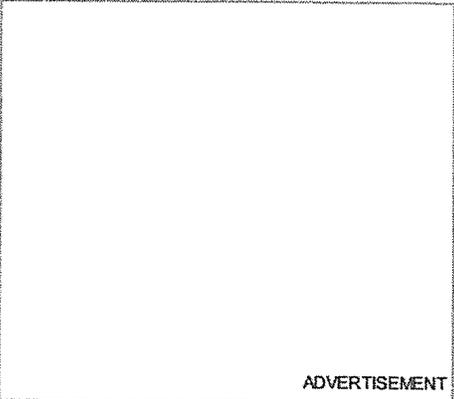
Also in the session, Reddy said Medicare had never successfully challenged a Prime billing, saying the company appeals whenever a billing is rejected.

"We never lose a case yet," Reddy said. "We fight on every case and we win."

In his letter, Glassman wrote that Reddy's presentation "focused on complex clinical information," including "evolving Medicare reimbursement models for physicians and hospitals."

"Dr. Reddy was not instructing his doctors on methods for cheating Medicare," the lawyer wrote.

Contact the writer: <http://californiawatch.org/user/lance-williams>



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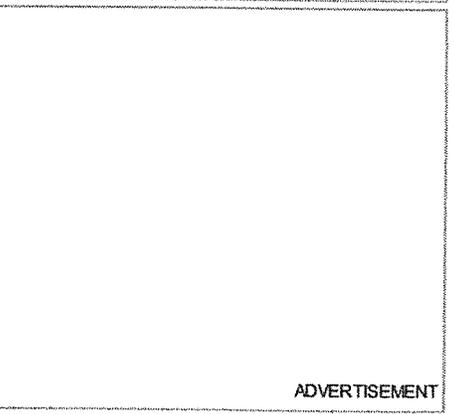
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He said those complaints would be shared with officials who oversee medical billing by providers in Kansas, including the Medicaid Fraud Control Unit in his office.

"Kansas will, of course, expect these new owners not only to live up to their commitments in this transaction but also to diligently comply with all aspects of Kansas law in their operations here," Schmidt said in a press release.

Prime responded on Monday afternoon to Schmidt's statement about opposing testimony at the hearing. In its sale announcement, Prime said that the critic and fellow members of the Service Employee International Union had tried – but failed – "to sway community opinion against the transaction" with the goal of hurting Prime.

Meanwhile, a spokesman for the SCLIS system confirmed that 24 employees in "duplicative roles" have been let go.

He said the buyer and seller hold to the commitment to maintain "substantially all" of the hospitals' workforce and that the eliminated jobs accounted for less than 1 percent of the employees.

To reach Diane Stafford, call 816-234-4359 or send email to stafford@kcstar.com.

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Prime Healthcare pitches singular corporate voice

August 3, 2011 | By Ron Shinkman

SHARE Editor's Corner:



Prime Healthcare Services should be a feel-good story: Upstart hospital chain buys financially ailing facilities and turns them around, planting feather after feather in the cap of its chairman, himself an immigrant enjoying the upscale version of the American dream.



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Except Prime's tale feels more like a bear breaking into a camper just as its owner has returned from a hike.

In the space of a few days last month Prime issued press releases boasting that it regularly prevails over Kaiser Permanente in administrative law hearings, claimed Kaiser and another organization were being regularly fined by the Centers for Medicare & Medicaid Services (CMS), and promised it would sue a non-profit investigative reporting group. These are fairly typical missives from the company, which possesses, what I can say after nearly 19 years covering the healthcare industry, a singularly unique corporate voice.

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These statements, at turns testy, defensive, and even ungrammatical, are likely penned by Prime founder Prem Reddy, a physician who immigrated to the United States from India in the 1970s and has made tens of millions of dollars first forming a medical group in Southern California, and later Prime. I make that guess because having crossed the aisle a few times in my career to do public relations consulting, no communications executive at a major corporation could release such statements of their own volition and keep their job. Nor would they likely counsel doing so. These are strictly top-down announcements.

Contact Author

Reprint

Prime has grown by leaps and bounds with a formula that is about as controversial as its voice: Eliminate contracts with insurers, admit their patients through the emergency room, and bill full charges. In an era where healthcare cost

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The \$2.8 trillion US healthcare industry is being upended by companies attuned to the needs

containment is the operative mode, this is a default mode few hospital operators embrace. Moreover, news outlets such as the *Los Angeles Times* and *California Watch*--a non-profit group whose work is regularly printed in major newspapers--say that Prime is under investigation or has been investigated by both federal and state agencies for the way it bills to treat patients for septicemia and malnutrition.

Prime is used to close scrutiny: It was sued by the Department of Managed Health Care for engaging in balanced billing--charging insured patients for portions of their care their insurer would not pay for--a violation of state law. Prime eventually agreed to stop the practice. It also was sued by the California Attorney General after closing down a psychiatric unit at a Los Angeles area hospital after agreeing to keep it open for a minimum of six months in order to get state approval to buy the facility. Later on, Prime reopened the unit, but claimed in another of its press releases it had been shut down by the previous owner.

Despite being called out repeatedly for conduct that would chagrin more than a few hospital operators, Prime pugnaciously guards its turf. I know this from personal experience, when I wrote about the malnutrition allegations earlier this year and found myself and a five-member editorial board on the business end of bulky Fed Ex packages that included demands for a retraction (a matter settled with a published letter to the editor from Prime).

Such strategies would make a healthcare finance executive simultaneously sing and fret, because although Prime makes money, it is keeping itself perpetually on the radar of CMS, the Internal Revenue Services, and a variety of state agencies.

Of course, there is a possibility these allegations and investigations will lead to nothing, and perhaps Prime will walk away unscathed. But given CMS demands back overpayments versus refunding underpayments at a more than five-to-one clip, and firms like Tenet Healthcare have been the subject of multiple billing probes (and never really recovered from the last one), the odds don't look terrific.

Either way, Prime's corporate voice runs counter to the notion that a hospital is not only a community asset but a public trust. If the tone of its ownership is simultaneously belligerent, boastful, and defensive, it becomes perfectly reasonable that members of that community would not want to entrust their lives to it.

This brings me back to the scenario of the hiker and the bear. You can invent your own ending, but outside of a fairy tale, it's awfully difficult to find one that feels good in any way. - Ron

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COMMENTS

STATE OF RHODE ISLAND
DEPARTMENT OF ATTORNEY GENERAL

October 28, 2013

DECISION

In Re: Initial Application of Prime Healthcare Services-Landmark, LLC, Prime Healthcare Services, Inc., Prime Healthcare Holdings, Inc., Prime Healthcare Management, Inc. and Jonathan N. Savage, Esq., in his capacity as the court-appointed Special Master for Landmark Health Systems, Inc., Landmark Medical Center and Northern Rhode Island Rehab Management Associates, L.P. d/b/a Rehabilitation Hospital of Rhode Island

The Department of Attorney General has considered the above-referenced application pursuant to R.I. Gen. Laws §§ 23-17.14-1, *et seq.*, the Hospital Conversions Act. In accordance with the reasons outlined herein, the application is **APPROVED WITH CONDITIONS**.

I. BACKGROUND

The first step in traversing the Hospital Conversions Act is the filing of an initial application with the Department of Attorney General and Department of Health (“DOH”). The parties filed their initial application (“Initial Application”) on January 2, 2013. The parties (collectively, “Transacting Parties”) to the Initial Application are identified below:

- **Landmark Medical Center** is a Rhode Island non-profit corporation that operates a 214 licensed bed acute care hospital located in Woonsocket, Rhode Island.
- **Northern Rhode Island Rehab Management Associates, L.P., doing business as Rehabilitation Hospital of Rhode Island** (the “Rehabilitation Hospital of Rhode Island”) is a Delaware limited partnership operating a rehabilitation hospital located in North Smithfield, Rhode Island.
- **Landmark Health Systems, Inc.** is a Rhode Island non-profit corporation and the parent of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island.
- **Prime Healthcare Services, Inc.** (“PHSI”) is a Delaware corporation formed on March 27, 2000¹, that operates eighteen (18) acute care hospitals throughout California, Kansas, Nevada, Texas and Pennsylvania.²

¹ PHSI was originally formed as K Reddy Corp., on March 27, 2000 and has had several name changes. Its final name change to Prime Healthcare Services, Inc. was on August 24, 2005. *See* Response to Initial Application Question 1 and Exhibit 10(bb).

- **Prime Healthcare Services –Landmark, LLC** (“Prime-Landmark”) is a Delaware limited liability company formed on September 19, 2012 and is a wholly-owned subsidiary of PHSI.
- **Prime Healthcare Holdings, Inc.** is a Delaware corporation formed on April 21, 2010 and is the sole shareholder of PHSI.
- **Prime Healthcare Management, Inc.** (“Prime Management”) is a Delaware corporation formed on February 24, 2002. It provides management, consulting and support services to hospitals owned and operated by PHSI.

See Response to Initial Application Question 1 and Exhibits 10 (a) – (gg)³.

In its simplest form, the structure of the transaction outlined in the Initial Application (the “Proposed Transaction”) is a sale of the assets of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island to Prime-Landmark.

II. REVIEW CRITERIA

The review criteria utilized by the Department of Attorney General for a hospital conversion involving a conversion of a non-profit hospital to a for-profit hospital⁴ is as follows:

- (1) Whether the proposed conversion will harm the public's interest in trust property given, devised, or bequeathed to the existing hospital for charitable, educational or religious purposes located or administered in this state;
- (2) Whether a trustee or trustees of any charitable trust located or administered in this state will be deemed to have exercised reasonable care, diligence, and prudence in performing as a fiduciary in connection with the proposed conversion;
- (3) Whether the board established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes;
- (4) Whether the board formulated and issued appropriate requests for proposals in pursuing a conversion;

² PHSI is also affiliated with Prime Healthcare Services Foundation, Inc., which is a 501(c)(3) public charity that owns and operates five (5) acute care hospitals in California. See Response to Initial Application Question 1.

³ For the purposes of this Decision PHSI, Prime-Landmark, Prime Healthcare Holdings, Inc and Prime Management will be called collectively “Prime” and Landmark Medical Center, Landmark Health System and the Rehabilitation Hospital of Rhode Island will be called collectively “Landmark”.

⁴ R.I. Gen. Laws § 23-17.14-7(c).

- (5) Whether the board considered the proposed conversion as the only alternative or as the best alternative in carrying out its mission and purposes;
- (6) Whether any conflict of interest exists concerning the proposed conversion relative to members of the board, officers, directors, senior management, experts or consultants engaged in connection with the proposed conversion including, but not limited to, attorneys, accountants, investment bankers, actuaries, health care experts, or industry analysts;
- (7) Whether individuals described in subdivision (c)(6) were provided with contracts or consulting agreements or arrangements which included pecuniary rewards based in whole, or in part on the contingency of the completion of the conversion;
- (8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions;
- (9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion;
- (10) Whether the board exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion;
- (11) Whether the board exposed an inappropriate amount of assets by accepting in exchange for the proposed conversion future or contingent value based upon success of the new hospital;
- (12) Whether officers, directors, board members or senior management will receive future contracts in existing, new, or affiliated hospital or foundations;
- (13) Whether any members of the board will retain any authority in the new hospital;
- (14) Whether the board accepted fair consideration and value for any management contracts made part of the proposed conversion;
- (15) Whether individual officers, directors, board members or senior management engaged legal counsel to consider their individual rights or duties in acting in their capacity as a fiduciary in connection with the proposed conversion;
- (16) Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary;
- (17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;
- (18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third party report or fairness opinion;

- (19) Whether the conversion is proper under the Rhode Island Nonprofit Corporation Act;
- (20) Whether the conversion is proper under applicable state tax code provisions;
- (21) Whether the proposed conversion jeopardizes the tax status of the existing hospital;
- (22) Whether the individuals who represented the existing hospital in negotiations avoided conflicts of interest;
- (23) Whether officers, board members, directors, or senior management deliberately acted or failed to act in a manner that impacted negatively on the value or purchase price;
- (24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable which may include, but not be limited to factors such as: the multiple factor applied to the "EBITDA" – earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiples; the projected efficiency differences between the existing hospital and the new hospital; and the historic value of any tax exemptions granted to the existing hospital;
- (25) Whether the proposed conversion appropriately provides for the disposition of proceeds of the conversion that may include, but not be limited to:
 - (i) Whether an existing entity or a new entity will receive the proceeds;
 - (ii) Whether appropriate tax status implications of the entity receiving the proceeds have been considered;
 - (iii) Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital;
 - (iv) Whether any conflicts of interest arise in the proposed handling of the conversion's proceeds;
 - (v) Whether the bylaws and articles of incorporation have been prepared for the new entity;
 - (vi) Whether the board of any new or continuing entity will be independent from the new hospital;
 - (vii) Whether the method for selecting board members, staff, and consultants is appropriate;
 - (viii) Whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making and public members representing diverse ethnic populations of the affected community;
 - (ix) Whether the size of the board and proposed length of board terms are sufficient;

(26) Whether the transacting parties are in compliance with the Charitable Trust Act, chapter 9 of title 18; .

(27) Whether a right of first refusal to repurchase the assets has been retained;

(28) Whether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory;

(29) Whether a control premium is an appropriate component of the proposed conversion; and

(30) Whether the value of assets factored in the conversion is based on past performance or future potential performance.

In addition to reviewing the Initial Application submitted by the Transacting Parties and other publically available information, the Attorney General and DOH jointly interviewed the following individuals:

Landmark

1. Jonathan Savage, Esq., Special Master
2. Richard Charest, President of Landmark Medical Center and President/CEO of the Rehabilitation Hospital of Rhode Island
3. Glenn Fort, M.D., Chief Medical Officer, Landmark Medical Center
4. Robert Crausman, M.D., Former Chief Medical Officer, Landmark Medical Center
5. Tom Klessens, CFO, Landmark Medical Center

Prime⁵

6. Prem Reddy, M.D., President and CEO of PHSI, and President and CEO of Prime Management
7. Luis Leon, President of Operations II (hospitals outside California)
8. Michael Bogart, Vice President of Finance
9. Harsha Upadhyay, Vice President of Operations

Other

10. Charles Jones, President and CEO of Thundermist Health Center in Woonsocket, Rhode Island

⁵The individuals listed as management for PHSI are actually employed by Prime Management and provide services pursuant to a management agreement.

11. Christopher Callaci, General Counsel, United Nurses and Allied Professionals

The Hospital Conversions Act requires a public informational meeting. *See* R.I. Gen. Laws § 23-17.14-7(b)(3)(iv). A public notice was published regarding an informational meeting as well as soliciting written comments regarding the Proposed Transaction. The Attorney General and DOH jointly held this meeting in Woonsocket at the Woonsocket High School.⁶ It was held on September 30, 2013 from 4 p.m. to 7 p.m.⁷ At the beginning of the session, the Transacting Parties were provided an opportunity to give a presentation regarding the Proposed Transaction; afterwards, public comment was taken. Over the course of the meeting, over fifty (50) speakers provided public comment. The comments were overwhelmingly in favor of the Proposed Transaction, with none in opposition. Several written comments were also received, the overwhelming majority of which supported the Proposed Transaction.

The Initial Application, along with the supplemental information provided, information gathered from the investigation, including publically available information and information resulting from interviews and public comment, were all considered in rendering this Decision.

III. PROCEDURAL HISTORY

It is general knowledge that this is the second Hospital Conversion review involving Landmark conducted by the Attorney General and DOH in the recent past. Landmark Medical Center and the Rehabilitation Hospital of Rhode Island's search for a strategic partner began around 2008 as the financial situation at the hospitals worsened. Because a strategic partner was not located in a timeframe that could guarantee the continued operation and viability of

⁶ The Attorney General would like to thank the staff of Woonsocket High School for their hospitality and for assisting us with use of the school.

⁷ In order to include all individuals who signed up to speak, the Attorney General and DOH continued the meeting until almost 7:30 p.m.

Landmark, it was placed into Special Mastership.⁸ The Court appointed attorney Jonathan Savage (the “Special Master”) to act as special master for the three entities.

Given that there is now over five (5) years of history regarding Landmark, this section will focus on the events directly leading to the Proposed Transaction and not all events already covered in the previous decision regarding Landmark and Steward Healthcare System (“Steward”).⁹ Therefore, this procedural history section will begin with the ill-fated pursuit of Landmark by Steward and its predecessor Caritas Christi.

From early in the Special Mastership of Landmark and for several years, the Special Master’s focus for a strategic partner for Landmark had been on Steward and its predecessor, Caritas Christi. On August 27, 2010, as a result of negotiations, an Asset Purchase Agreement was signed with CCHC Healthcare, Inc., a Rhode Island affiliate of Caritas Christi, a Catholic-affiliated organization operating six (6) community hospitals in Massachusetts.¹⁰ For reasons that are not fully disclosed, Caritas Christi walked away from the Landmark deal in late 2010. During this same timeframe, the assets of Caritas Christi were purchased by Steward effective November 2010. As a result, the Caritas Christi hospitals became the first hospital assets of Steward.

⁸ See Gaube v. Landmark Medical Center P.M. No.: 08-4371 (“Landmark Special Mastership”), Gaube v. Landmark Health Systems C.A. No.: 08-5893 (“LHS Special Mastership”) and Charest v. Northern Rhode Island Rehab Management Associates, Limited Partnership PB No.: 08-7186 (“RHRI Special Mastership” and collectively, “the Special Mastership”).

⁹ See Attorney General’s Decision regarding the affiliation of Steward Health Care System, LLC, Steward Medical Holdings, LLC, Blackstone Medical Center, Inc. and Blackstone Rehabilitation Hospital, Inc. and Jonathan N. Savage, Esq., in his capacity as the court-appointed Special Master for Landmark Health Systems, Inc., Landmark Medical Center and Northern Rhode Island Rehab Management Associates, L.P. d/b/a Rehabilitation Hospital of Rhode Island, dated, May 25, 2012. (the “Landmark/Steward Decision”).

¹⁰ This Asset Purchase Agreement was signed only by CCHC Healthcare, Inc. and was not placed before the Court for approval.

After the split with Caritas Christi, the Special Master began to seek other bidders for Landmark. This was done using a formal bidding process through the Court. Several bidders presented themselves as interested in purchasing Landmark's assets.¹¹ On April 14 and 15, 2011, detailed bid hearings were held to review the bids. Prime was one of the bidders who participated in the bid hearings. After the hearings, a winning bidder was not automatically awarded. Instead, the Court gave the bidders additional time to "satisfy any and all of their respective contingencies to closing other than court and regulatory approval." See Landmark Special Mastership Order at para. 1, (dated, April 29, 2011). The contingency at issue regarding Prime was: "[g]ood faith negotiation of a mutually acceptable agreement with Blue Cross."¹² See *Id.* at para. 2(c). In a letter dated, May 6, 2011, Prime indicated to the Court that an agreement had been reached with Blue Cross.

The Court held an additional hearing on May 10, 2011 to choose a bidder. At that hearing, it was evident that all bidders had outstanding issues that the Court would like resolved before rendering a decision choosing a bidder. The issue regarding Prime was a recent news story that included allegations questioning the rates of particular diseases that certain Prime hospitals were reporting and the appropriateness of Prime's coding of such diseases. On May 12, 2011, Prime sent a seven (7) page letter with thirteen (13) pages of attachments to the Court outlining its position regarding these allegations. Shortly thereafter, on May 16, 2011, Prime sent a letter to the Special Master withdrawing its bid for Landmark. Its reasoning was "Blue Cross' unwillingness to negotiate a fair and reasonable contract...". Prime also expressed concern "about a process where [the Special Master is] permitted to communicate with new

¹¹ One bidder, HealthSouth was only interested in purchase of the assets of the Rehabilitation Hospital of Rhode Island.

¹² "Blue Cross" refers throughout to Blue Cross Blue Shield of Rhode Island.

bidders at this late stage.”¹³ Surprisingly, after the bid hearings, but before decision, one by one, each bidder, including Prime, withdrew its bid leaving no bidder for Landmark.

With all bidders gone, Steward re-appeared on the scene. Days after all bidders left, on May 31, 2011, the Court approved an Asset Purchase Agreement with Steward presented by the Special Master. Steward subsequently filed a hospital conversion initial application in October 2011. Thereafter, a full hospital conversion review was performed, consisting of reviewing voluminous documentation, conducting numerous interviews, issuance and response to over eighty (80) follow-up questions and holding two public informational meetings. In all, this process from beginning to end took almost a year, four months of which was waiting for Steward to file the initial application after being chosen.

After this comprehensive review, the Attorney General approved the hospital conversion application involving Steward on May 25, 2012. The parties were given sixty (60) days to close the transaction. During this time, Steward attempted to negotiate a provider agreement with Blue Cross. Several parties attempted to facilitate these negotiations, including Judge Silverstein, the presiding justice in the Special Mastership, who appointed a mediator to assist and the Attorney General, who personally tried to facilitate negotiations. Ultimately, an agreement was not reached between Steward and Blue Cross. Thereafter, Steward formally walked away from the transaction upon sending a September 27, 2012 letter to the Special Master. It should be pointed out that while the existence of an agreement with Blue Cross was a specific condition precedent of the previous deal with Caritas Christi, it was not included as a condition in the Steward Asset Purchase Agreement. While Steward’s letter stated that the reason for the withdrawal was that closing had not taken place within the timeframe stated in the Steward Asset Purchase

¹³ As outlined herein, this statement is seemingly a reference to Steward.

Agreement,¹⁴ it is clear that the failure of an agreement with Blue Cross was the real issue. Indeed, Steward has sued Blue Cross in the United States District Court for the District of Rhode Island specifically stating that: "[b]y engaging in the anti-competitive conduct described [in this Complaint], including its refusal to negotiate in good faith for reasonable reimbursement rates for Landmark, its needless and intentional disruption of Landmark's patient and payment flows, further damaging the hospital's already troubled finances, and its active role in discouraging other health care providers from dealing with Steward, [Blue Cross] purposely thwarted Steward's acquisition and planned revitalization of Landmark and thereby excluded [Steward] from Rhode Island..." See Complaint filed by Steward Health Care System, LLC, et. al. Case No. 13-405-S. This case is currently pending before the United States District Court for the District of Rhode Island.

The Attorney General notes that conducting a hospital conversion review requires the commitment of a substantial amount of resources at the Department of Attorney General.¹⁵ A hospital conversion review also takes staff and resources away from other projects that could benefit the people of the State of Rhode Island. Suffice to say that a large amount of resources were expended on the review of Steward's proposed purchase.

Needless to say, the failure of Steward to go through with the purchase of Landmark and Rehabilitation Hospital of Rhode Island was deeply disappointing to all involved, especially to

¹⁴ The date included in the Steward Asset Purchase Agreement was July 20, 2012. This expectation of a closing on such date was clearly not contemplated as several continuances for the closing date required in the Landmark/Steward Decision were requested and Steward continued to move towards a closing well after July 20, 2012.

¹⁵ In addition, resources of the Department of Health were also taxed, where there was not only the hospital conversion review, but a separate review for Change in Effective Control, which resulted in a number of meetings of the Health Services Project Review Committee that were performed on an expedited basis.

the loyal staff of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island and the patients they serve.

Faced again with a situation where there was no bidder for Landmark, the Special Master began to reach out to potential bidders. *See* Response to Initial Application Question 1. Entities that the Special Master spoke to included Care New England, Lifespan, CharterCare and Prime. *Id.* As a result of these discussions, on October 9, 2012, the Special Master's presented an Asset Purchase Agreement with Prime to the Court for approval. It has been indicated that the Prime Asset Purchase Agreement was based upon the Steward Asset Purchase Agreement. *See* Response to Initial Application Question 55.

In response to this turn of events, the Attorney General responded and brought several concerns regarding Prime and the Prime Asset Purchase Agreement to the Court's attention. Among those concerns, the Attorney General requested: (1) the Special Master's due diligence on Prime; (2) that in the event there may be others that are interested in purchasing Landmark, a transparent bid process shall be created; and (3) that the Court should require a guarantee by the parent corporation for Prime-Landmark's obligations under the Prime Asset Purchase Agreement. *See* Landmark Special Mastership, Attorney General's Response to Special Master's Petition for Instructions Regarding Asset Purchase Agreement Presented to the Special Master by Prime Healthcare Services-Landmark, LLC, (dated, October 5, 2012). However, at the hearing on October 31, 2012, the Court approved the Prime Asset Purchase Agreement with no further proceedings.¹⁶

The Transacting Parties filed the Initial Application approximately two months later, on January 2, 2013. On February 1, 2013, the Departments informed the Transacting Parties that

¹⁶ Both Care New England and Lifespan had representatives that appeared at the October 31, 2013 hearing.

the Initial Application was incomplete and requested significant additional information. On March 14, 2013 the Transacting Parties re-filed their Initial Application. On March 29, 2013, the Departments again informed the Transacting Parties that the Initial Application was incomplete. At such time, the hospital conversion review was suspended. The only other alternative to suspension was rejection of the Initial Application, which would have resulted in the Transacting Parties having to re-file the entire application. Instead, the suspension allowed the Transacting Parties to work from the point where they were already and keep moving forward toward completeness.¹⁷ Further, suspension causes no prejudice to the Transacting Parties as it is the legal equivalent of a rejection as the Transacting Parties are given a detailed explanation of the reason for suspension. *See* R.I. Gen. Laws §23-17.14-10(a)(2).

On April 3, 2013, an additional more detailed description of the information necessary to complete the Initial Application was provided to the Transacting Parties. On April 18, 2012, the Transacting Parties filed additional information. On May 3, 2013, the Transacting Parties were again informed that the Initial Application was incomplete. On May 21, 2013, the Departments officially requested that Prime Management be added as a Transacting Party.

An issue that caused a significant amount of delay in this process was the question of whether Prime Management should be included as a Transacting Party on the Initial Application. Early on it was clear to the Departments that Prime Management has a significant role in the operation of Prime and its hospitals. Indeed, Prime Management was the only entity identified by Prime involved with the hospitals that actually had employees. *See* Response to Initial Application Question 38. None of the entities on the corporate chart above the Prime hospitals

¹⁷ Interestingly, the Special Master drafted an appeal of the Departments' suspension of the review even though he thanked the Departments for using the same procedure in the Steward review and invited such procedure again if necessary. The appeal was never filed.

have any employees. *Id.* All of the individuals identified on the PHSI website as management are employed by Prime Management. *Id.* They are working for PHSI pursuant to a management agreement. *See* Initial Application Exhibit 1(f) at pg. 7. Despite these facts, Prime repeatedly objected to the inclusion of Prime Management. Prime flew out its Interim General Counsel at the time, David Grant, to convince the Departments that Prime Management should not be included as a Transacting Party. After that meeting had no impact on the Departments' position that Prime Management be included in the review of the transaction, Prime provided a ten (10) page memorandum plus two corporate charts outlining the inter-relationship between the Prime entities and Prime Management. *See* Initial Application Exhibit 1(f). This Memorandum only solidified the Departments' position that the Initial Application was incomplete without Prime Management, the entity that employs the entire management team of PHSI. After weeks of a number of meetings and communications about Prime Management, Prime finally agreed to include Prime Management as a Transacting Party to the Initial Application in June of 2013. Accordingly, weeks of delay in this review were directly caused by Prime's position that Prime Management not be included in the review.¹⁸

Finally, on June 28, 2013 the Initial Application was deemed complete with the condition that new copies of the Initial Application be filed incorporating the confidentiality decision made by the Attorney General wherein some documents that were originally requested to be deemed confidential were deemed public. On July 8, 2013, the Transacting Parties filed the final version of the Initial Application with the Departments.

¹⁸ It should be noted that the applicant in a hospital conversion review initially chooses the entities to include as a required "Transacting Party" pursuant to the Hospital Conversions Act. It was Prime's choice not to either include Prime Management in the first place or to have a conversation with the Departments about whether Prime Management should be included given the unusual inter-relationship between these entities.

During the review, five (5) sets of Supplemental Questions consisting of one hundred and sixty (160) questions were sent to and responded to by the Transacting Parties.

IV. DISCUSSION

As outlined above, the review criteria contained in the Hospital Conversions Act applicable to the Proposed Transaction consists of thirty (30) requirements. For organizational purposes we have addressed them grouped by topic below.

A. BOARD OF DIRECTORS

Numerous provisions of the Hospital Conversions Act involve a review of the actions of the board of directors of the existing hospital.¹⁹ In the Landmark/Steward Decision, the Attorney General provided a review of the action of the board of directors before mastership as well as the Special Master's actions leading to the Landmark/Steward transaction. *See* Landmark/Steward Decision at pg. 13-16. The Attorney General incorporates by reference the findings of the Landmark/Steward decision regarding actions prior to the Special Mastership as well as the actions of the Special Master leading up to the Steward transaction. Actions taken subsequent to the Landmark/Steward Decision are outlined below.

1. Duties of the Board of Directors

As stated in the Landmark/Steward Decision, once the Special Master was appointed, the Boards of Directors of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island were disbanded. Since that time, the Special Master has, in essence, acted in the capacity of the Board of Directors at each hospital, making all major decisions with regard to the fate of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island with court approval of certain actions. The absence of a Board of Directors is not contemplated by the Hospital

¹⁹ *See e.g.*, Hospital Conversions Act, R. I. Gen. Laws §§ 23-17.14-7(c) (3), (4), (5), (8), (9), (10), (11), (13), (14), (15), and (23).

Conversion Act. The Act requires review of the decisions leading up to a conversion to ascertain whether the directors fulfilled their fiduciary duties to the hospital. Because the Special Master has taken on the responsibility of the Board, the Attorney General will review his actions through the lens of the Hospital Conversion Act criteria applicable to the Board of Directors.

The first criteria of the Hospital Conversions Act guiding the review of the actions of the Special Master in pursuing a conversion is governed by R.I. Gen. Laws § 23-17.14-7(c)(3). This section requires review of whether there was “appropriate criteria [used] in deciding to pursue a conversion in relation to carrying out [the hospital’s] mission and purposes.” With regard to this particular provision, the Special Master was presented with a situation where a conversion was inevitable given the filing of the Petitions for Special Mastership. This process has taken a number of twists and turns in locating a buyer. Again, we will start the discussion of this statutory criteria after the Landmark/Steward Decision and examine the actions leading to the choice of Prime as the successful bidder.

As stated above, there was an involved bid process held in April 2011 in which Prime participated. The criteria necessary to be a successful bidder through the bid process was included in the Court’s Order in the Landmark Special Mastership of February 14, 2011. These criteria included:

- (i) The purchase price;
- (ii) The experience of the Qualified Purchaser in running healthcare facilities, and, if appropriate, financially-distressed healthcare facilities;
- (iii) The capitalization or access to capital of the Qualified Purchaser;
- (iv) The minimum amount of capital that the Qualified Purchaser is willing to contractually commit to the successor LMC and/or NRIRMA entity(ies) (exclusive of capital dedicated to the purchase price);
- (v) A five year pro forma cash flow projection of the successor LMC and/or NRIRMA entity(ies);

(vi) The period of time that the Qualified Purchaser is willing to contractually commit not to sell the assets and business or equity interest in LMC if it becomes the successful purchaser;

(vii) How the Qualified Purchaser intends to meet the healthcare needs of the community currently serviced by LMC including, without limitation, (i) any services that the Qualified Purchaser anticipates terminating; and

(viii) The approximate number of employees that the Qualified Purchaser anticipates retaining.

The bid process in which Prime participated in extensively prior to its withdrawal and that ultimately resulted by default in the asset purchase agreement with Steward (upon which the Prime Asset Purchase Agreement is based) was dictated by the Rhode Island Superior Court. The criteria, considered in broad strokes, sought an entity that could continue to operate Landmark Medical Center and the Rehabilitation Hospital of Rhode Island in as close to their current forms as possible.

The Special Master outlines the steps he took in choosing Prime in detail within the Initial Application. *See* Response to Initial Application Question 13. As outlined therein, he chose to originally speak to Prime because it has already been a “finalist” in the previous bid process. *Id.* He also indicates that he approached Care New England, with whom he had extensive discussion, however, ultimately Care New England decided not to pursue Landmark. Thereafter he approached Lifespan along with Landmark’s President Richard Charest and the attorney to the Union, Christopher Callacci. He also states that other members of state government²⁰ tried to engage with Lifespan to put forth a proposal similar to its previous proposal early on in the Special Mastership that would be a so-called “treat and transfer” model whereby the number of hospital beds would be reduced and certain care would be transferred outside the hospital. The Special Master has stated several times that he does not support a

²⁰ The Attorney General is not aware of the particulars of these referenced meetings and was not involved in these meetings.

model that results in anything less than a full service community hospital. The Special Master indicated that he approached CharterCare who also did not submit a proposal. In discussion of his choice of Prime, the Special Master emphasizes that when Steward walked away, the issue that he was concerned about was “the financial ability of [Landmark] to continue while a new purchaser was sought and the process re-commenced with a new buyer.” *Id.* While the wisdom of this path to locating a buyer remains to be seen, for the purposes of the Hospital Conversion Act review, we find that the Special Master met the minimum requirements of R.I. Gen. Laws § 23-17.14-7(c)(3).

The next section, R.I. Gen. Laws § 23-17.14-7(c)(4) requires a review of “[w]hether the board formulated and issued appropriate requests for proposals in pursuing a conversion.” An additional section requires review of “whether the board exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion.” *See* R.I. Gen. Laws § 23-17.14-7(c)(10). These two requirements are so intertwined with the Court approved bid process discussed in the previous section, we find such criteria are also met based upon the information set forth above.

2. Board Use of Consultants

Two criteria in the Hospital Conversions Act deal with a board’s use of consultants. *See* R.I. Gen. Laws §§ 23-17.14-7(c)(8) and (9):

(8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions; and

(9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion.

As outlined in the Initial Application, the Special Master engaged consultants during his five (5) year tenure.²¹ These include lawyers, lobbyists, accountants and other health care professionals. Experts utilized early on in the Landmark Special Mastership, such as PricewaterhouseCoopers and Vector Group did not appear to be utilized at all in the more recent past since the time of the Landmark/Steward Decision. As stated below, the Special Master continued with the same public relations and lobbyists, but they were engaged by Prime. Such consultants are typically not relevant to the Hospital Conversions review criteria on the board's use of consultants as they do not directly provide advice on the proposed conversion. As outlined below, while the Special Master had originally engaged Joshua Nemzoff of Nemzoff & Company ("Nemzoff") to provide assistance in locating Steward and although Nemzoff's assistance was sought again by the Special Master, Nemzoff was hired by Prime instead. It is unclear that the Special Master conferred with any consultants in reaching the deal with Prime. When asked for the names of the individuals who prepared the Asset Purchase Agreement, an attorney from the Special Master's firm was the only individual representing Landmark.²² While the Special Master requested and received permission to hire the law firm of Nixon Peabody to assist with the Proposed Transaction, his request was months after Prime was chosen and the Prime Asset Purchase Agreement was already approved. Therefore, it does not appear that in this portion of the transaction that the Special Master relied upon the advice of a consultant regarding the choice of Prime. Accordingly, the only consultant that has changed (other than now being employed by Prime) is Nixon Peabody, who was court-approved. The Department of Attorney General has no reason to second guess the judgment of the Court regarding the propriety of the engagement of Nixon Peabody.

²¹ See Response to Initial Application Question 60.

²² Nemzoff was listed, but was presumably working for Prime.

With regard to the care given “in accepting assumptions and conclusions provided by consultants,” the Department of Attorney General is not privy to the advice provided by these consultants other than any documents submitted with the Initial Application or through the court process. No final reports regarding Prime were produced. It is unclear if more than advice regarding the regulatory process was provided by consultants in this chapter of the transaction. Accordingly, the Department of Attorney General has found nothing to refute that the Special Master’s decision to accept the assumptions and conclusions provided by the consultants, to the extent there were any, was with due care.

3. Remaining Board Criteria

Regarding the remaining criteria of this type, the Transacting Parties have not disclosed any management contracts between Prime and any Landmark entity or employee with regard to the Proposed Transaction. *See* R.I. Gen. Laws § 23-17.14-7(c)(14). The only management agreement disclosed is that involving Prime Management’s provision of certain services to Prime-Landmark after the Proposed Transaction, as it does with all of its hospitals. With that regard, DOH has mandatory conditions pursuant to the Hospital Conversions Act addressing agreements between affiliates. *See* R.I. Gen. Laws § 23-17.14-28.

The Prime Asset Purchase Agreement does not include consideration that is based upon future or contingent value based upon success of the new hospital. *See* R.I. Gen. Laws § 23-17.14-7(c)(11). The Special Master is an attorney and was also represented by and consulted with various attorneys at his law firm throughout the Special Mastership as well as hiring special outside health care counsel. *See* R.I. Gen. Laws § 23-17.14-7(c)(15). The Department of Attorney General has no information that the “officers, board members, directors, or senior

management deliberately acted or failed to act in a manner that impacted negatively on the value or purchase price.” *See* R.I. Gen. Laws § 23-17.14-7(c)(23).

When asked on a conflict of interest form whether the Special Master’s law firm, Shechtman Halperin Savage, LLP, had been promised any business relationships with one or more of the Transacting Parties, the answer was in the negative. *See* Supplement 1, Exhibit 31 and R.I. Gen. Laws § 23-17.14-7(c)(13). When asked whether it intends to or has any verbal or written agreement to become a director, officer, employee, consultant, contractor or other representative of one or more of the Transacting Parties, the firm similarly answered in the negative. *Id.* This information addresses R.I. Gen. Laws § 23-17.14-7(c)(13). Therefore, the additional miscellaneous Hospital Conversions Act criteria that must be reviewed regarding board actions have been satisfied.

As outlined above, with regard to the Hospital Conversions Act board criteria, while it is difficult to judge the actions of the Special Master in choosing to bring Prime to the Court for approval, it does not appear, given that Prime participated in the previous bid process and absent any information provided from other potential bidders asserting unfairness of the process, that they have violated any provision of the Hospital Conversions Act.²³

B. CONFLICTS OF INTEREST

Numerous provisions of the Hospital Conversions Act deal with conflicts of interest.²⁴ The Attorney General has reviewed the criteria in the Act to determine whether the Transacting Parties and their consultants have avoided conflicts of interest.

²³ *See* Hospital Conversions Act, R. I. Gen. Laws §§ 23-17.14-7(c)(3), (4), (5), (8), (9), (10), (11), (13), (14), (15) and (23).

²⁴ *See* R.I. Gen. Laws §§ 23-17.14-7(c) (6), (7), (12), (22) and (25) (iv).

1. Conflict of Interest Forms

As part of the Initial Application, certain individuals associated with the Transacting Parties were required to execute conflict of interest forms. These included officers, directors and senior management for Landmark and Prime. Individuals completing the conflict of interest forms were asked to provide information to determine conflicts of interest such as their affiliation with the Transacting Parties, their relationships with vendors and their future involvement with the Transacting Parties. Prime submitted forty-two (42) executed conflict of interest forms and Landmark submitted seventy-five (75) forms. All statements submitted were signed and notarized. *See* Initial Application Exhibit 15(a) and (b) and supplemental responses. After reviewing all forms, the Attorney General determines that none of the submitted forms revealed any conflict of interest.

Two conflict of interest forms from Prime were missing. Neither former Prime CEO Laxman Reddy, the brother-in-law of Prime's current CEO Prem Reddy, nor the former Prime CFO, Roger Krissman provided forms. Both local counsel for Prime and the Attorney General contacted these individuals to obtain forms. While they are no longer employed by Prime, their forms are required. One should not be able to avoid providing a conflict form because of change in employment. Clearly the forms from these individuals are relevant. These individuals have failed to cooperate with the Attorney General's review. Because no forms have been provided the Attorney General has made an inference that a conflict of interest exists with regard to these individuals and any future dealings between Prime and these individuals will be considered suspect and in the event the Attorney General obtains additional information, further action may be taken.

2. Consultants

The Hospital Conversions Act requires a review of the possibility of conflicts of interests with regard to consultants engaged in connection with the Proposed Transaction. R.I. Gen. Laws §§ 23-17.14-7(c)(6) and (7). The Special Master engaged several entities for consultation and advice early in the Mastership, including: (i) PricewaterhouseCoopers LLP (“PWC”), a health industry advisory company; (ii) Vector Group, a health industry advisory company; (iii) JACA Architects; (iv) True North Communications (“True North”), a public relations firm; (v) Kahn, Litwin, Renza & Co. Ltd., an accounting firm; and (vi) Capitol City Group, Ltd. (“Capitol City”) a lobbying firm. The majority of these consultants continued to assist the Special Mastership after Steward’s withdrawal and into the Proposed Transaction. In the instant matter, the Special Master sought permission to hire an additional consultant, Nixon Peabody LLP, (“Nixon Peabody”) health care law attorneys, to assist with this transaction.^{25,26}

On behalf of Prime, several consultants were engaged including Government Strategies, Inc., a lobbying firm, and the Law Offices of Michael Sarrao, Capitol City and True North were originally consultants to the Special Master, but were switched over to Prime.²⁷ See Initial Application Response to Question 60. The Transacting Parties agreed to “share” these two consultants.²⁸ While the switching of consultants from the buyer to the seller during a

²⁵ See Special Mastership Order granting the Special Master’s Amended Petition to Hire Legal Counsel, dated, February 25, 2012.

²⁶ Nixon Peabody previously represented Steward in its bid to purchase Landmark (albeit in a limited role) previously represented 21st Century Oncology (which operates the Cancer Center at Landmark) and also represented a significant creditor to Landmark, Siemens Medical Solutions USA, Inc. The Superior Court did not find any issue with these previous representations and approved the retention of Nixon Peabody.

²⁷ It appears that True North was officially switched in March of 2013 and Capitol City in April 2013.

²⁸ The Initial Application states: “although Prime will pay for their services, relieving the Mastership estate of the costs, nonetheless, Capitol City Group and True North Communications

transaction is inherently suspect, due to the nature of these consultants as public relations and lobbying consultants, so long as the Transacting Parties interests were aligned, this arrangement was acceptable. However, generally the switching of consultants from one side to the other requires additional scrutiny.

a. Nemzoff

Another consultant who has originally contracted with the Special Master and decided to align with Prime later in the transaction is Joshua Nemzoff of Nemzoff & Company. The Special Master engaged Nemzoff as a “Hospital Acquisition Advisor” in the bid process that lead to the Landmark/Steward deal to market the assets and businesses of Landmark to qualified prospective purchasers.²⁹ The terms of Nemzoff’s engagement required him to coordinate negotiations and accomplish a transaction with an identified purchaser. *Id.* Pursuant to the arrangement, Nemzoff would be entitled to an hourly rate for fixed work and for a certain lump sum (“Finder’s Fee”) if he identified the successful bidder. See Original Nemzoff Agreement at Section IV. His agreement had certain carve-outs to the Finder’s Fee for known bidders that were already interested in Landmark, as seemingly the point of the Finder’s Fee was an additional bonus for finding the bidder. Nemzoff sought the Finder’s Fee in the previous transaction even though his agreement contained a carve-out for Caritas Christi, the predecessor of Steward and Steward was the successful bidder. In the Landmark/Steward Decision, the Attorney General prohibited the payment of the Finder’s Fee to Nemzoff. See Condition 13 of the Landmark Steward Decision.

will be available to assist the Special Master whenever necessary.” See Initial Application Response to Question 60.

²⁹ See Landmark Special Mastership Order Appointing Special Master dated, July 25, 2008 at para. 5 with Letter Agreement between the Special Master and Nemzoff, dated, January 13, 2011. (“Original Nemzoff Agreement”).

Even before the Landmark/Steward transaction publicly fell through, the Special Master contacted Nemzoff to determine if he was interested in assisting the Special Master again to identify a buyer for Landmark. *See* Response to Supplement 3, Exhibit 13. Nemzoff responded in an email on August 30, 2012, detailing his displeasure with the Attorney General's prohibition on payment of his Finder's Fee. *Id.* He told the Special Master he would only assist the Special Mastership in finding a new entity to acquire Landmark under certain terms. First, the agreement would be for \$500,000.00 and would "apply to anyone that buys the hospital." *Id.* Nemzoff also encouraged the Special Master in this email to consider Prime as the best choice to acquire Landmark commenting that alternatives to Prime are not as "strong and they are not risk takers." *Id.* In another plug for Prime, Nemzoff stated that Prime will likely resolve the Steward debt noting that in comparison to the alternatives "Prime is going to be much more likely to pay." *Id.*

Days after this email exchange, the Special Master's relationship with Nemzoff ended and Nemzoff's relationship with Prime began.³⁰ A review of this timeframe is essential to determining whether Nemzoff's conduct violates R.I. Gen. Laws § 23-17.14-7 (c)(22), which requires an analysis of "whether the individuals who represented the existing hospital in negotiations avoided conflicts of interest." Within days of advising the Special Master to "talk with Prime," Nemzoff signed an agreement to work for Prime in connection with "any transaction related to Landmark Medical Center and related entities."³¹ Nemzoff was present in

³⁰ *See* Email from the Special Master to his counsel dated, September 15, 2012 wherein he states "Josh is no longer working for us but is now working for Prime." *See* Response to Supplement 3, Exhibit 13 page 1.

³¹ *See* Initial Application Confidential Exhibit Number 61(a) - Nemzoff Financial Advisory and Consulting Agreement dated, September 11, 2012. This agreement was deemed confidential along with the other agreements filed with the consultants. At the request of the Attorney General the parties consented to this information being deemed public.

court on October 31, 2012 when the Special Master sought permission for approval of the Prime Asset Purchase Agreement.

The Attorney General reviewed the agreement between Nemzoff and Prime (“Nemzoff-Prime Agreement”).³² This agreement was not for any certain term, but only included an engagement regarding Landmark. *Id.* The fee included in this agreement was \$250,000. *Id.* Of interest, Nemzoff began including the following language in his new agreements after the Attorney General prohibited his Finder’s Fee in the Landmark/Steward transaction:

In the event that any regulatory or judicial entity attempts to stop the Company from paying these fees or makes any approval of this transaction contingent upon not paying these fees, then the Company shall not proceed with the closing of this transaction.

See Supplement 2, Financial Advisory and Consulting Agreement between Prime and Nemzoff filed in the New Jersey Attorney General Application for the transfer of ownership of St. Michael’s Medical Center at 005037-005039. The Attorney General notes that the legal enforceability of such provision is questionable.

For unknown reasons another agreement between Nemzoff and Prime (“Nemzoff-Prime Long Term Agreement”) was entered on March 27, 2013 for the time frame from April 15, 2013 to April 15, 2014. *See* Supplement 4, Response to Question S4-2, Exhibit 2. It outlined a scope of services that included “regular and customary consulting advice concerning financial matters relating or pertinent to [PHSI]” and included an up-front fee of \$500,000 “to cover all of the services that have been rendered by the Consultant up to and including [the] date [of the agreement].” *See* Nemzoff-Prime Long Term Agreement at para 3(a). For the remainder of the

³² *See* Initial Application Confidential Exhibit Number 61(a) - Nemzoff Financial Advisory and Consulting Agreement dated, September 11, 2012. This agreement was deemed confidential along with the other agreements filed with the consultants. At the request of the Attorney General the parties consented to this information being deemed public.

year, Nemzoff was to be paid \$50,000 per month. *See* Nemzoff-Prime Long Term Agreement para. 3(b).

After this agreement was signed, a payment was made by Prime to Nemzoff in the amount of Five Hundred Fifty Thousand Dollars (\$550,000). *See* Responses to Supplemental Question S1-41 and S3-3. A month following this payment, Prime reported that their relationship with Nemzoff was terminated. *See* Response to Supplemental Question S1-41.

Overall, Nemzoff's role in this transaction since the withdrawal of Steward has been questionable. In the previous transaction, his agreement with the Special Master was approved by the Court and he clearly participated throughout the bid process and throughout the Landmark/Steward transaction. It is not appropriate for a consultant of the nature of Nemzoff to switch from Landmark to one of the competing bidders that he was charged with reviewing in the original transaction. From the start of this transaction, he lobbied the Special Master to choose Prime and then shortly thereafter was engaged by Prime for \$250,000 regarding work with Landmark. Thereafter for reasons that are not clear, he was given another contract for more money, slightly in excess of the original prohibited Finder's Fee he felt he was entitled to from the Landmark/Steward deal. While it is possible that the Special Master reviewed other potential bidders and independently decided that Prime was the best candidate for the acquisition of Landmark, Nemzoff's switch to Prime is a conflict of interest. In certain other circumstances and with additional facts with regard to the money paid by Prime, a relationship such as the one between Prime and Nemzoff could have resulted in denial of an Initial Application.

b. Attorney Special Masters

Aside from the expenses Prime has incurred in acquiring Landmark,³³ the Attorney General notes that the Special Mastership has generated a significant amount of income from this case. For example, the amount requested by the Special Master in his Interim Reports on all three special masterships totals approximately \$4,871,966.93.³⁴ In addition, the Special Master hired his own firm, Schectman, Halperin, Savage, LLP, for litigation ancillary to the Mastership proceeding. As was discussed in the Landmark/Steward Decision, the issue of the inherent conflicts that arise from special mastership involving an attorney special master are intrinsic in the process and will continue to be grappled with in future proceedings.

3. Negotiations And Conflicts

With the exception of the discussions outlined above, there was no information provided which suggests that the individuals who represented the existing hospital in negotiations of the Proposed Transaction had any impermissible conflicts of interest.³⁵

4. Sale Proceeds And Conflicts

As contemplated by the structure of the purchase price outlined in the Asset Purchase Agreement, there will be no proceeds from the Proposed Conversion. Therefore, there is no need

³³ Pursuant to an estimated accounting provided in Response to Initial Application Question #48, exclusive of the Nemzoff settlement, minimally Prime estimates it will spend \$266,000 on attorneys' fees, consultants, travel and additional costs in connection with acquiring Landmark.

³⁴ This amount is based upon the Landmark Medical Center 1st to 40th Interim Reports and Fee Requests of the Special Master as well as the Fee Requests regarding Landmark Health Systems and the Rehabilitation Hospital of Rhode Island. The Attorney General is aware that the entire amount of those fees is not finally determined. The Special Master has agreed to a few of the Attorney General's requests to remove fees and some amounts in dispute remain outstanding. However, this is the amount that was requested.

³⁵ R.I. Gen. Laws § 23-17.14-7(c)(22).

to address whether the Transacting Parties have appropriately provided for the disposition of proceeds.³⁶

5. Prime Conflicts Of Interest

In response to various questions, Prime has indicated that no final determinations have been made regarding future positions at Prime-Landmark.³⁷ Given that response, the Attorney General cannot determine if future conflicts of interest will exist.³⁸

C. VALUE OF TRANSACTION

The following Hospital Conversions Act criteria deal with valuation of the Proposed Transaction. *See* R.I. Gen. Laws §§ 23-17.14-7 (c)(17), (18) and (24):

(17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;

(18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third party report or fairness opinion; and

(24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable which may include, but not be limited to factors such as: the multiple factor applied to the "EBITDA" – earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiples; the projected efficiency differences between the existing hospital and the new hospital; and the historic value of any tax exemptions granted to the existing hospital.

Given their relevant expertise in this area, the Attorney General consulted with its expert, Health Strategies & Solutions, Inc., ("HS&S"), in making a determination regarding valuation.

According to the analysis of HS&S:

According to the Asset Purchase Agreement, Prime Healthcare Services, Inc. (Prime) will expend a total of \$43.3 million (subject to various adjustments), plus the value of Net Working Capital as of the closing date for the acquisition of [Landmark]. Prime states that it will also spend \$4.5 million in the first five years following closing for physician recruitment to meet the needs of the community.

³⁶ *See* R.I. Gen. Laws § 23-17.14-7(c)(25)(iv).

³⁷ *See* Initial Application Response to Questions 35, 36, 39 and 42.

³⁸ R.I. Gen. Laws § 23-17.14-7(c)(12).

In addition, Prime expects to provide at least \$15.0 million over this period for “routine replacements” at [Landmark].

A third party valuation analysis or fairness opinion was not completed with regard to the proposed transaction. Because LHS has had negative earnings before interest, taxes, depreciation, and amortization (EBITDA), margins over each of the past several years, a multiple of earnings calculation, yields a negative value for [Landmark].

The purchase commitment from Prime for the acquisition of [Landmark] is fair and reasonable. This is based on review of available documentation, analysis of [Landmark]'s current and historical operating performance, and interviews and discussions with numerous individuals who participated in the negotiation processes leading up to and specifically related to this transaction.

While it was clear at the public informational meetings that the value of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island to the people of Northern Rhode Island is without measure, this does not translate into cash proceeds. It is clear this is an unusual situation. Typically, there are proceeds in a hospital conversion, however, the Proposed Transaction is designed such that Prime will pay certain obligations of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island as well as provide future promises of capital. In determining whether the valuation of the Proposed Transaction is correct, the report of HS&S regarding the financial status³⁹ of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island as steadily deteriorating is also of assistance. Further, the bid process before the Court during the Special Mastership and the previous bid by Steward that was approved by the Court were instructive as to what the relevant market would pay for Landmark Medical Center and the Rehabilitation Hospital of Rhode Island.

³⁹ See Final Report of HS&S, Assessment of Operating and Financial Performance (dated, October 25, 2013).

Accordingly, given the information provided by HS&S, as well as the amount of offers of other bidders through this five (5) year process, the criteria regarding valuation of the Proposed Transaction has been met.

D. CHARITABLE ASSETS

The Department of Attorney General has the statutory and common law duty to protect charitable assets within the State of Rhode Island.⁴⁰ In addition, the Hospital Conversions Act specifically includes provisions dealing with the disposition of charitable assets in a hospital conversion generally to ensure that the public's interest in the funds is properly safeguarded. With regard to the charitable assets of Landmark, the landscape has not changed significantly from the time when they were reviewed and outlined in the Landmark/Steward Decision.

1. Disposition of Charitable Assets

In the Initial Application, the Transacting Parties identified the amount of \$33,331.55 in restricted funds (the "Restricted Funds"). See Response to Supplemental Question S5-2, Exhibit 2.⁴¹ Of such amount, \$26,723 is attributable to the HRSA Hospital Preparedness Program ("HRSA Grant").⁴² *Id.* The remainder of the Restricted Funds are designated for the Heart Center and the Cancer Center. *Id.* There are also charitable funds identified as "Unrestricted Funds" totaling \$19,468. *Id.*

In addition, as outlined in the Landmark/Steward Decision, a large amount of charitable assets previously held by Landmark were amounts it reported that it received from an endowment fund, the John R. Higgins Residuary Trust. Landmark previously provided

⁴⁰ See e.g., R.I. Gen. Laws § 18-9-1, *et seq.*

⁴¹ This Exhibit consists of Initial Application Exhibit 28(b)(2) updated as of September 30, 2013.

⁴² It was represented in the previous transaction that it is possible for the HRSA grant to be transferred.

documentation that the funds in the Higgins Trust that were disbursed to Landmark in 2007 were exhausted by Landmark, with the last amounts being spent in 2011.⁴³ The Attorney General found in the Landmark/Steward Decision that there is no violation of the Charitable Trust Act regarding the Higgins Trust based upon the information that was provided.⁴⁴

With regard to the Restricted Funds, per the Hospital Conversions Act, in a hospital conversion involving a not-for-profit corporation and a for-profit corporation, it is required that any endowments, restricted, unrestricted and specific purpose funds be transferred to a charitable foundation.⁴⁵ In furtherance of that requirement, Landmark has indicated that it intends to transfer all currently held specific purpose and restricted funds to the Rhode Island Foundation,⁴⁶ which will use the funds in accordance with the designated purpose. With an appropriate agreement with the Rhode Island Foundation to manage these assets, the Attorney General finds that the Proposed Transaction will not harm the public's interest in the property given, devised or bequeathed to Landmark for charitable purposes.⁴⁷ The Attorney General notes that the Rhode Island Foundation is specifically mentioned as an appropriate entity to manage funds as a result of a hospital conversion.⁴⁸

2. Maintenance of the Mission, Agenda and Purpose of Landmark

The Hospital Conversion Act at R.I. Gen. Laws § 23-17.14-7(c)(16) and R.I. Gen. Laws § 23-17.14-7(c)(25)(iii) requires consideration of the following:

⁴³ See Landmark/Steward Decision, pg. 25-26

⁴⁴ See R.I. Gen. Laws § 23-17.14-7(c)(26).

⁴⁵ R.I. Gen. Laws § 23-17.14-22(a).

⁴⁶ See Response to Supplemental Question S2-25

⁴⁷ R.I. Gen. Laws § 23-17.14-7(c) (1).

⁴⁸ R.I. Gen. Laws § 23-17.14-7-22(e).

- Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary; and
- Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital.

According to the original Articles of Incorporation for Woonsocket Community Health, Inc.,⁴⁹ the organization's purpose was to:

[support] the advancement of the health of all persons through improving the knowledge and practice of medicine, surgery, nursing, health planning, and other activities related the care and treatment of such persons, and to support and encourage charitable, scientific, and educational services and programs which are consistent with such purposes...

See Initial Application Exhibit 10(a).

According to information provided in supplemental responses, the current mission statement of Landmark Medical Center is to “provide a continuum of exceptional quality, patient-centered services that improve health in a culturally competent manner that is creative and consistent with values aligned with our diverse communities.”⁵⁰ The mission statement of the Rehabilitation Hospital of Rhode Island is of a similar nature: “[C]ommit[ment] to providing competent and compassionate comprehensive medical rehabilitation services, respectful of every patient's dignity and cultural values, assuring patient's of achieving their greatest functional outcomes in the most cost-effective manner.”⁵¹

Prime provided as its mission statement: “Prime Healthcare Services endeavors to provide comprehensive, quality healthcare in a convenient, compassionate and cost effective

⁴⁹ Woonsocket Community Health Inc. was the sole member of Woonsocket Hospital, which later became Landmark Medical Center. See Initial Application Response, Exhibit 10(a).

⁵⁰ See Response to Supplemental Question S5-4.

⁵¹ *Id.*

manner.”⁵² While implied in Prime’s for-profit status that profit is an issue that will be considered, Prime’s stated vision is in keeping with the current purposes of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island.⁵³ Upon the closing of the Proposed Transaction, the mission statements of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island will be changed to be identical to Prime’s Mission Statement. *Id.*

The Attorney General has also considered that Prime has purchased a number of distressed hospitals as part of its business model and has stated publically that it has never closed or sold any of its hospitals. *See* Testimony of Luis Leon, Transcript of Public Meeting, September 30, 2013, at pg 5, lines 12-18. Prime represents that it purchased its first hospital in 2001 and now owns twenty-three (23) hospitals through PHSI and its affiliated foundation. *See* Prime Healthcare Services Presentation to the Health Services Council, dated, July 9, 2013 at pg. 18. *See also*, Initial Application Question 1. Although there is no evidence that the Proposed Transaction will differ significantly from the stated purposes of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island, it is necessary that a cy pres be filed and granted to ensure the proper utilization of the remaining restricted funds and because this hospital conversion includes the conversion of two non-profit entities’ assets for use by for-profit entities.

In further consideration of whether “a resulting entity will depart from the traditional purposes and mission of the existing hospital,” the Attorney General reviewed Prime’s intention to work with hospital leaders and community representative to develop a Community Benefits Advisory Council. *See* Response to Initial Application Question 33. Included therein, Prime “will conduct a comprehensive community health needs assessment for those communities within the hospitals’ primary service areas.” *Id.* The Community Benefits Advisory Council will

⁵² *Id.*

⁵³ R.I. Gen. Laws §§ 23-17.14-7(c)(16) and (25)(iii).

use this assessment to develop a “community benefits plan that identifies target populations, specific programs and activities that address the identified assessment, and measure short-and long-term goals for each program.” *Id.* Prime represents that each year a report will be produced that will describe “the ascribed community benefits programs, including those goals, outcomes, and expenditures.” *Id.* This report will be available to the public. *Id.*

Further, Rhode Island law requires that all licensed hospitals, whether non-profit or for-profit, provide unreimbursed healthcare services to patients with an inability to pay.⁵⁴ Therefore, Prime will be required even as a for-profit hospital to provide a certain amount of charity care. In addition, Prime has provided information in the Initial Application demonstrating its provision of charity care in its other acquired hospitals.⁵⁵

Finally, in consideration of whether the new entity will operate with a similar purpose, pursuant to Section 10.3 of the Asset Purchase Agreement entitled “Maintenance of Services” Prime has agreed to maintain Landmark Medical Center as an acute care hospital with an open and accessible emergency department and an independent medical staff.⁵⁶ There is no guarantee that services will continue as they have in the past. As with any merger, it is likely that some changes will take place after Prime takes over the hospitals even though Prime has stated that it “does not have any plans for changes to the existing services at LMC or RHRI.” *See* Initial Application, Response to Question 53(b). Prime also states that it has not “had the opportunity to meet with [local] physicians in any meaningful way concerning such changes.” *Id.* In addition, Prime states in another response, that it “believes that plans to develop or change the existing services at a hospital or to develop new services can only be determined after review of

⁵⁴ R.I. Gen. Laws §§ 23-17.14-15(a)(1), (b) and (d).

⁵⁵ *See* Initial Application Exhibit 32(a).

⁵⁶ *See* First Amendment to Asset Purchase Agreement at para. 2.

sufficient data and input from local management, local physicians and other health providers, and local community leaders.” *See* Response to Initial Application Question 57. It also states that although services are being reviewed, it has “not yet made any final determinations regarding whether such departments and/or services may need to be changed, by eliminating, significantly reducing or enhancing such departments, and/or service in the interest of operational efficiency following the proposed conversion.” *See* Response to Initial Application Question 73. Accordingly, the Proposed Transaction does include a risk that Prime will change the services provided at Landmark.

3. Foundation for Proceeds

In addition to dealing with charitable assets, the Hospital Conversions Act requires an independent foundation to hold and distribute proceeds from a hospital conversion consistent with the acquiree's original purpose.⁵⁷ With regard to the Proposed Transaction, the Asset Purchase Agreement does not include a purchase price that will produce traditional proceeds as it is structured upon payment of certain obligations and commitment to future investments in the hospital. Accordingly, R.I. Gen. Laws § 23-17.14-22 does not require a foundation for receipt of proceeds.

E. TAX IMPLICATIONS

There are three criteria in the Hospitals Conversions Act that deal with the tax implications of the Proposed Transaction.⁵⁸ Currently, Landmark Medical Center and Landmark Health Systems are non-profit corporations organized pursuant to Rhode Island law. Northern Rhode Island Rehab Management Associates, L.P. is a limited partnership organized pursuant to the laws of Delaware. Upon the purchase of their assets by Prime, the resulting entities will be

⁵⁷ R.I. Gen. Laws § 23-17.14-22(a) and R.I. Gen. Laws § 23-17.14-7(c)(16).

⁵⁸ *See* R.I. Gen. Laws §§ 23-17.14-7(c)(20), (21) and (25)(ii).

for-profit entities and no longer immune from certain tax obligations. Clearly, this has an impact on the tax status of these entities.⁵⁹ This transaction represents the first full service hospital in Rhode Island to change from a non-profit to a for-profit hospital. It is a marked change in how hospitals in Rhode Island have traditionally been held. While some may be cautious about allowing a for-profit entity to purchase Landmark Medical Center and Rehabilitation Hospital of Rhode Island, in the instant matter this decision was not made in a typical fashion, but was made by a Special Master with approval of the Rhode Island Superior Court in a situation involving a distressed hospital and only one potential bidder. Such bidder was selected after the original for-profit bidder withdrew after a year's process towards a transaction and after four (4) years of the hospitals being in Special Mastership. Thereafter, Prime was the only option offered to the Superior Court for approval. Accordingly, the wisdom of choosing a for-profit company to purchase a non-profit hospital is not a matter that warrants in-depth consideration given the circumstances.

With regard to tax implications, in supplemental questions Prime was asked to provide an estimate of real estate taxes it will pay upon closing the Proposed Transaction. *See* Response to Initial Application Question 54. Prime responded that it expected to pay \$946,000 in real estate taxes to the City of Woonsocket.⁶⁰ *See* Response to Supplemental Question S1-88. It appears that this figure is based upon a previous report from when the Caritas Christi deal was in the

⁵⁹ The question posed by R.I. Gen. Laws § 23-17.14-7(c)(21) is whether the tax status of the existing hospital is "jeopardized." This characterization does not apply to the Proposed Transaction as not only is it jeopardized, it is knowingly being changed from non-profit to for-profit.

⁶⁰ No real estate taxes will be paid by Prime to North Smithfield for RHRI as the real estate is owned by another entity and is not being purchased in this transaction. *Id.*

works several years ago.⁶¹ *See* Response to Supplemental Question S2-13. This document calculated an estimated tax to Woonsocket for Landmark Medical Center of approximately \$2.2 Million Dollars based upon various assumptions and including the planned improvements contemplated by the Caritas Christi Asset Purchase Agreement. The real estate tax portion is stated as \$946,000. *Id*

A review of the public record reveals that Landmark Medical Center currently has an assessed value of \$27,370,600.⁶² Accordingly, using the available documents, it appears that the tax payable to Woonsocket will be significant.⁶³ The payment by Prime of substantial real estate taxes is a significant factor in this Department's decision with regard to the Proposed Transaction. Prime has indicated that it has not and will not seek a tax treaty from the City of Woonsocket. *See* Response to Supplemental Questions S1-89 and S3-6. An estimate of \$1,965,834 in property and tangible tax was also provided, this amount including the additional capital expenditures contemplated by the Asset Purchase Agreement. *See* Response to Supplemental Question S3-6 and Exhibit 6. The payment of real estate taxes to Woonsocket, that so desperately needs the resources, is a clear, tangible benefit directly resulting from the Proposed Transaction. While it remains a question whether this benefit will outweigh the possible risks of allowing Rhode Island hospitals to be purchased by for-profit entities remains to be seen, payment of real estate taxes to Woonsocket certainly represents a positive attribute of Prime.

⁶¹ *See* Landmark Medical Center – Pro Forma Property and Tangible Tax Calculation (dated, April 30, 2010).

⁶² *See* <http://gis.vgsi.com/woonsocketri/Parcel.aspx?pid=10626> (last accessed October 24, 2013).

⁶³ The Attorney General has not verified any of the tax estimates contained in this Section and has provided them for illustration only. The final amount will be determined by the City of Woonsocket.

In addition to real estate taxes, typically Prime would be required to pay Rhode Island sales and use tax in certain situations. *See* R.I. Gen. Laws § 44-18-1 *et seq.*, and 44-19-1, *et. seq.* However, in 2010, legislation was passed to exempt Landmark Medical Center and any successor in interest from payment of such taxes for the term of 12 years.⁶⁴ Accordingly, Prime will be exempt from significant Rhode Island sales and use tax that it would have owed until 2022. As a result, Prime has already realized favorable tax treatment provided to no other existing hospital in Rhode Island.⁶⁵

As for the remaining review criteria contained in R.I. Gen. Laws §23-17.14-7(c)(20), regarding “whether the conversion is proper under applicable state tax code provisions,” in response to Question 54 of the Initial Application, the Transacting Parties have indicated that “Prime has not prepared or received any opinions, reports or memoranda addressing the state and federal tax implications of the proposed conversion.” Accordingly, the Attorney General makes no finding with regard to whether the Proposed Transaction is proper under applicable state tax code provisions. Regarding the tax status of the entity receiving the proceeds, no proceeds are contemplated and the new entities will be for-profit. *See* R.I. Gen. Laws § 23-17.14-7(c)(25)(ii).

F. NEW ENTITY

The Attorney General must review certain criteria pursuant to the Hospital Conversions Act that deals with the corporate governance of the new hospitals after the completion of the Proposed Transaction.⁶⁶ Below is an outline of the review of such requirements.

⁶⁴ The result of such legislation was a new statutory provision codified at R.I. Gen. Laws § 23-17.25-2.

⁶⁵ This considerable concession bolsters the position that a tax treaty regarding real estate taxes is not necessary.

⁶⁶ *See e.g.*, Hospital Conversions Act, R.I. Gen. Laws §§ 23-17.14-7(c)(25) (i), (v), (vi), (vii), (viii), and (ix).

1. Bylaws and Articles of Incorporation

One issue that must be examined is whether the new entity has bylaws and articles of incorporation. The new corporate entity that will purchase the assets of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island is Prime Healthcare Services-Landmark, LLC. Prime-Landmark, is a Delaware corporation incorporated on September 19, 2012. *See* Initial Application Exhibit 10(f). The current bylaws⁶⁷ for Prime-Landmark were provided by the Transacting Parties. *Id.* After DOH raised concerns that the current bylaws did not comply with the Rhode Island regulations for licensure of hospitals, revised bylaws that will be adopted post-closing were provided. *See* Letter from Cynthia Warren (enclosing revised bylaws) dated, July 8, 2013. These revised bylaws will be considered the Prime-Landmark Bylaws for purposes of this Decision as they are the anticipated governing documents as required by DOH. Therefore, bylaws and articles of incorporation have been provided for Prime Landmark.

Prime Management is identified as the entity that will operate Landmark and Rehabilitation Hospital of Rhode Island. Prime Management is a California corporation incorporated on February 24, 2004. *Id.* Bylaws for Prime Management were provided in the Initial Application. *See* Initial Application Exhibit 10(cc). Therefore, bylaws and articles of incorporation have been provided for Prime Management. In addition, the relevant corporate documents have been provided for Prime Healthcare Holdings, Inc. and Prime Healthcare Services, Inc. *See* Initial Application Exhibits 10(gg) and 10(b). Accordingly, R.I. Gen. Laws § 23-17.14-7(c)(25)(v) has been satisfied.

⁶⁷ Typically a limited liability company does not have bylaws. However, Prime-Landmark has bylaws, as well as an operating agreement.

2. Board Composition

In addition to bylaws and articles of incorporation, specific criteria that must be considered regarding the new corporate entities include analysis of the composition of the new boards.

Specifically, the Hospital Conversions Act requires review of:

- (vi) whether the board of any new or continuing entity will be independent from the new hospital;
- (vii) whether the method for selecting board members, staff, and consultants is appropriate;
- (viii) whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making and public members representing diverse ethnic populations of the affected community; and
- (ix) whether the size of the board and proposed length of board terms are sufficient.

See R.I. Gen. Laws §§ 22-17.14-7(c)(25)(vi), (vii), (viii) and (ix).

In Response to Question 7 of the Initial Application, the Transacting Parties state:

Prime-Landmark has not yet identified those individuals who will serve on the local governing boards for Landmark Medical Center and Rehabilitation Hospital of Rhode Island. Nonetheless, the local governing boards will be comprised of local community leaders, medical staff members, and hospital management. Prime-Landmark will seek input from all stakeholders as to the selection of local governing board members.

The response further states:

After the conversion, Prime-Landmark will be a wholly-owned subsidiary of PHSI, and the Board of Directors of PHST will serve as the Board of Directors of Prime-Landmark. Prime-Landmark will form local governing boards at Landmark Medical Center and Rehabilitation Hospital of Rhode Island. Each governing board will have five (5) to eleven (11) members including local physicians and community leaders.

According to lists of the members of the board of directors for the other Prime hospitals, no other Prime hospital has less than five (5) board members.⁶⁸ *See* Response to Initial Application Question 7. Section 3 of the Prime-Landmark Bylaws outlines the requirements for members of the Prime-Landmark Board of Directors, including the mechanism via which members are appointed. Criteria that is supposed to be considered includes:

- (a) Willingness to give as much time as is reasonably requested;
- (b) Availability to participate actively in Governing Board and committee activities, especially those activities where the Governing Board Member has a special interest and expertise;
- (c) Experience in organizational and community activities;
- (d) Proficiency in the art of managing people and property; and
- (e) Integrity, objectivity, and loyalty.

See Section 3.2. The Prime-Landmark Bylaws require no less than three (3) so-called Regular Members. (Section 3.2) Ex-officio Members are also contemplated, including certain hospital staff members. *Id.* Only Regular Members are entitled to vote. *Id.* While Board Members have significant authority (Section 3.8), PHSI retains broad control over certain aspects of Prime-Landmark. For example, pursuant to Section 3.3, PSHI chooses all board members. It may also remove members without cause (Section 3.5). The Chair of the PSHI Board, currently Dr. Reddy, automatically serves as the Chair of the Prime-Landmark Board (Section 4.1) and appoints all committee members (Section 3.4). Further, certain powers are expressly reserved to PSHI (Section 6.7). These include: (i) election of regular members of the Governing Board; (ii) removal of the CEO; (iii) approval of all capital and operating budgets; (iv) approval of any loan or other facility from a financial institution; and (v) approval of any budgeted expenditure in excess of such amount as determined, from time to time, by [PHSI].

⁶⁸ The five (5) member Board of Directors for PHSI serves as the Board of Directors for the local PHSI hospitals. The local governing boards for each hospital have no less than seven (7) members. *Id.*

Accordingly, the composition of the boards of Landmark Medical Center and the Rhode Island Rehabilitation Hospital of Rhode Island boards is not sufficiently clear to either ensure the independence from the hospital or the diversity of experience required by the Hospital Conversions Act. *See* R.I. Gen. Laws §22-17.14-7(c)(25)(vi) and (viii). No method for selecting board members has been provided other than they will be selected by PHSI and certain criteria will be considered. *See* R.I. Gen. Laws §22-17.14-7(c)(25)(vii). No concrete number of board members has been provided and no number of directors has been required to be from the community. Therefore, the Hospital Conversions Act criteria regarding the Boards of the new entities have not been met.

G. CHARACTER, COMMITMENT, COMPETENCE AND STANDING IN THE COMMUNITY

An important and encompassing portion of the Hospital Conversions Act review criteria requires review of “[w]hether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory” *See* R.I. Gen. Laws § 23-17.14-7(c)(28). As stated above, a PHSI subsidiary incorporated specifically for this Proposed Transaction, Prime-Landmark, is buying the assets of Landmark. Prime Management is going to provide certain management services to Landmark. PHSI will have significant control over Landmark and is the owner/operator of twenty-three (23) other hospitals. Therefore it is the relevant entity to review in accordance with the requirements of this statutory provision.

1. Character

As stated above, PHSI was incorporated on March 27, 2000. *See* Initial Application Exhibit 10(bb). Prime represents that it purchased its first hospital in 2001 and now owns twenty-three (23) hospitals through PHSI and its affiliated foundation. *See* Prime Healthcare

Services Presentation to the Health Services Council, dated, July 9, 2013 at pg. 18. *See also*, Initial Application Question 1. The first Prime hospital was Desert Valley Hospital that Dr. Reddy has indicated he built from the “ground up.” Transcript of Health Services Council, July 9, 2013, Testimony of Prem Reddy, at pg. 35, lines 7-11. As stated above, Prime indicates that it has never sold or closed a hospital that it has purchased.

On the other hand, there are some issues of concern to the Attorney General regarding Prime. The first is a recent Resolution Agreement with the Office of Civil Rights and the other is an outstanding subpoena issued by the Department of Justice and the Office of Inspector General. These issues will be discussed in turn below.

a. Office of Civil Rights Resolution Agreement

The U.S. Department of Health and Human Services, Office for Civil Rights (“OCR”) initiated a compliance review of a PHSI hospital, Shasta Regional Medical Center (“Shasta”) in January 2012. *See* Resolution Agreement between Shasta and OCR, Exhibit 50 to Supplement 1. The review was prompted by an article in the *Los Angeles Times* that indicated two Shasta senior leaders discussed medical services provided to a patient with the media without valid written authorization. *Id.* at pg. 1. This investigation concluded in June 2013 with a Resolution Agreement whereby Shasta paid a resolution amount of \$275,000. *Id.* The Resolution Agreement contains the indicated findings of the OCR investigation, specifically, that the following alleged conduct occurred in December 2011 without the patient’s authorization:

- (1) SRMC (through its parent company) sent a letter to *California Watch*, detailing a patient’s medical treatment and lab results;
- (2) two SRMC senior leaders met with an editor of *The Record Searchlight* and discussed a patient’s medical record; and
- (3) SRMC sent a letter to the *Los Angeles Times* concerning information about the patient’s treatment.

Id. at pg. 2.

According to OCR, a December 20, 2011 e-mail was sent to the entire Shasta medical staff and workforce, approximately 785 to 900 individuals, that described the patient's medical condition, diagnosis and treatment. *Id.* The Agreement was not an admission of liability by Shasta. *Id.* Included in the Resolution Agreement, Shasta agreed to comply with a Corrective Action Plan and to appoint a Compliance Representative. *Id.* at pg. 3. While operation of a hospital is fraught with the possibility of running afoul of the privacy laws, this Resolution Agreement involved a situation appearing to include several serious lapses in judgment and included a significant penalty amount.

b. DOJ/OIG Subpoena

In response to Question 1 of the Rhode Island Change in Effective Control Application, Prime revealed that a subpoena from the Department of Justice and Office of Inspector General was issued to various Prime-affiliated hospitals/entities. Prime would not provide a copy of the subpoena stating that it was prohibited from doing so by language in a cover letter to the subpoena. *See* Response to Supplemental Question S1-63. Instead, Prime provided a lengthy so-called "white paper" outlining its response to allegations that apparently they felt could be deduced from the requests in the subpoena, namely that the Prime hospitals have higher rates of certain disease codes. *See* Response to Supplemental Question S1-62 and Exhibit 62(a). Prime specifically addressed its coding of two conditions, septicemia and kwashiorkor, in this white paper. *See* Response to Supplemental Question S1-62 and Exhibit 62(a).

The Department of Attorney General has been in contact with the Department of Justice regarding the subpoena. At this point, it appears that the Department of Justice investigation remains ongoing. Accordingly, the Department of Attorney General is in a difficult situation.

On one hand, Prime is subject to a criminal subpoena from the Department of Justice and Officer of Inspector General. On the other hand, however, at this point, it is only a subpoena and no resolution either positive or negative has taken place prior to the issuance of this Decision. There is no way to predict the outcome of any particular investigation. Clearly, a definitive result one way or another would be helpful in making a decision under the Hospital Conversions Act; however, we do not have that luxury. Therefore, we must view the subpoena simply as what it is, an inquiry from a federal agency.

Prime has indicated that it is diligent regarding providers appropriately documenting all issues involved in a certain episode of care. Prime has hired professionals to train its staff on documentation. *See* Response to Supplemental Question S3-12. How a procedure is coded may impact both quality scores associated with a hospital's performance as well as the reimbursement rate at which the hospital is paid. If the Office of Inspector General had found that Prime's coding has crossed the line from diligent documentation to illegal activity, that fact would be considered, but not conclusive on the character of Prime. As of this date, however the Attorney General is unaware of any finding by the OIG and therefore, must only consider that there is an outstanding issue with regard to coding, but such issue is, of yet, unresolved.

2. Commitment

Pursuant to the Asset Purchase Agreement, Prime-Landmark has agreed to a number of financial commitments, including a \$30 Million Dollars in capital expenditures to improve Landmark. *See* Asset Purchase Agreement, Section 10.1 and 1.6(a). However, only \$10 Million of such amount is guaranteed by PHSI. *See*, Asset Purchase Agreement Section 10.4.⁶⁹ These

⁶⁹ Because Prime-Landmark is initially no more than a shell corporation to hold the assets of Landmark, the Attorney General requested at the time of the hearing on the approval of the Asset Purchase Agreement for the entire amount of the capital expenditures to be guaranteed by PHSI.

improvements include investing in technology, equipment and/or expanded services. *See* Response to Initial Application Question 57(d). Also, included in the Asset Purchase Agreement is a commitment to invest no less than \$4.5 million toward physician recruitment during the first five (5) years. *See* Asset Purchase Agreement, Section 1.7(a). Further, the Asset Purchase Agreement contains a commitment to invest no less than \$15 million towards routine equipment replacement during the first five (5) years. *See* Asset Purchase Agreement Section 1.7(b). The Asset Purchase also includes other commitments in lieu of cash that will have to be performed by Prime-Landmark prior to Closing. *See* Asset Purchase Agreement, Section 1.6. Other than financial commitments, Prime has promised that Landmark will continue as an acute care hospital for the term of five (5) years with an open and accessible emergency room and an independent medical staff. *See* Asset Purchase Agreement Section 10.3.

3. Competence

As stated above, Prime has a track record of operating twenty-three (23) hospitals in other states, one for twelve (12) years. The term competence can have multiple meanings and connotations. The Department of Attorney General reviewed the relevant competence with a focus on the ability to successfully operate the hospital after the Proposed Transaction. The central function of operating hospitals is patient care. The Rhode Island Department of Health's review focuses more directly on health services and has identical review criteria regarding this topic,⁷⁰ therefore, the Department of Attorney General will rely on and defer to their expertise and experience relating to PHSI's track record for quality services in its other hospitals. Prime has made several representations about patient care and health services. Specifically, it

The Court did not require this, but Prime volunteered at the hearing to include a \$10 Million Dollar guarantee.

⁷⁰ *See* R.I. Gen. Laws § 23-17.14-8 (b)(1).

represents that its hospitals are currently JCAHO accredited and in good standing. *See* Initial Application Response to Question 64. The Joint Commission of National Quality Approval released a report in 2011 and 2012 that recognized top performers on key measures. Prime represents that several of its hospitals were recognized. *See* Prime Healthcare Services Presentation to the Health Services Council dated, July 9, 2013. Further Prime represents that it “has been recognized by Thomas Reuters as a Top 15 Health System in the United States based on quality measures.” *See* Initial Application, Answer to Question 1.

The other relevant component to competence in this context is the ability to manage the business side of a hospital. In its twelve (12) year history, PHSI has acquired twenty-three (23) hospitals, many of which were financially-distressed. It does not appear that Prime has been denied a hospital by a regulatory agency other than a denial for the Victor Valley Hospital in California whereby the California Attorney General denied the transaction simply stating that it was “not in the public interest and will likely create a significant effect on the availability or accessibility of healthcare services to the affected community.” *See* Response to Supplemental Question S2-14, Exhibit 14. On the other hand Prime has no concrete business plan regarding expansion as it relies upon the number of hospitals Dr. Reddy and his family are interested in buying. Transcript of Health Services Council, July 9, 2013, Testimony of Prem Reddy, at pg. 54, lines 1-3.

During interviews conducted pursuant to the Hospital Conversions Act review, the Attorney General found that Prime’s management team has years of experience in operating community hospitals. Further, as outlined hereafter, the Attorney General’s expert has found that the finances of Prime are in line with company acquiring distressed community hospitals which appears to be a signal of some level of success.

4. Standing in the Community

The issue of standing in the community is interrelated with overlapping inquiries to the question of character. Overall, given the totality of the circumstances, the Attorney General finds that Prime's character, commitment, competence, and standing in the community meet the threshold and are satisfactory for the purposes of a Hospital Conversions Act review.

H. MISCELLANEOUS

In addition to the provisions outlined above, there are also a few additional requirements of the Hospital Conversions Act that do not fit into any of the categories outlined above. They are outlined individually below.

1. Rhode Island Nonprofit Corporations Act

The Hospital Conversions Act requires that a hospital conversion comply with the Rhode Island Nonprofit Corporations Act. R.I. Gen. Laws §§ 7-6-1, *et. seq.* (the "Nonprofit Act").⁷¹ The Nonprofit Act is comprised of 108 sections. Many of these sections discuss the governance requirements of non-profit corporations. The Attorney General makes no finding with regard to whether the Transacting Parties have complied with the Nonprofit Act and has not reviewed their corporate minute books. First, the Prime Transacting Parties: Prime Holdings, Prime Management and PHSI are neither non-profit entities nor Rhode Island corporations, therefore, the Nonprofit Act does not apply to them. Second, Rehabilitation Hospital of Rhode Island is a limited partnership not subject to the Nonprofit Act. Finally, the remaining Transacting Parties, Landmark Medical Center and Landmark Health System both have been subject to Special Mastership for over five years. These corporations have been operating without a board since that time. Accordingly, it would not be a useful exercise to determine if the Nonprofit Act has

⁷¹ See R.I. Gen Laws § 23-17.14-7 (c)(19).

been complied with as it is uncertain as to the application of most of the provisions of the law given the instant circumstances.

2. Right of First Refusal

The Hospital Conversions Act requires review of whether the Proposed Transaction involves a right of first refusal to repurchase the assets. *See* R.I. Gen Laws § 23-17.14-7 (c)(27). The Asset Purchase Agreement contains no right of first refusal. The only known right of first refusal concerning the Proposed Transaction involves a certain tract of land originally conveyed by the Special Master with permission of the Court. *See* Landmark Special Mastership Order dated, April 7, 2011. The status of this right of first refusal is unknown.

3. Control Premium

With regard to the one remaining review provision of the Hospital Conversions Act, there is no control premium included in the Proposed Transaction. R.I. Gen. Laws § 23-17.14-7(c)(29).

4. Additional Issues

There are four issues that the Attorney General will address in addition to the enumerated review criteria that have come to light during the review process.

a. Prime's Ability to Fund Transaction

The Attorney General's expert, HS&S has reviewed the financial information provided by Prime and has concluded as follows:

Does Prime have the Resources to Finance this Transaction as Well as Ongoing Commitments to LHS?

Based on Prime's Income Statement (Consolidated) for the six months ended 6/30/13, Prime generated \$65.8 million in income from operations. This represents an operating margin of 6.6% of revenue. Prime's operating margins

were in excess of 8% for each year from 2010 to 2012. This is in the upper quartile for US hospitals⁷².

Prime's Balance Sheet as of 6/30/13 indicates that Prime had \$86.2 million in cash and cash equivalents and \$604.6 million in current assets. The \$86.2 million represents approximately 35.1 days cash on hand, which is low as compared to the 2011 median of 85.8 days for US hospitals¹[sic.]. Prime's total assets as of 6/30/2013 were \$1,311.1 million. Prime's total liabilities were \$1,007.2 million, which includes \$323.2 million in current liabilities and \$684.1 million in non-current liabilities. Shareholders' equity for Prime was \$303.9 million as of 6/30/2013. Given these statistics, Prime has a relatively poor liquidity position and a relatively high level of debt as compared to equity. Supporting documentation is provided at the end of this document.

Based on the terms outlined above, approximately \$11.5 million will be required to close the LHS acquisition. An additional \$6 million (based on one-fifth of the \$30 million commitment over five years) will be required in the first year to meet the capital commitment as outlined in the Asset Purchase Agreement. Prime has already provided the deposit of \$1 million and will forgive \$1 million that is due to Buyer, according to the Working Capital Loan Agreement.

On September 16, 2013, Healthcare Finance Group, LLC (HFG) announced a five-year, \$475 million financing transaction for Prime. This is comprised of a \$225 million "asset-based facility" loan and a \$250 million "senior secured term loan." Including this financing, Prime will have access to a total of \$550 million for acquisitions and additional financing will be available in the future.⁷³ Even without the incremental HFG financing, despite its relatively poor liquidity position, Prime has sufficient cash and current assets to close this transaction.

During on-site meetings with representatives from the Rhode Island Office of the Attorney General and the Rhode Island Department of Health, several members of Prime's senior leadership team each stated that Prime has more than sufficient financial resources to fund the closing of this transaction and also meet ongoing capital commitments.

Based on the financial documentation submitted by Prime and the representations of Prime's leaders, the organization has the resources to finance this transaction as well as ongoing capital commitments. Prime's capacity to meet future capital commitments could be compromised if the organization enters into other transactions that (in total) exceed its available financial resources and access to capital, or if its financial performance/position deteriorates.

⁷² Source: Ingenix Almanac of Hospital Financial and Operating Indicators, 2013.

⁷³ See Response to Supplemental Questions S2-28.

Given the opinion of HS&S, absent any exigent circumstances or, as aptly pointed out by HS&S, any acquisition plan or other commitments that would over-extend Prime, it currently appears to have the financial ability to fund the Proposed Transaction.

b. Mandatory Conditions

Among the changes to the Hospital Conversions Act in 2012 was the imposition of mandatory conditions on for-profit acquirors. *See* R.I. Gen. Laws § 23-17.14-28. The Legislature crafted eight (8) such conditions for DOH with a wide variety of topics. *See* R.I. Gen. Laws § 23-17.14-28(b). As for the Attorney General, one such condition was imposed, namely: “the acquiror's adherence to a minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit.” *See* R.I. Gen. Laws § 23-17.14-28(c). With regard to these pre-determined conditions, if either Department deems them “not appropriate or desirable in a particular conversion,” such Department must include rationale for not including the condition. *See* R.I. Gen. Laws § 23-17.14-28(b) and (c). The Attorney General finds the condition contained in R.I. Gen. Laws § 23-17.14-28(c) to be ambiguous and the Attorney General is unable to determine its intent. Notwithstanding, the Attorney General finds that to the extent that such condition is applicable, the Transacting Parties have satisfied it by the obligations contained in the Asset Purchase Agreement and no additional condition will be added other than those already imposed.

c. Use of Monitor

Another change to the Hospital Conversions Act in 2012 was to include a requirement that a for-profit acquiror file reports for a three (3) year period. *See* R.I. Gen. Laws § 23-17.14-28(d)(1). In addition, such section requires that the Attorney General and DOH “monitor, assess and evaluate the acquiror's compliance with all of the conditions of approval.” *See* R.I. Gen.

Laws § 23-17.14-28(d)(2). Further, there shall be an annual review of “the impact of the conversion on health care costs and services within the communities served.” *Id.* The costs of these reviews will be paid by the acquiror and placed into escrow during the monitoring period. *See* R.I. Gen. Laws § 23-17.14-28(d)(3). No Initial Application can be approved until an agreement has been executed with the Attorney General and the Director of the DOH for the payment of reasonable costs for such review. *Id.* The Transacting Parties have executed a Reimbursement Agreement dated, October 28, 2013. The Attorney General’s conditions will be monitored by an individual or entity chosen by the Attorney General and paid for by Prime. An agreement with such monitor and Prime will be drafted and executed prior to the Closing on the Proposed Transaction.

d. Health Planning

As during the previous Landmark review, there has been some discussion in the health care community about the role of Landmark in the Rhode Island health care system. The Attorney General notes that the Hospital Conversions Act in its present form is not a health planning tool. Although there has been much talk about creating a so-called state health plan, that goal has not been reached, nor does it appear likely to be reached in the immediate future. Therefore, it is not the position of the Attorney General to use the Hospital Conversion Act to effectuate health planning that should be properly done elsewhere with input from a variety of groups. The Hospital Conversion Act contains a set of criteria, it does not allow for the Attorney General to opt for a different model or to suggest a different suitor for Landmark. Clearly, a five year special mastership for a hospital is not an ideal situation and is not the model which others should endeavor to match. However, the question to be answered by this review is whether this particular transaction meets the criteria of the Hospital Conversions Act.

V. CONCLUSION

Now we find Landmark Medical Center and the Rehabilitation Hospital of Rhode Island, yet again at the crossroads of regulatory approval and the possibility that this transaction will proceed to a successful closing. Unfortunately, this is a position they have been in before. As in its previous review, this Department has diligently reviewed the Proposed Transaction pursuant to the Hospital Conversions Act. This Department continues to spend significant time conducting reviews of hospital transactions, with this being the third approval of a hospital conversion issued by this Department in this calendar year, not to mention the review and approval of the prior Landmark deal. During the public meeting there was much discussion about closure of Landmark. However, as has been the position of the Attorney General for the past several years, the Attorney General has no intention to sit idly by and watch a closure of Landmark happen. However, this does not mean that the Attorney General can simply rubber-stamp a deal that is handed to it even in a precarious situation.

While the Act is no guarantee that a hospital will not be sold to an entity with a different plan in mind than what the surrounding community may value, the Act at the very least provides a minimum framework for review of a hospital transaction. The Attorney General hopes that Prime becomes everything it has promised to be for the people of Northern Rhode Island. As with all of the Attorney General's reviews pursuant to the Hospital Conversions Act, this Decision represents this Department's best efforts and a careful review of the Proposed Transaction given the information available.

Wherefore, based upon the information provided above in this Decision, the Proposed Transaction is **APPROVED WITH CONDITIONS**. These conditions are outlined below.

VI. CONDITIONS

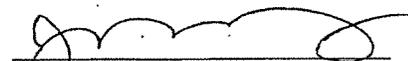
1. Upon their appointment and for the next three (3) years, please provide the names, addresses and affiliations of all members appointed to any board of Prime Healthcare Services-Landmark LLC.
2. The Board of Directors of Prime Healthcare Services-Landmark LLC shall consist of no less than eleven (11) members of which shall include at least twenty-five percent (25%) community directors⁷⁴ all of which shall: (i) be independent of and not employed by or affiliated with Prime or its affiliates; and (ii) not be an elected official or an individual that is subject to the Rhode Island Code of Ethics or employed by any federal, state or local government.
3. For a period of five (5) years, Prime Healthcare Services-Landmark LLC shall provide corporate documents requested by the Department of Attorney General to evidence compliance regarding board composition as required by this Decision. In addition, Prime Healthcare Services-Landmark LLC shall provide any proposed amendments to their corporate documents 30 days prior to amendment.
4. For the next three (3) years, identify any contracts between any of the Transacting Parties and any of the current officers, directors, board members or senior management other than employment agreements including the Special Master, his law firm or its affiliates.
5. That a binding agreement acceptable to the Department of Attorney General with the Rhode Island Foundation or other appropriate entity for disbursement of all charitable assets be provided.
6. A cy pres petition be filed and granted prior to closing of the Proposed Transaction allowing all charitable assets to be transferred to the Rhode Island Foundation or other appropriate entity for disbursement in accordance with donor intent.
7. For the term of five (5) years, all assets transferred by the Asset Purchase Agreement shall be utilized for the benefit of Landmark only and shall not be utilized for projects or programs situated outside the State of Rhode Island without the consent of the Department of Attorney General.
8. That the Proposed Transaction be implemented as outlined in the Initial Application.
9. That the Transacting Parties comply with applicable state tax laws.

⁷⁴ A community director shall be defined as an individual that resides or works within the Landmark Medical Center Service Area and has the appropriate skill sets to serve on a hospital's board of directors. The "Landmark Medical Center Service Area" is comprised of the following towns in Rhode Island: Woonsocket; North Smithfield; Cumberland; Lincoln; Burrillville; and Glocester and the following towns in Massachusetts: Blackstone, Bellingham and Millville. See Initial Application, Exhibit 53(d)(i).

10. All Landmark entities identified subject to Special Mastership shall be wound down and all necessary documents must be filed with applicable state agencies, including, but not limited to the Secretary of State and the Division of Taxation.
11. That all costs and expenses due from the Transacting Parties pursuant to the Reimbursement Agreement dated, March 12, 2013, be paid in full prior to closing of the Proposed Transaction.
12. That PHSI guarantee the full amount of financial obligations contained in the Asset Purchase Agreement or other assurances satisfactory to the Attorney General.
13. That Prime provides information requested by the Department of Attorney General to determine its compliance with the Asset Purchase Agreement and the Conditions of this Decision.
14. That Prime complies with the Reimbursement Agreement dated, October 26, 2013, for retention by the Attorney General of an expert to assist the Attorney General with enforcing compliance with these Conditions. Further, Prime shall enter into an additional agreement outlining the terms of its obligations regarding cooperation with the Attorney General and any expert retained to assist the Attorney General with enforcing compliance with these Conditions.
15. Prime shall provide information about any actions taken against Prime or any final resolution to the investigation currently being conducted by the Department of Justice and Office of Inspector General regarding coding at Prime's hospitals. For a term of five (5) years, Prime shall inform the Attorney General of any actions initiated against it or any of its hospitals or affiliates by any governmental entities. The information to be included in these reports shall be determined by the Attorney General.
16. The bylaws of Prime-Landmark shall be officially amended in conformance with the revised bylaws submitted by Prime's counsel on July 8, 2013 prior to Closing.

All of the above Conditions are directly related to the proposed conversion. The Attorney General's APPROVAL WITH CONDITIONS is contingent upon the satisfaction of the Conditions. The Proposed Transaction shall not take place until Conditions 5, 6, 11, 12 and 16 have been satisfied. The Attorney General shall enforce compliance with these Conditions pursuant to the Hospital Conversions Act including R.I. Gen. Laws § 23-17.14-30.


Peter F. Kilmartin
Attorney General
State of Rhode Island


Jodi Bourque
Assistant Attorney General

NOTICE OF APPELLATE RIGHTS

Under the Hospital Conversions Act, this decision constitutes a final order of the Department of Attorney General. Pursuant to R.I. Gen. Laws § 23-17.14-34, any transacting party aggrieved by a final order of the Attorney General under this chapter may seek judicial review by original action filed in the Superior Court.

CERTIFICATION

I hereby certify that on this 28th day of October, 2013, a true copy of this Decision was sent via electronic and first class mail to counsel for the Transacting Parties:

Cynthia J. Warren, Esq.
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Hayward: St. Rose Hospital may be taken over by private owner with a troubled past

By Angela Woodall Oakland Tribune (mailto:awoodall@bayareanewsgroup.com?subject=Inside Bay Area:)

POSTED: 09/13/2012 04:26:58 PM PDT | UPDATED: ABOUT A YEAR AGO

0 COMMENTS

0 paths in limbo and a mounting debt, St. Rose Hospital in **Hayward** faces two choices for a new health care operator -- the **Alameda County Medical Center** or a private company.

0 **Hayward** officials will announce their decision -- made during a **city council** session this week -- on Monday. But the front-runner appears to be **Lex Reddy**, an executive who presided with his **brother** in-law over one of the state's most notorious health care companies, **Prime Healthcare Services**.

0 **St. Rose** is running out of time. The private nonprofit hospital, **which** was operated in Hayward for 50 years, has been losing \$1 **million** more a month.

0 **The private model** is probably "the best option," **Interim District 2 Supervisor** and former St. Rose board member **Richard Valle** said Tuesday.

"It's a matter of timing," said Valle, who is still a trustee and helped usher the parties together in a set of meetings kept out of the spotlight.

A community option would take longer to put together, he added, "and time is of the essence."

The question is whether Reddy will continue to operate St. Rose as a "safety net" hospital that provides general acute care to county residents -- many low-income and uninsured.

Reddy stepped down in February 2012 as chief executive from the troubled health care company, which also made a bid for St. Rose. He gave no reason for his departure after 11 years at the helm. He, however, continually defended Prime Services, the target of investigations by the Inspector General of the U.S. Department of Health and Human Services; by the state Attorney General's Bureau of Medi-Cal Fraud and Elder Abuse; and by the California Department of Public Health.

"We did have concerns," said Teamsters Local 856 representative Matthew Mullany, who was aware of Prime's reputation.

It was SEIU-UHW that persuaded Rep. Pete Stark, D-Fremont, to ask the Department of Health and Human Services to look into allegations against Prime of Medicare fraud.

On the advice of former San Francisco Mayor Willie Brown, who represents clients as an unofficial lobbyist, Reddy approached the union. In a meeting with Mullany, he promised to retain the 450 Teamster workers at St. Rose and recognize their contracts.

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- Reporter's transcript: Attorney General's hearing (https://s3.amazonaws.com/us3.documenthearing.pdf)
- Preliminary injunction filed by Attorney General (http://archive.wialib.us.com/files/2012)
- Supervisor Valle's powerpoint presentation (http://www.dpsloc.com/docs/1295885_Hayward-Town-Hall)
- District Court civil filings (http://www.dpsloc.com/docs/129588499AJ @ District Courts Civil Filings Booklet 2012-09-13 13-37)
- Combined State, civil and criminal filings (http://www.dpsloc.com/docs/129588163/Combined_State_Civil_and_Criminal_Filings2012-09-13 13-41)
- Letter from Rep. Pete Stark (http://www.dpsloc.com/docs/129588120/7-1-10-Stark-Waxman-Prime-OK-Letter)

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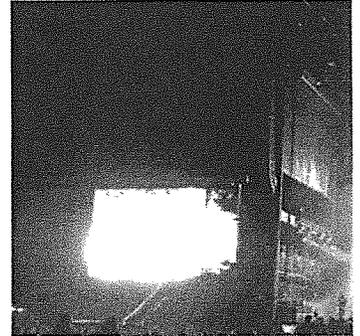
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"We have to deal with who's coming forward," he said.

The hospital's finances have improved by bringing down costs and improving collections even though losses are still steep.

"If the operational improvements sustain, St. Rose will be in a stronger position to serve the community for another 50 years," said Makato Nakayama, interim president and chief executive.

But the possibility of bankruptcy was frightening: closing St. Rose would have a negative ripple effect on other county hospitals, further straining limited resources and emergency room beds. That is why Alameda County has tried to help keep St. Rose from sinking under the weight of an estimated \$75 million debt. Supervisors have injected a total of \$5 million into St. Rose since January, in addition to the \$2.5 million in Measure A tax funds the hospital receives each year.

County officials also helped broker a loan from Kaiser, which will shut down its own facility in Hayward before 2014. That would leave St. Rose with the only emergency department to treat Hayward's approximately 145,000 residents.

Yet the massive debt, \$15 million of which comes from unfunded pension liabilities, made St. Rose look like a toxic investment. Even worse, St. Rose administrators hid the state of the hospital's finances until a private firm was hired to assess the problems.

"Given the magnitude of the financial issues facing St. Rose Hospital, our district has determined that it cannot single-handedly take it on," said Gisela Hernandez, spokeswoman for Washington Township Healthcare Services, in August after seeing St. Rose's books.

That left two options: integrating St. Rose with Alameda County's public hospital system, the Alameda County Medical Center, or finding another operator willing to maintain it as a safety net hospital. The St. Rose board of directors met Wednesday to discuss the proposals, which included Prime.

ACMC's offer was a sign that ACMC has emerged from the brink of extinction to become an alternative to a private operator, Alameda County Health Care Services Director Alex Briscoe said.

Whether intentional or not, ACMC may also have helped keep Prime away from St. Rose by providing an option in case Lex Reddy's bid fell through.

State Attorney General Kamala Harris will have final say over the deal. She is already familiar with Prime and Lex Reddy, having blocked the company from taking over Victor Valley Community Hospital in San Bernardino County last year after a routine hearing into the bid. In her denial Harris wrote: "We have concluded that this proposed sale is not in the public interest and will likely create a significant effect on the availability or accessibility of health care services to the affected community."

Prime has faced a number of lawsuits in California although the company defended its record and quality of care.

Lex Reddy did not return calls for comment. His last business address is listed in Southern California as Desert Valley Medical Center, operated by Prime.

But he stood by Prime Healthcare's record during the September attorney general's hearing. He blamed the conditions at Prime hospitals, including one in Encino, on the physicians who testified during the hearing.

"They have taken advantage of this facility financially," Reddy said. "They have brought it to the state of affairs in which it is today."

St. Rose board members could still opt for ACMC, although county supervisors are still wary about the burden of rescuing another debt-ridden facility as they did with ACMC in the 1990s.

"We tried to provide options but now it's up to the St. Rose Board," District 3 Supervisor Wilma Chan said. If the board decides on ACMC, she said, "We'll try to make it work."

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May 26, 2010

Mr. Dave Regan, Counsel
United Healthcare Workers
560 Thomas L. Berkley Way
Oakland, CA 94612

RE: Prime Healthcare – Alleged Overbilling of Medicare and Medi-Cal

Dear Mr. Regan:

Chief Deputy Attorney General Jim Humes forwarded your package of materials, including PowerPoint slides and two, UHW-generated informational pieces about Dr. Prem Redding, DBA Prime Healthcare for me to review and consider.

The Attorney General's Bureau of Medi-Cal Fraud and Elder Abuse (BMFEA) has an ongoing, strong relationship with both the U.S. Department of Health and Human Services, Office of the Inspector General, and the Federal Bureau of Investigation in the Los Angeles basin by reason of our joint participation in the southern California Health Care Fraud Task Force.

Since your detailed analysis contends that Medicare may likely be paying on falsified or fraudulent claims from Prime Healthcare, I have referred this matter to Tony Sidley, the Bureau's Special Agent in Charge and one of our representatives to the Health Care Fraud Task Force. It is likely that the federal agency investigators will open an investigation and, if the evidence suggests fraud against Medi-Cal, will invite the BMFEA to participate in a joint investigation.

Thank you, in advance, for your interest and referral. I will assure you that your complaints will be treated with care and preliminary examinations carefully performed in order to justify opening any criminal investigation.

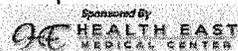


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GWB bridge scandal provides grist for union ads against for-profit hospital takeover in Passaic

FEBRUARY 7, 2014, 5:28 PM LAST UPDATED: FRIDAY, FEBRUARY 7, 2014, 5:28 PM

BY LINDY WASHBURN
STAFF WRITER

THE RECORD

A labor union opposing the for-profit takeover of St. Mary's Hospital in Passaic has bought radio ads that draw parallels to actions by Governor Christie's aides to disrupt traffic in Fort Lee, claiming a Christie insider is influencing approval of the takeover.

The ads that began Friday on a Trenton-area station were purchased by a California labor union involved in a three-year contract dispute with Prime Healthcare Services, the California hospital chain that wants to buy St. Mary's, St. Michael's Medical Center in Newark and St. Clare's Health System in the counties of Morris and Sussex.

"We've seen it before," the 60-second spot on NJ 101.5 begins. "An aide close to Governor Christie takes action that negatively impacts the health and safety of the residents of New Jersey." The female narrator then names Mike DuHaime, Christie's chief campaign strategist and a member of his transition team, who the ad says "brokered" the St. Mary's sale, the ad says

DuHaime did not broker the sale. His firm, Mercury, has handled public relations for Prime HealthCare Services. It sent bilingual promotional mailings to nearly 20,000 Passaic-area households and made calls to 500 last month, in advance of three public hearings held by state officials about the proposed sale.

The ads, which are to air for a week on the talk-radio station, were purchased for \$21,000 by the Service Employees International Union-United Healthcare Workers West. The union represents 150,000 health care workers in California — including 1,200 at three Los Angeles-area hospitals owned by Prime that have been without a contract for three years, said Chris Salm, the union's research director.

Salm and two union members traveled to Passaic last month to testify at public hearings held by the State Health Planning Board and the Attorney General's office about the sale. The union members pointed to ongoing federal investigations into allegations that Prime is rring Prime from

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"The sale of St Mary's could prevent thousands of New Jersey residents from getting the healthcare they need, and would stick New Jersey taxpayers with \$22 million in unpaid bonds," the radio ad says. "Stop the backroom deals and open up the sale of St. Mary's to protect the people of New Jersey." The \$25-million sale price for St. Mary's falls short of the

amount the hospital owes in state-guaranteed bond debt.

A spokesman for Prime said the ad campaign was "nothing more than a desperate act by the SEIU in the continuing vicious campaign against Prime Healthcare, which has been going on for the past three years."

The union wants to "extort" an agreement from Prime that would enable it to organize employees at the chain's other 11 California hospitals, "without those employees having any choice in the matter," said Edward Barrera, the Prime spokesman. "None of these baseless allegations the SEIU keeps making against Prime Healthcare were ever proven."

Michael DuHaime, through a spokeswoman, declined to comment.

New Jersey's State Health Planning Board is to meet Thursday to vote on a recommendation to the state health commissioner about whether to approve the sale of St. Mary's, the sole surviving hospital among three that once existed in Passaic.

The conversion of the century-old non-profit, founded by the Catholic Sisters of Charity of St. Elizabeth, to for-profit status also requires the approval of the state attorney general and a Superior Court judge.

Email: washburn@northjersey.com

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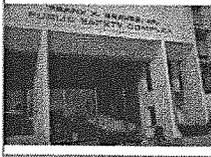
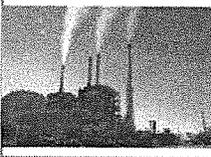
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COALITION MAKES CASE FOR STATE ATTACHING STRINGS TO ST. MARY'S HOSPITAL SALE

ANDREW KITCHENMAN | JANUARY 15, 2014

Unions part ways over whether NJ should require monitor for-profit hospital manager Prime Healthcare



St. Mary's Hospital in Passaic.

Prime Healthcare Services' yearlong effort to buy St. Mary's Hospital in Passaic is entering its endgame, as a coalition of opponents to the deal argue that it will put the community, patients and healthcare workers at risk if the state doesn't attach more strings to the deal.

This coalition, which includes unions that represent workers at other hospitals as well as healthcare advocates and community activists, alleges that the core of Prime's business model - turning struggling nonprofit facilities into profit makers - is

based on dangerous tactics that only a bevy of state requirements and a state-appointed monitor can combat.

But Prime has gained a key ally - JNESO, the union that represents nurses and other healthcare workers at St. Mary's, has already reached a contract agreement with Prime pending completion of the sale.

The process will come to a head over the next two nights, as the state Department of Health holds a pair of legally required public hearings at Passaic High School, during which opponents and supporters of Prime are expected to make their case.

The outcome will have ramifications for not only the St. Mary's sale, but also for Prime's bids for Saint Michael's Medical Center in Newark and the three Morris County hospitals operated by Saint Clare's Health System.

India Hayes Larrier, an organizer for nonprofit coalition member New Jersey Citizen Action, said in a telephone press conference yesterday that Prime has a history of putting profits ahead of the interests of communities and patient care.

The coalition is demanding a series of measures it wants the state to require if it approves the hospital's transfer of ownership. They include keeping St. Mary's as an acute-care facility, requiring that it maintain outpatient and clinical services, and mandating that St. Mary's maintain in-network status with insurers.

The coalition members said the state must also require Prime to address the health needs of the local community, which a survey determined to include treating patients with hypertension, asthma, diabetes and depression, as well as other mental illness and substance-abuse issues.

In addition, the coalition wants a state monitor to ensure access to care and to prevent the hospital from shifting costs to consumers and other providers, weakening its quality and diminishing the standard of living for its healthcare workforce.

The participation in the coalition by the Health Professionals and Allied Employees, a union that

represents workers at other hospitals but not at St. Mary's, has incensed JNESO Executive Director Virginia Treacy.

"To place unrealistic restrictions on a new buyer will make (the sale) untenable," Treacy said.

Treacy said that both JNESO and Prime agree with most of the coalition's goals, including that St. Mary's continues as a full-service hospital that meets the needs of the community. But JNESO opposes having a state financial monitor.

Treacy noted that the HPAAE represents workers at other New Jersey hospitals operated by for-profit owners and that only one of them has a monitor - Meadowlands Hospital Medical Center.

"I find it absolutely hypocritical that HPAAE has had for-profit buyers in so many different facilities and comes into a hospital (objecting to a sale) where they represent no one," Treacy said.

She also opposed the coalition's demand that St. Mary's join all insurers' networks. She argued that every hospital in the state must be able to negotiate contracts with insurers, with the ability to remain out-of-network if an insurer isn't willing to bargain.

Prime has been in a long-running dispute with the Service Employees International Union in California. SEIU executive board member Stephanie Allen said that based on her experience as a respiratory therapist at Centinela Hospital Medical Center in Los Angeles, St. Mary's patients can expect reduced services, staff layoffs, increased use of expensive testing and cancelled insurance contracts.

Nelly Celi of the Peruvian American Coalition in Passaic, expressed a fear that St. Mary's would ultimately be reduced to a shell, with an emergency department shifting patients to out-of-town hospitals that are inaccessible to patients' families.

"It is not enough to have a hospital that does not care about the day-to-day healthcare needs of our community," Celi said.

Renee Steinhagen, executive director of New Jersey Appleseed Public Interest Law Center, said St. Mary's governing board has a track record that's "blatantly" not in the hospital's best interest. She cited reports that Prime will only pay off \$15 million of the \$40 million bond that the state provided the hospital, leaving taxpayers to pay the other \$25 million.

She expressed doubt that the hospital board fully explored a nonprofit purchaser before reaching its agreement with Prime. She said that in order to fulfill its fiduciary duty, Prime must appoint a locally based corporate board, not just an advisory panel, and pay for a state monitor for three years.

"We have to ensure that this facility remains a community hospital," Steinhagen said.

Prime officials responded to the concerns with an emailed statement.

"Prime Healthcare Services is committed to St. Mary's Hospital, its employees and the greater Passaic community," wrote Luis Leon, Prime's president of operations. "We welcome the state of New Jersey's thorough review process and look forward to the public hearings, which will allow community members to make their voices heard. We remain confident that this fair and open process will ultimately lead to St. Mary's joining the Prime Healthcare family. Prime Healthcare's goal is to make St. Mary's one of the best hospitals in New Jersey."

second Phila.-area hospital



John George

Senior Reporter- *Philadelphia Business Journal*

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Prime Healthcare Services completed its purchase of Lower Bucks Hospital in Bristol, Pa., on Wednesday.

The deal marks the for-profit hospital management company's second acquisition in this region. The California-based company acquired Roxborough Memorial Hospital in Philadelphia earlier this year.

Dr. Prem Reddy, Prime Healthcare's chairman and CEO, said the company will maintain all services, including the emergency department, and invest at least \$10 million for capital improvements,

The company has pledged to hire all employees, maintain all collective bargaining agreements, and provide the same level of charity care for indigent and low-income patients.

Prime Healthcare will form a local governing board, consisting of medical staff and community leaders, for the hospital.

Lower Bucks Hospital, saddled with extensive bond debt and pension obligations, spent two years operating under bankruptcy protection before emerging from Chapter 11 back in January.

Primary Healthcare, whose Medicare billing practices have come under scrutiny by regulators in its home state of California, now owns and operates 20 sites in California, Nevada, Texas and Pennsylvania.

John George covers health care, biotech/pharmaceuticals and sports business.

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Weslaco joins Knapp ownership lawsuit

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Knapp Medical Center

By ELIZABETH FINDELL The Monitor | Posted Feb 16, 2013

WESLACO — Who really owns Knapp Medical Center?

That question has gained momentum in recent weeks after the hospital's leadership announced Jan. 3 that Knapp had been acquired by the California-based Prime Healthcare Foundation. The Weslaco Health Facilities Development Corp. subsequently sued, skeptical of the sale.

City leaders voted Feb. 5 to intervene in the lawsuit, effectively making Weslaco a co-plaintiff. The lawsuit accuses hospital leadership of breaching past agreements with the city and asks for an injunction to halt any property transfer from Knapp to Prime.

City Manager Leo Olivares and City Attorney Ramon Vela indicated that the entities would be filing an amended petition, but had not done so as of Friday.

The case centers around the question of ownership of the hospital, which became murky early on as attorneys and leaders familiar with the deal emphasized that Prime “owned” control of Knapp’s board of directors, but not the hospital’s physical assets.

Meanwhile, staffing and management changes have hit the hospital. Some 50 people were laid off last week. Controversial CEO Jim Summersett is no longer Knapp’s leader, but has been named the Dallas-based regional executive for Prime Healthcare Services.

“I’m going to have general responsibility for the strategic leadership and acquisitions for Prime... like the process we just went through,” Summersett said.

Dinah Gonzalez has been acting as interim CEO since that time. Summersett said his position had “absolutely not” been negotiated as part of the hospital’s transaction.

LAWSUIT

Controversy over the corporate structure of the Knapp-Prime partnership began when the city sought to clarify the status of bonds the facilities development corporation had helped Knapp issue. Prime has controlling interest in Knapp, but the deal had not constituted a change of

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of formation with the Texas Secretary of State Dec. 28, listing its membership as five Ontario-based Prime executives.

But Knapp filed no change of ownership with the Texas Department of State Health Services, which would be required if there was “a change in the person legally responsible for the operation of the hospital, whether by lease or ownership,” according to the department’s rules.

A DSHS spokeswoman said Wednesday that the department had determined there had been no change of ownership at the hospital.

Olivares said those kinds of subtleties would likely be a point in the litigation as the city questions the legal operation of Knapp.

Also at issue in the litigation may be whether the deal appropriately upholds restrictive covenants on an old deed that have blocked previous Knapp sales. One requires that the hospital remain a nonprofit entity.

The lawsuit questions whether Prime Healthcare Foundation really counts as a nonprofit for purposes of the restriction, as it is a nonprofit associated with the for-profit Prime Healthcare Services and shares the same leadership.

“There’s been a lot of smoke and we’re going to clear the smoke with this litigation,” Olivares said.

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Jo Ciavaglia's portfolio

Stories written by Jo Ciavaglia, award-winning multimedia newspaper reporter at the Bucks County Courier Times in Bucks County, a suburb of Philadelphia, Pa. For more information about Jo, check out her Linked-in profile, as well as her Facebook page and Google+ 1.

Monday, September 3, 2012

The \$14 million question: Who pays off Lower Bucks Hospital's loan

Posted: Sunday, September 2, 2012

A \$14 million question is looming over the pending sale of Lower Bucks Hospital to a for-profit health care system: Will Bucks County remain on the hook for the money it borrowed to help the hospital emerge from bankruptcy?

As of last week, county officials — including the head of the agency that owns the hospital — didn't have firm answers.

"It is a very complicated situation that will have to be resolved before the (Bucks County Redevelopment) Authority board votes to approve the sale," said Robert White, the authority's director.

The \$14 million bond is the result of an agreement between the county's redevelopment authority and Lower Bucks Hospital to allow the hospital to exit Chapter 11 bankruptcy earlier this year. Under the agreement, the redevelopment authority would have to approve any sale of the Bristol Township hospital.

In 2010, the Bucks County commissioners approved the redevelopment authority borrowing the money by issuing bonds secured by the county and the hospital's dedicated .05 percent from Pennsylvania table games revenue at Parx Casino in Bensalem, which is estimated to be \$750,000 to \$1 million a year.

Under the agreement, the redevelopment authority took title to the hospital property as collateral, and leased it back to Lower Bucks Hospital. In exchange, the hospital committed all its rights to future gaming revenue to pay the debt service on the bond.

The hospital agreed to repay the loan with interest over 20 years and buy back the property. The total amount the hospital promised to repay would be almost \$30 million.

But now that the hospital is slated to be sold to Prime Healthcare Services, a California-based, for-profit chain of 18 mostly West Coast hospitals, some are wondering if the county will be stuck paying off a loan for the new for-profit owner.

White said that there are "no simple answers" to questions regarding the bond and its repayment with the pending sale. He added that the redevelopment authority has not received any "official" notification about a sale.

If the \$14 million is not carried as a liability on the hospital's balance sheet, then it is unclear as to how the debt would be satisfied, said Robert Hill, director of business and financial practices for Health Strategies & Solutions Inc., a Philadelphia-based national health care strategy consultant firm.

Lower Bucks Hospital CEO and President Albert Mezzaroba said that the new owner would not be responsible for the debt service on the loan.

"The short answer is no, there is nothing in the lease, or any other document that would require a new owner to ... pay the debt service," he said.

Rather, Mezzaroba said the new owner would step into the current lease agreement that exists between Lower Bucks Hospital and the redevelopment authority; if the sale is approved, Prime Healthcare would have the same responsibilities as Lower Bucks Hospital including operating the property as a health care center.

Bucks County Commissioner Diane Marseglia expressed frustration at the lack of answers.

"I am mystified as to why (the commissioners) are in the dark," she said.

She said her inquiries with county financial people confirm one possible scenario is that the county would be required to keep paying the bonds using the casino revenue until they reach maturity in 15 to 20 years.

The other scenario, Marseglia said, is that the new owner pays off the bond debt or agrees

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to pay off the bonds over the next 15 to 20 years from its profits.

If the new owner pays off the bond, the county could reap up to an additional \$1 million a year in gaming revenue, Marseglia said.

That's because Prime Healthcare is a for-profit group, which means it is not entitled to receive the table gaming revenue under state law. Instead, the money will go to the county.

If the bond is paid off at the time of the sale, the county could use the table game revenue for other purposes, such as to offset tax increase or make infrastructure repairs, Marseglia said. Otherwise, the county cannot use the gaming revenue until the bond is repaid.

Lower Bucks Hospital would be the second Pennsylvania hospital in Prime Healthcare's growing portfolio; in February it bought the financially struggling Roxborough Memorial Hospital in Philadelphia.

The company specializes in financially challenged hospitals that treat mostly low income patients and rely heavily on government reimbursement, according to published reports.

In January, Prime Healthcare Services was recognized one of the top 15 U.S. health systems by Thomson Reuters, a business data provider.

In formally announcing the sale last week, Lower Bucks Hospital said that as part of the sale agreement Prime Healthcare had agreed to a list of conditions, including:

Maintain all services, including emergency departments.

Provide access to a \$3 million loan for working capital, with plans to invest up to \$10 million for needed capital improvements.

Hire all employees and maintain all collective bargaining agreements.

Assume all health care contracts and liabilities.

Provide the same level of charity care for indigent and low-income patients.

Pennsylvania regulators could require the new owners to fulfill those promises, too, said Health Strategies & Solutions' Hill, who has worked on a number of hospital sales.

With hospital sales, the state will develop and impose a set of conditions on the buyer and monitor to make sure the conditions are adhered to, Hill said. That said, the employees could be terminated for cause and the new owner could request state permission to terminate a service.

Nonprofit community hospitals, such as Lower Bucks Hospital, generally have higher levels of charity care than for-profit hospitals because they offer a wider array of services, some of which require they accept low-income patients, Hill said.

Increasingly nonprofit hospitals are finding access to capital more difficult because of the challenging credit markets. Nonprofits tend to run on tighter margins, which makes lenders more reluctant to approve loans, Hill said.

As a result, more for-profit health care groups, such as Healthcare Services — which has substantial capital reserves — are buying up nonprofit hospitals. The attraction for the for-profit groups is that a nonprofit hospital is still a money generator — and a good investment, Hill said.

Often for-profit health care companies will buy struggling hospitals, invest in infrastructure and services, and improve the economies of scale so they can buy things at better prices — then once the portfolio is in a good financial position, they sell them, Hill said. Typically the turnaround process is five to 10 years, he said.

The biggest downside to for-profits, Hill said, is that the organization likely doesn't have that same community commitment and roots. Also there is a loss of local control of what many people consider a critical community asset.

For-profit owners might be more inclined to terminate select services that they deem unprofitable.

Posted by Jo Ciavaglia at 7:27 P.M.

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HEALTH & WELFARE | DAILY REPORT | DECODING PRIME

Prime Healthcare drops bid for N.J. hospital

February 7, 2012 | Christina Jewett and Lance Williams

PRINT



Murica Larrn/California Watch

Prime Healthcare Services pulled its bid to buy a New Jersey hospital last week, saying it was deferring to the wishes of local elected officials who wanted to see the hospital remain a locally operated nonprofit.

The proposed deal met strong resistance from a health workers union and a community group that aired concerns over Prime's business model.

Prime leaders and Christ Hospital attorneys also faced tough questions from health regulators and the New Jersey attorney general's office, including queries about

billing practices based on findings of a yearlong investigation by California Watch. The nonprofit investigative news operation has identified a pattern at Prime Healthcare of billing Medicare for treatment of rare conditions among its elderly patients – conditions that enable the chain to reap lucrative bonus payments.

"They were getting hit from all sides," said Jeanne Ottersen, public policy director for Health Professionals and Allied Employees, a union that represents 400 nurses at Christ Hospital.

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Prime spokesman Edward Barrera said in an e-mail that the chain already had shared a great deal of information with state health regulators and "was in the process of finalizing its responses."

"The queries played no role in Prime Healthcare's decision to withdraw," according to Barrera.

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In a statement, Prime Healthcare chief executive Lex Reddy, who is chain founder Prem Reddy's brother-in-law, said Prime had hoped to "play a key role in stabilizing the financial future of healthcare in Hudson County by acquiring Christ Hospital and investing tens of millions of dollars to upgrade its services, provide much-needed charity care and keep jobs in Jersey City."

"It is unfortunate things did not work out the way we had hoped," he said.

Christ Hospital chief executive Peter Kelly also said in a statement that he regrets that a partnership with Prime will not move forward. The hospital received another offer from a local hospital group.

Prime Healthcare leaders said they spent months in New Jersey, investing in an effort to keep the hospital financially solvent.

Prime was opposed by a coalition of business and neighborhood associations. Paul Bellan-Boyer, a leader of the group, said community members banded together and concluded that the \$15.7 million offer by Prime, with a promise to invest \$35 million in upgrades, didn't "withstand any reasonable scrutiny." Another group offered \$104 million for the hospital in January.

Ottersen, of the nurses union, said Christ Hospital nurses had read California

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Watch reports about Prime Healthcare billing and patient admission practices with concern and brought them to the attention of state authorities. "It was hard, real research," she said. "It was so important."

The New Jersey Department of Health and Senior Services, which plays a role in granting hospital licenses, inquired about high rates of acute heart failure at one Prime hospital. California Watch reported that Chino Valley Medical Center billed Medicare for six times more cases of the condition than other state hospitals.

The New Jersey attorney general's office also sent inquiries to the Christ Hospital counsel as part of its hospital-vetting process, asking why hospital trustees didn't conduct independent investigations into reports about "high incidence of certain rare diseases" or "over billing."

California Watch has reported that Prime hospitals billed for outsized rates of some medical conditions that also draw enhanced Medicare payments. Those ailments include kwashiorkor, a form of malnutrition usually associated with starving children, and autonomic nerve disorder, a condition seen in Prime hospitals nearly 90 times more often than the statewide average.

Three California members of Congress have asked the U.S. Department of Health and Human Services' inspector general to investigate Prime's billing practices. FBI agents have interviewed a former Prime hospital patient and contacted two former Prime employees as part of a federal inquiry into billing methods at the hospital chain.

Prime has maintained that its billings are appropriate and that it relies on physicians to diagnose patients. It also called California Watch's analysis of acute heart failure cases "faulty, unfair and biased."

Prime's Barrera noted that Thomson Reuters, a business data firm, recently ranked Prime Healthcare one of the top 15 health systems in the nation, compared with 321 other organizations. The report examined hospital outcomes for three medical conditions: pneumonia, heart attacks and acute heart failure.

The Thomson Reuters report, based in part on Medicare billing data, concluded that Prime hospitals had the nation's lowest 30-day mortality rate for acute heart failure patients, at 9 percent. That means that compared with the number of patients diagnosed with the condition, the number who died within 30 days was exceptionally low.

In November, Dr. Steven Shayani, president of the New York Heart Research Foundation, told California Watch that he was skeptical about the high rate of acute heart failure among Medicare patients at Chino Valley Medical Center.

The San Bernardino County hospital reported that 35.2 percent of its Medicare patients had acute heart failure, a breakdown in the body's ability to circulate blood. That's far higher than 4.8 percent, the rate at California hospitals not owned by Prime, according to an analysis of billing data from 2008 to 2010.

In an interview, Shayani said that while acute heart failure is prevalent among the elderly, there was "no way of explaining" the hospital's high rate. He also noted that an inflated acute heart failure rate could boost a hospital's quality ratings.

"If you put heart failure as the diagnosis and the patient survives, that's how you would statistically lower your mortality rate," he said. "And so your ratings are better."

The Thomson Reuters awards also reflect hospital performance in achieving low complication rates, high patient safety ratings and optimal patient lengths of stay.

Prime has been involved in other unsuccessful attempts to buy hospitals in recent years. In September, California Attorney General Kamala Harris denied a bid by the chain's nonprofit arm to buy Victor Valley Community Hospital over concerns about patient access to care.

During an August hearing over the proposed Victor Valley sale, John Petty, who spoke on behalf of another would-be buyer, submitted several California Watch articles to the attorney general's office.

"We all have, you know, dogs in this fight," he said. But independent investigative journalists "have ... developed a series of articles that, I think, are fairly irrefutable," he said.

It was the second hospital sale that a California attorney general denied. Gov. Jerry Brown, the state's previous attorney general, also blocked the chain's bid to purchase an Orange County hospital after a contentious public hearing in 2007.

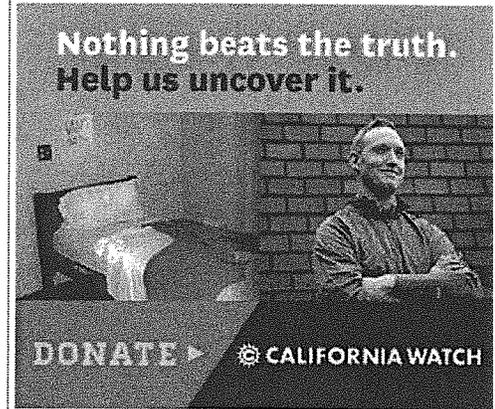
Prime signaled its interest in buying two bankrupt hospitals in Hawaii but backed out of the deal in December. The chain bought a share of a Texas hospital in December.

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Hospital is facing a bleak prognosis

A Victorville hospital has agreed to deals with Prime Healthcare, which has a record of stripping out low-margin or unprofitable medical services.

December 28, 2011 | Michael Hiltzik

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In September, state Atty. Gen. Kamala D. Harris killed the proposed takeover of a struggling Victorville hospital by a nonprofit arm of Prime Healthcare Corp., saying it was "not in the public interest."

Her ruling was anything but casual. Basing the decision on what she said was her own department's investigation, as well as testimony at a marathon public hearing in August, Harris indicated that the takeover would result in the reduced availability of healthcare in the High Desert.



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Her concerns included Prime's "disturbing business model," which includes canceling managed-care contracts at the hospitals it acquires, driving up costs for those payers and forcing many patients to travel long distances to find affordable care elsewhere.

One would have thought that was that. The attorney general has explicit jurisdiction over transfers of ownership of California nonprofit hospitals, such as the bankrupt 101-bed Victor Valley Community Hospital.

Yet the attorney general believes her order is being flouted. The hospital has gone ahead and signed two agreements with Prime, including one for a \$6-million line of credit, that Harris says will give Prime effective control of Victor Valley over her objections. In a separate frontal attack on Harris' authority, the hospital has asked a San Bernardino County Superior Court judge to overturn her veto.

What makes this more than just a dust-up in the desert is the involvement of Prime Healthcare, which owns 14 hospitals in California and one in Texas. In recent years, Prime has drawn the scrutiny of state and federal regulators over its patient treatment policies, its billings to government healthcare agencies and its employment practices.

Prime defends its record, but these concerns raise the question of whether even allowing Victor Valley to shut down might be preferable to turning it over to Prime.

For the community, that's not a serious question. "No one in the High Desert wants this hospital to close," says its interim chief executive, Edward Matthews. But it does underscore the excruciating choices involved in keeping it open.

If there's a secret to making hospitals profitable, Prime seems to have found it. The creation of Dr. Prem Reddy, an India-born cardiologist who came to the U.S. in 1976, Prime has assembled a portfolio of institutional castoffs — "Every hospital I acquire, I acquire in bankruptcy," Reddy once said of his

Hospital is facing a bleak prognosis - Los Angeles Times
corporate strategy.

The company earned nearly \$248 million in 2010 on revenue of \$1.6 billion, according to an income statement filed with the Securities and Exchange Commission. (The privately held Prime's financial statements were filed by a publicly traded real estate investment trust that is financially dependent on its business.)

Prime achieves this in part by stripping low-margin or unprofitable medical services out of its hospitals. As The Times has reported, Prime closed more than half of Centinela Hospital's operating rooms and cut back on chemotherapy and birthing services after taking over the institution in 2007.

The hospital, a healthcare linchpin for South Los Angeles, served 146,000 outpatients, including emergency room patients, in 2006, according to state records; last year the figure was 55,000. But Centinela swung from a \$10-million loss in 2006 to a profit of nearly \$11 million in 2010.

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Prime has acknowledged in legal filings that it avoids contracting with managed-care insurance plans, or HMOs. That frees the company from the obligation to deliver emergency care to those plans' members at a low contracted rate. Instead, it charges those patients or their health plans what the market will bear.

In 2008 and 2009, auditors from the state Department of Health Care Services caught the firm trying to stick the Medi-Cal program with more than \$4 million in what the auditors considered inappropriate expenses, including \$838,000 for a Beverly Hills home, more than \$1.4 million for a helicopter and hundreds of thousands of dollars more for a company Bentley.

The agency has referred the expenses to the attorney general's office for a possible fraud investigation. Prime said this week that it "came to agreements with Medi-Cal" on some of the disallowed items and appealed others, but did not give details on the outcome of the agreement.

It should go without saying (but I'll say it anyway) that if these billings weren't caught by the auditors and subtracted from Medi-Cal claims filed by Prime hospitals, they'd wind up inflating your state healthcare bills. That might give you a different perspective on what Prime says is its gift for delivering more efficient healthcare.

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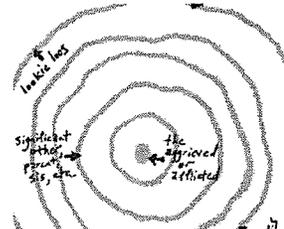
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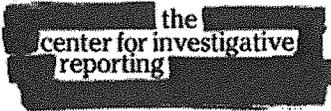


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Lance Williams
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Credit: Monica Lam/The Center for Investigative Reporting

A controversial California-based hospital chain might be receiving five-star health care ratings because it exaggerates how ill its patients really are, two state lawmakers say.

In a toughly worded letter, the lawmakers, who head the Legislature's health policy committees, said Ontario-based Prime Healthcare Services doesn't deserve the glowing evaluation it has received in recent years from the authoritative Truven Health Analytics service.

Prime has acknowledged that the U.S. Justice Department is investigating the 23-hospital chain's Medicare billings, state Sen. Ed Hernandez and Assemblyman Richard Pan wrote in their Aug. 29 letter to the rating service.

They also noted that in June, Prime paid \$275,000 to settle allegations that it had breached federal patient privacy laws.

A series of stories by The Center for Investigative Reporting's California Watch project detailed how Prime in recent years billed Medicare for treating what the lawmakers called "implausibly high rates" of unusual medical conditions.

Despite all that, Truven has rated Prime as one of the top 15 health systems in the United States three times in the past five years. This year, eight of Prime's 23 hospitals made Truven's list of the top 100 hospitals in the country – more than any other California chain.

The rating service's praise for Prime "is so at odds with the company's reputation and record in California as to strain Truven's own credibility," wrote Hernandez, of West Covina, who is chairman of the Senate Health Committee, and Pan, of Sacramento, chairman of the Assembly Health Committee. Both are Democrats.

They urged Truven to recompute Prime's ratings, lest they reflect poorly on the rating service itself.

In a Sept. 17 response to the legislators, Michael Boswood, CEO of Michigan-based Truven, defended Prime's ratings, saying they were based on a "comprehensive, stringent and time-tested" analysis. Asked for comment, a Prime spokesman wrote in an email that Truven's ratings are based on Medicare data collected by the government.

The correspondence highlights what the lawmakers contend are flaws underlying Truven's ratings, which the company says are relied upon by consumers and health care professionals.

Prime is a fast-growing company that operates hospitals in five states. According to a CIR analysis, Prime hospitals have reported that many Medicare patients were afflicted with unusual medical conditions, including acute heart failure, septicemia and kwashiorkor, a form of malnutrition usually found in children during famines in Africa. Billing for those conditions qualified Prime for bonus payments from Medicare

worth millions of dollars, federal records show.

In testimony before a 2012 legislative committee hearing, some former Prime employees contended that Dr. Prem Reddy, the chain's founder, had urged his staff to pad or "upcode" Medicare billings with exaggerated diagnoses to collect bonus payments.

Prime says its billings are accurate. It claims that the upcoding allegations were orchestrated by the Service Employees International Union to leverage the settlement of a Southern California labor dispute. In an email, Prime spokesman Fred Ortega accused CIR of being a "surrogate" for the union.

But in January, in an application to buy a Rhode Island hospital, Prime disclosed that the U.S. Justice Department was investigating its Medicare billings. The company said it expected to be exonerated.

The California lawmakers complained in their letter that Truven ignored the issue of questionable billings in rating Prime as a top-tier institution where patients have higher survival rates, better long-term outcomes and fewer medical complications.

Truven doesn't appear to screen the Medicare data on which the ratings are based to ensure it is accurate, the lawmakers wrote. As a result, a hospital that "systematically exaggerates patient diagnoses" would get unjustifiably higher ratings, they claimed.

For example, the lawmakers note that according to Truven's metrics, hospitals that cure patients with severe illnesses get higher ratings. They also get a ratings boost if patients have shorter-than-average hospital stays and no complications afterward.

But, as the lawmakers write, "if patients are not as sick as reported to Medicare," Truven would incorrectly conclude that they were making quick, successful recoveries from severe ailments.

That appears to be what is going on with Prime, Hernandez said in an email.

"Unfortunately, it appears that Prime Healthcare is being recognized and rewarded for, in essence, treating manufactured conditions," he wrote.

In his response, Truven CEO Boswood said he was aware of the allegations about Prime, but it would be premature to rescind the chain's high ratings.

Only a government investigation can prove fraudulent billing practices, he said. In the absence of "an admission of guilt, sanctions and conviction of wrongdoing," Prime's ratings will stand, he wrote.

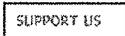
In their letter, the lawmakers also complained that Truven should have downgraded Prime for a breach of patient privacy laws at Prime's Shasta Regional Medical Center in Redding in 2011. Truven didn't respond to that issue in its letter.

In an effort to rebut a CIR story about Prime's questionable billings, a hospital executive emailed a patient's medical records to hundreds of people without permission, state investigators found. Prime was fined \$95,000 for violating state law. In June, Prime paid \$275,000 to settle a federal probe into the same incident. The company denies wrongdoing.

Shasta Regional is among the Prime hospitals that made Truven's top 100 list in 2013.

This story was edited by Amy Pyle and copy edited by Nikki Frick and Christine Lee.

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HEALTH & WELFARE | DAILY REPORT | DECODING PRIME

Prime Healthcare to manage hospital over Harris' objection

November 1, 2011 | Christina Jewett

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Steve Rhodes/Flickr
Kamala Harris

When Attorney General Kamala Harris' office denied the sale of Victor Valley Community Hospital to Prime Healthcare Services' nonprofit arm in September, it seemed like a closed case.

However, the hospital's board continued talks with Prime, declined to negotiate with another potential buyer, and yesterday succeeded in securing a deal in bankruptcy court to allow Prime, through a consulting agreement, to take over day-to-day management of the hospital.

The move capped a day of courtroom drama that started with the attorney general's office seeking an order [PDF] in San Bernardino County Superior Court to stop the consulting agreement from going forward. A judge did not grant a restraining order but scheduled a more in-depth hearing on the matter for Nov. 23, according to Lynda Gledhill, spokeswoman for the attorney general.

Gledhill said it's the first example of a buyer entering into a consulting agreement to operate a hospital after the state had

rejected the purchase.

Prime said it is pleased the state court denied the attorney general's requested restraining order because "she did not show a probability of success on the merits." The firm, through an outside spokesman, also said it was pleased with the bankruptcy ruling "so that Victor Valley can remain open and serve the healthcare needs of the community."

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Prime Healthcare's treatment of rare ailments stands out

Prime Healthcare, which owns 13 Southern California hospitals and one in Shasta County, is also seeking to buy a New Jersey hospital.

California Watch has written about the chain's tendency to boost Medicare patient admissions after taking over hospitals it acquired since 2005. Prime hospitals also report high rates of rare ailments among Medicare patients that entitle facilities to enhanced payments. The Kaiser health plan has accused Prime of "trapping" its patients and "upcoding" or overstating their medical conditions for profit. Prime has denied the allegations.

Victor Valley initially was slated to be sold to Victor Valley Hospital Acquisition last year, but the group associated with Hemet physician Kall Chaudhuri failed to close the deal this summer. That opened up negotiations with Prime, the backup bidder.

The 101-bed hospital is one of three hospitals in the geographically isolated High Desert region of San Bernardino County.

The attorney general held an August hearing over the sale to Prime, which included impassioned testimony in favor of and against the deal.

A little more than a month later, the attorney general's office denied the

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sate [PDF], saying it was not in the public interest and "will likely create a significant effect on the availability or accessibility of healthcare services in the affected community."

The Victor Valley hospital board, however, proposed a different arrangement soon after in bankruptcy court, records show.

On Oct. 17, the hospital board attorneys filed an emergency motion seeking the court's approval for a credit and security agreement and consulting services agreement.

Two days later, the attorney general's office sent a letter to the board saying that both agreements needed the office's approval to go forward. Attorneys for the hospital board wrote back, disagreeing.

On Friday, Harris' office filed a request for a restraining order [PDF] and injunction to stop the deal. In court records, the attorney general argued that the deal would cause the hospital to incur \$6 million in additional administrative costs, "manipulating the market value of the hospital."

The attorney general also argued that by failing to get her office's consent, the hospital board "thwarted and circumvented the Attorney General's authority."

Samuel Maizel, a Los Angeles attorney for the Victor Valley hospital, said the arrangement approved in bankruptcy court means that Prime will work for the nonprofit hospital's board and chief executive to turn around the facility.

"If we had not prevailed in both hearings today, there was a very good likelihood that we would have had to start shutting down the hospital," Maizel said.

Under the consulting agreement, records show, Prime's for-profit arm will take the lead at Victor Valley Community Hospital in physician relations, revenue management, contracting, auditing and preparation of financial statements.

Nearly a year ago, Prime acquired Alvarado Hospital in San Diego, despite calls by lawmakers to withhold licenses to the chain pending investigations of high rates of septicemia. State authorities ultimately filed and then dismissed deficiency findings about record-keeping related to septicemia patients, but passed on the findings to state auditors and federal investigators.

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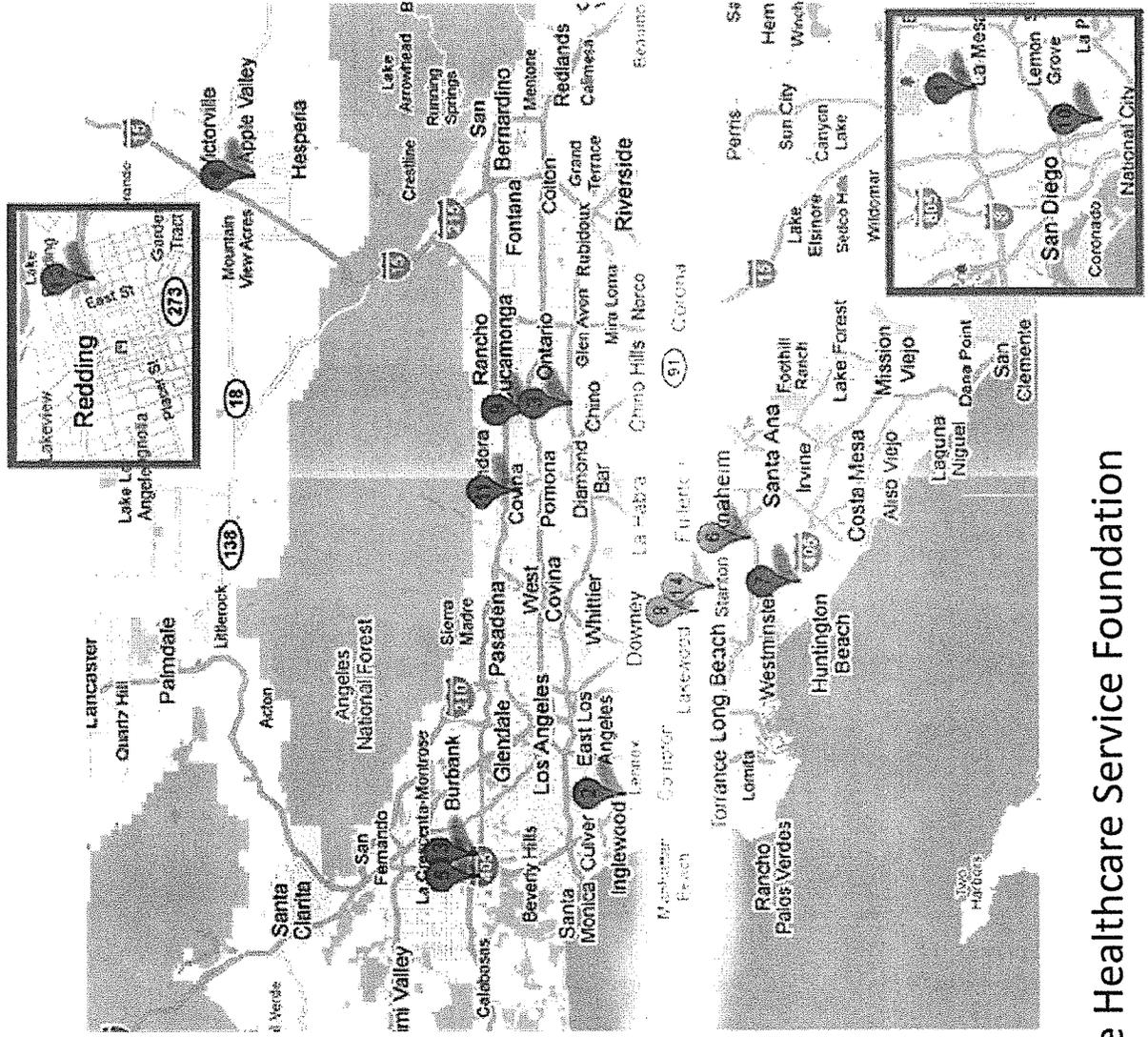
"Local Reporting," Finalist
Pulitzer Prize, 2012

"Medical Reporting," Winner

EXHIBIT “B”

Prime Hospitals in California

-  Alvarado Hospital Medical Center
-  Centinela Freeman Regional Medical Center - Centinela Campus
-  Chino Valley Medical Center
-  Desert Valley Hospital
-  * Encino-Tarzana Regional Medical Center - Encino Campus
-  Garden Grove Hospital And Medical Center
-  * Huntington Beach Hospital
-  La Palma Intercommunity Hospital
-  * Montclair Hospital Medical Center
-  Paradise Valley Hospital
-  San Dimas Community Hospital
-  Shasta Regional Medical Center
-  * Sherman Oaks Hospital & Health Ctr
-  West Anaheim Medical Center



* Now owned by non-profit arm, Prime Healthcare Service Foundation

Rapid growth outside California

Texas

- 3 hospitals (PHSI)
- 1 hospital with non-profit PHSF

Pennsylvania: 2 hospitals

Nevada: 1 hospital

Pending acquisitions:

- New Jersey – at least 2 hospitals
- Kansas – 2 hospitals
- Rhode Island – 1 hospital

Prime Hospitals

“This is not a charity hospital. If you don’t have insurance, you need to get out of here. It’s a gold mine in here.”

- Former Emergency Room manager at Desert Valley Hospital testified under oath that, while in the hospital Emergency Room, Dr. Reddy stated the above, according to Charge Nurse Reports provided to her.

Key Business Entities

- **Dr. Prem Reddy**

Founder and Chairman of Board at all entities listed below

- **Prime Healthcare Services, Inc. and entities under common control (PHSI)**

The parent company for Prime's for-profit operations

- Held by Prime Healthcare Holdings, Inc. (PHHI)
- KASP Trusts is the sole shareholder of PHHI
- KASP: irrevocable trusts to benefit Dr. Prem Reddy's children

- **Prime Healthcare Services Foundation (PHSF)**

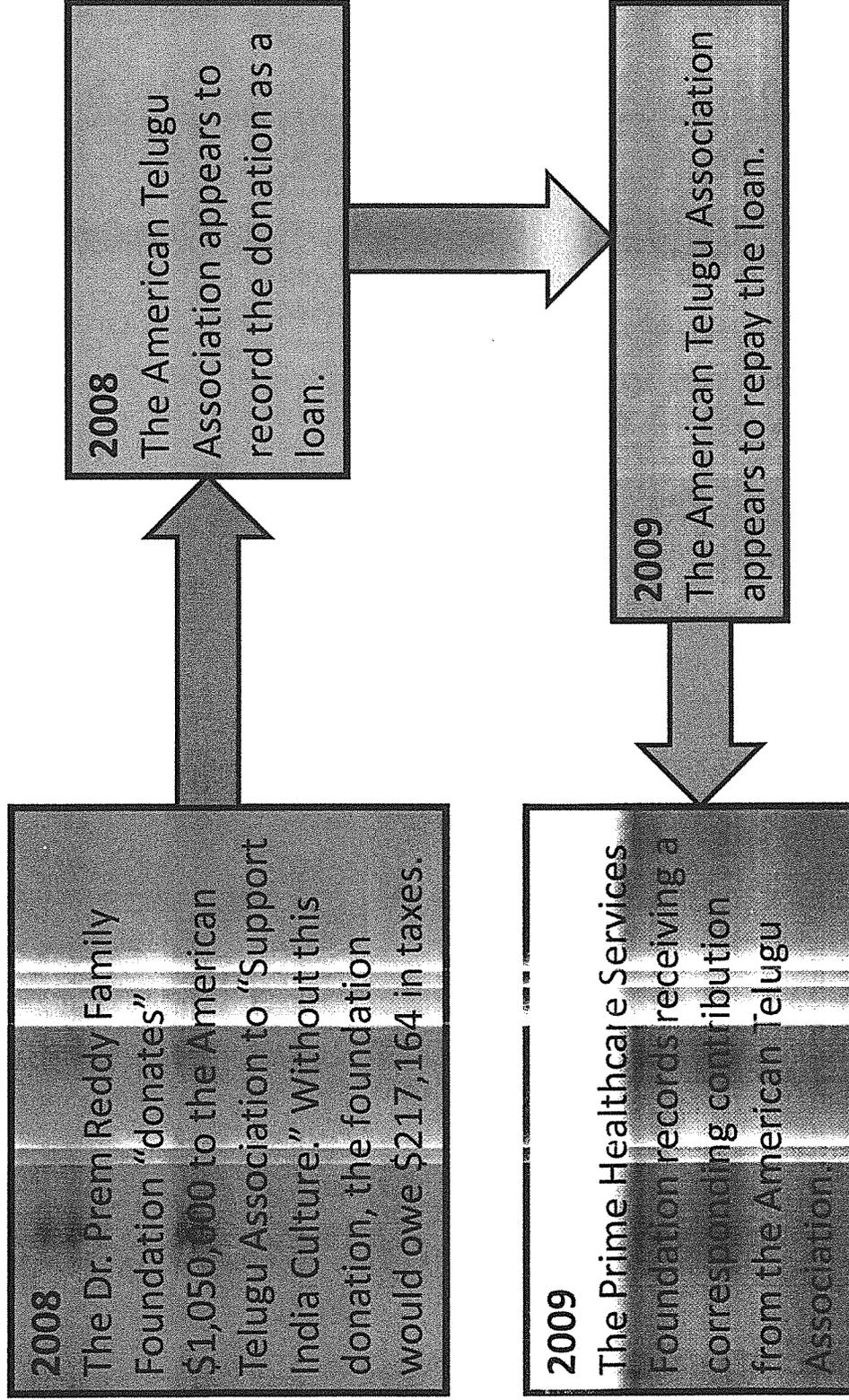
The non-profit arm of Prime. It now owns 4 California hospitals and has a controlling share of one Texas non-profit. It began converting from a Private Foundation to a Public Charity on 10/1/2009.

- **Dr. Prem Reddy Family Foundation**

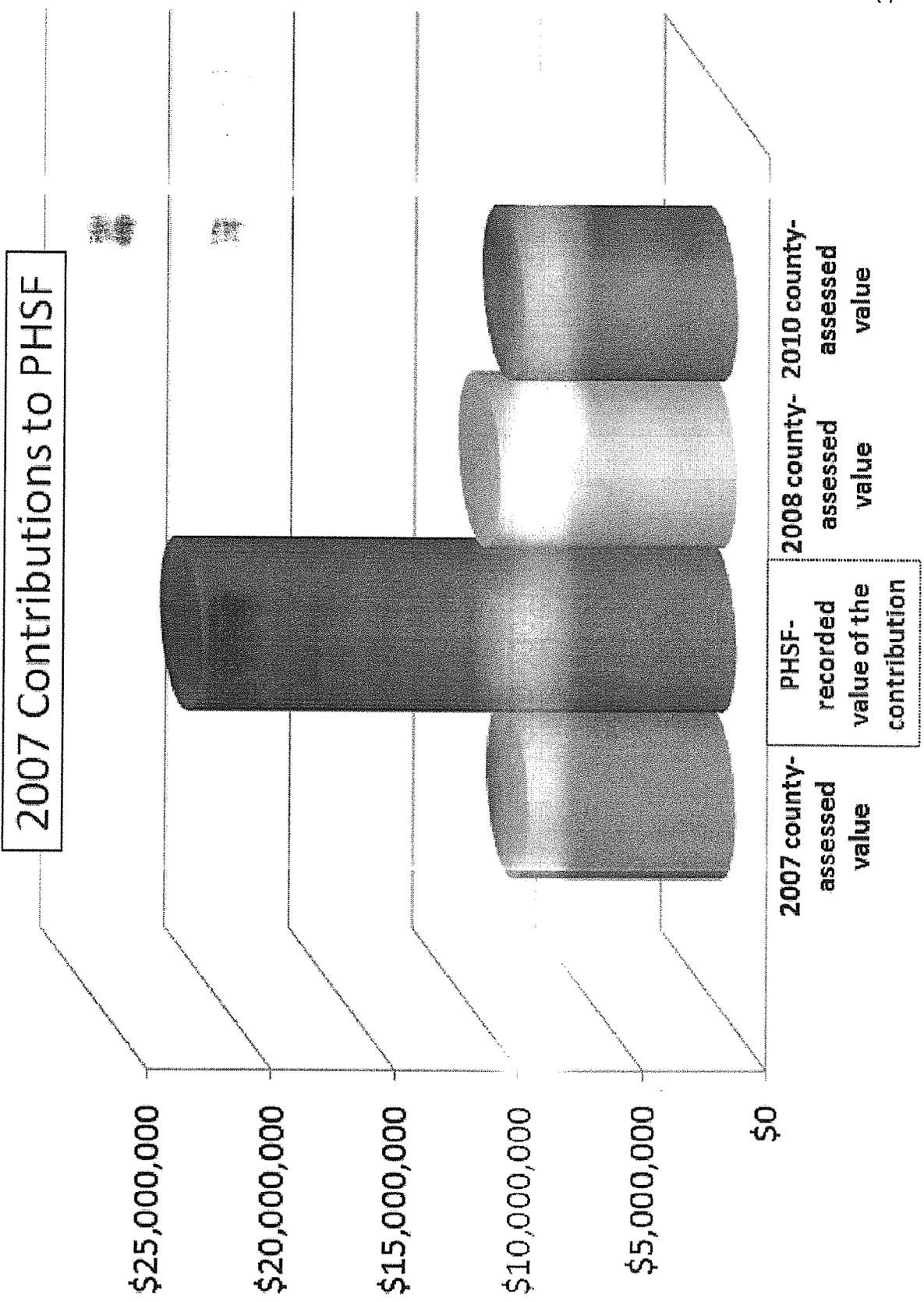
Recap of concerns raised 6/16/2011

- **Potential tax evasion**
 - Circular contribution
 - Potential overvaluation of land donations
- **Prime's non-profit hospitals**
 - Same troubling business practices as for-profits
 - Red flags indicate potential for inurement

6/2011: Circular contribution



6/2011: Valuation of Land Donations



6/2011: Same troubling practices at nonprofit

Preliminary 2010 Medicare billing data raise concerns about Encino Hospital

Of 2,717 U.S. hospitals, Encino Hospital:

- Had the **highest septicemia rate** in the U.S. in 2010
 - 4 of the highest 10 U.S. hospitals were operated by Prime
- Billed Medicare for the **highest severity level** of any hospital in the U.S. in 2010 for general medical care
 - 9 of the highest 15 U.S. hospitals were operated by Prime

Note: Data Source is the 2011 Proposed Rule MedPAR file. This data set contain approximately 85-93% claims for Federal Fiscal Year 2010. The analysis will be augmented using the complete ("final rule") data set when that data becomes available. Encino Hospital was a non-profit for 3 of the 4 quarters included.

6/2011: Red flags for inurement

The foundation's two hospitals were each very close to a for-profit Prime hospital

Foundation Hospital	Prime Hospital	Miles Apart
Encino Hospital	Sherman Oaks Hospital	3
Montclair Hospital	Chino Valley Hospital	4

There was extensive overlap between governance and leadership teams. E.g., at non-profit Encino Hospital and nearby Sherman Oaks:

Individual	Role at Encino	Role at Sherman Oaks
Prem Reddy	Chairman of the Board	(same)
Bob Bills	Board Member, CEO	(same)
Bockhi Park	Board Member, COO	(same)
J. Nathan Rubin	Board Member, Chief of Staff	(same)
Daniel Leon	Board Member, CFO	CFO
Muhammad Anwar	Board Member, Medical Director	(same)
Lea Ann Rohde-Tonissen	Board Member, Corporate Medical Staff Officer	(same)

Developments since 6/16/2011

Transfers from PHSI to non-profit PHSF

- Sherman Oaks – 12/31/2011
- Huntington Beach – 12/31/2012

Acquisitions by non-profit PHSF

- Knapp Memorial (Weslaco, TX) – Jan. 2013

New Documents Heighten Concern

- Self-dealing with the for-profit
- Nonprofit financials are incongruous
- Inurement through control of nonprofit competitor
- Nonprofit boards lack independence

Self-dealing and other red flags

Extensive self-dealing with Prime's for-profit entities

2. Pursuant to Treasury Regulation Section 1.507-2(f)(2)(ii), chapter 42 does not apply to PHSF during its 60-month termination period. Consequently, PHSF is not subject to the self-dealing rules of IRC Section 4941. As such, all self-dealing questions have been answered appropriately, but no Form 4720 has been filed. Transactions with related entities include the following:

- A management agreement with Prime Healthcare Management – Encino, Inc., an entity under common control.
- A management agreement with Prime Healthcare Management, Inc., an entity under common control.
- PHSF participates in the 401(k) plan of a related entity.
- PHSF makes payments to a related entity for professional liability, workers' compensation, healthcare and earthquake and flood insurance coverage.
- PHSF reimburses a related entity for professional, clinical and consulting services provided by hospitals owned by another related entity.

Source: PHSF Form 990, 2011 Attachment A (20th page)

Self-dealing (con't): Management contracts

Prime's nonprofits are managed by Prime for profit

Note 11 - Related Party Transactions

EHMC entered into a management agreement with Prime Healthcare Management - Encino, Inc. ("PHMEI"), a related party, under which PHMEI provided management services to the Company. Management fee expense incurred under the agreement totaled \$912,000 for the year ended December 31, 2011. The Company also paid PHMEI approximately \$410,000 related to administrative and payroll services for the year ended December 31, 2011.

On January 1, 2011, MHMC entered into a management agreement with Prime Healthcare Management, Inc. ("PHMI"), a related party, under which PHMI provides management services to the Company. Management fees relating to this agreement totaled approximately \$1,200,000 for the year ended December 31, 2011.

Source: PHSF CFS, 2011 Note 11 (Page 20)

Self-dealing/Management contracts (con't)

The management companies are part of Prime's for-profit arm

PRIME HEALTHCARE SERVICES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 2 - Organization and Summary of Significant Accounting Policies (continued)

Basis of consolidation (continued) - The Company has a variable interest in the following entities as defined by Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 810, for which PHSI is the primary beneficiary of these variable interest entities:

[...]

Other entities:

- Prime Healthcare Management, Inc.
- Prime Healthcare Management - Garden Grove, Inc.
- Prime Healthcare Management - San Dimas, Inc.
- Prime Healthcare Management - Encino, Inc.
- Prime Healthcare Management - Shasta, Inc.
- Hospital Business Service, Inc.
- Prime Healthcare Aircraft Transport LLC
- International Aircraft Investments LLC
- HMC Realty, LLC (see Note 4)

Source:
Consolidated
Financial
Statements
for PHSI and
Subsidiaries,
12/31/2011

Self-dealing (con't): Biomedical services

PHSF second-highest paid professional is Bio-Med Services, Inc.

PRIME HEALTHCARE SERVICES FOUNDATION, INC. 20-8065139

990PF, PART VIII - COMPENSATION OF THE FIVE HIGHEST PAID PROFESSIONALS

ATTACHMENT 22

<u>NAME AND ADDRESS</u>	<u>TYPE OF SERVICE</u>	<u>COMPENSATION</u>
PUCHLIK DESIGN ASSOCIATES INC 859 S RAYMOND AVE PASADENA, CA 91105	ARCHITECTURE	532,929.
BIO MEDICAL SERVICES INC 300 E GUASTI ROAD 3RD FLOOR SANTARBO, CA 91761	BIOMEDICAL SERVICES	636,061.

Bio-Med Services, Inc. is a PHSI subsidiary

Income taxes - PHSI, Desert Valley Hospital, Chino Valley Medical Center, and Bio-Med Services, Inc. are Sub chapter S Corporations. In addition, Desert Valley Hospital, Chino Valley Medical Center and Bio-Med Services, Inc. are qualified Q subs of PHSI and are included in the PHSI S corporation income tax return for the years ended December 31, 2011 and 2010. In lieu of corporate income taxes, the

Self-dealing (con't): Insurance products

PHSF's main insurance company is a Prime for-profit

PRIME HEALTHCARE SERVICES FOUNDATION, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 9 - Professional Liability, Workers' Compensation, Earthquake and Employee Health Insurance

Desert Valley Insurance, LTD. ("DVIL") and the Hartford Insurance Company provide professional liability, workers' compensation, healthcare and earthquake insurance coverage to EHMC, MHMC and SOH. Under the terms of the agreement, DVIL is obligated to insure each workers' compensation claim up to a maximum of \$1,000,000 per claim. Losses in excess of \$1,000,000 per claim are insured by Hartford Insurance Company up to the statutory limit. EHMC, MHMC and SOH also entered into an agreement with DVIL to provide medical malpractice liability insurance on a claims-made basis. Under

Insurance provided
to the non-profits by
DVIL

PRIME HEALTHCARE SERVICES, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

DVIL is
related to
for-profit
PHSI

Note 11 - Professional Liability, Workers' Compensation, Healthcare and Earthquake Insurance

through
'common
ownership"

Desert Valley Insurance, LTD. ("DVIL") and the Hartford Insurance Company provides professional liability, workers' compensation, healthcare and earthquake insurance coverage to the Company. DVIL is affiliated with the Company through common ownership. Under the terms of the agreement DVIL is obligated to insure each workers' compensation claim up to a maximum of \$1,000,000 per claim. Losses in excess of \$1,000,000 per claim are insured by the Hartford Insurance Company.

Self-dealing (con't): Disqualified persons

Transactions with disqualified persons

Part VII B Statements Regarding Activities for Which Form 4720 May Be Required

File Form 4720 if any item is checked in the "Yes" column, unless an exception applies.

1a During the year did the foundation (either directly or indirectly)

- | | | |
|---|---|--|
| (1) Engage in the sale or exchange, or leasing of property with a disqualified person? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| (2) Borrow money from, lend money to, or otherwise extend credit to (or accept it from) a disqualified person? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (3) Furnish goods, services, or facilities to (or accept them from) a disqualified person? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| (4) Pay compensation to, or pay or reimburse the expenses of, a disqualified person? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| (5) Transfer any income or assets to a disqualified person (or make any of either available for the benefit or use of a disqualified person)? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Incongruous nonprofit financials: Payroll

Are payroll expenses being passed to the nonprofit?

Year	Entity	Payroll	Net Patient Revenue	Payroll as Percentage of Net Revenue
2010	For profit PHSI	\$ 540,880,458	\$ 1,291,485,857	42%
2011	For profit PHSI	\$ 589,817,249	\$ 1,189,030,744	50%
2011	Nonprofit PHSF	\$ 52,314,989	\$ 78,993,641	66%

“Your costs are high in payroll. You are at 60% of net revenue, which is very high. It should be normally, industry standard, is about 45%.”

—Dr. Prem Reddy speaking to physicians at Knapp Medical

Center 1/2013

Incongruous financials (con't): Operating losses

Why did nonprofit hospital operations fare poorly?

Year	Entity	Net Patient Revenue	Operating Expenses	Operating Margin [#]
2010	For profit PHSI	\$ 1,291,485,857	\$ 1,059,444,905	18%
2011	For profit PHSI	\$ 1,189,030,744	\$ 1,066,240,592	10%
2011	Nonprofit PHSF	\$ 78,993,641	\$ 85,440,432	-8%

* Excludes revenues unrelated to patient care

Controlling the competition

- Prime's nonprofit operations are run by Prime's for profit arm
- This can lead to private inurement, through:
 - Investment decisions by the non profit
 - Competitive decisions impacting both NP and FP, such as:
 - Decisions about what patient services to offer
 - Decisions about where and when to transfer patients
 - Decisions about which operational services to outsource to the for profit arm
- For example: PHSF purchased Knapp Medical Center in Weslaco Texas, an investment decision that allocated substantial California nonprofit assets (\$100M)
- Note that Prime owns a nearby for-profit hospital, Harlingen Medical Center

Controlling the competition (con't)

In addition to self-dealing contracts, will Prime make money through PHSF's alleged \$100M investment in Knapp Medical Center?

Patient Transfers to Prime's nearby for-profit

"If we have to transfer we will transfer to a sister hospital like Harlingen.

[...] There is nothing that prevents [us]. As long as the quality is good at Harlingen. As long as the economics are good for us to almost mandate it. To use that facility for certain procedures that they are good. I don't think nothing prevents us from doing it."

· Dr. Prem Reddy speaking to physicians at Knapp Medical Center 1/2013

Consolidating departments with Prime's nearby for-profit

"Maybe you're sharing [...] some of the departments between Harlingen and here. So that, to have, economies of scale and to cut the unnecessary expense."

—Dr. Prem Reddy speaking to physicians at Knapp Medical Center 1/2013

Nonprofit Boards Controlled by Reddy

- Prem Reddy is the Chairman of the Board of Prime's for-profit, as well as every single nonprofit entity
- Until 2011 Reddy was the sole director of PHSF. There are now five directors at PHSF including Reddy, his daughter Kavitha Bhatia, a former PHSI hospital director and two other associates.
- Members of PHSF's nonprofit hospital boards include family members, business associates, and others with a vested interest in PHSI

"I am the sole owner of Prime Healthcare for profit. And I'm the sole contributor of all the \$400 million that the Foundation has now. All contributed by me and my family. Nobody else contributed a penny to that. Okay. [laughs] So you – the board is not in my control. But I'm the sole contributor, so they will listen to me [laughs]."

–Dr. Prem Reddy speaking to physicians at Knapp Medical Center 1/2013

Nonprofit Boards: Example - Huntington Beach

Prem Reddy, M.D., Chairman

Dr. Prem Reddy completed his residency training in Internal Medicine and Cardiovascular Disease at the Down State Medical Center, L. Y. in Brooklyn, New York in 1981. He moved to California and started (then his medical practice) in the High Desert area of Southern California. Dr. Reddy is board certified in Internal Medicine and Cardiology. He was awarded the honor of becoming a Fellow of the American College of Cardiology (ACC) and a Fellow of the American College of Chest Physicians (ACCP). During his 27 years of practice in the High Desert, he was committed to the care of his patients and performed more than 4,000 cardiac procedures, including coronary angiography and angioplasty and percutaneous transluminal angioplasty.

In 1974, Dr. Reddy and his wife founded the Desert Valley Hospital in Yreaville, California. Desert Valley Hospital received several accolades and was ranked as the highest quality hospital for the high quality of its services and facilities in the first 100 hospitals in the top 500 hospital survey years.

After selling a private company, which included Desert Valley Hospital, Dr. Reddy founded Prime Healthcare Services (PHS) in 2004. Dr. Reddy purchased the former Mission Valley Medical Center and the Desert Valley Medical Group and moved them back into business with a new agreement that was very approachable to the community and provided the higher quality of care.

Among the many accolades, Prime Healthcare was recognized as one of the top 10 health systems in the nation in 2012 by *Forbes* magazine. This was the second time in four years Prime has been recognized. Also in 2012, by *Forbes* magazine, hospital ratings were made among the top 100 hospitals in the nation, including Desert Valley, by the *Forbes* magazine and West American Medical Center, for the third year. In 2004, the United States Healthcare Hospital's earned national recognition from The Joint Commission, the leading Medicare accreditation organization in the country. They were ranked among the top 10 percent of over 4,000 hospitals nationwide.

In 2011, Dr. Reddy was honored with the Royal Society of Great Britain Distinguished Achievement Award. He was also named one of the 40 Most Powerful Physicians | *Forbes* magazine in 2011 by *Forbes* magazine and the second time in four years.

Throughout his career, Dr. Prem Reddy has been committed to serving the communities in which he works. In 1988, he established the Dr. Prem Reddy Family Foundation, a 501(c)(3) not-for-profit charitable organization with an initial gift of \$1 million. More than three million dollars have been donated to the Foundation. The Dr. Prem Reddy Family Foundation serves the health care needs of the High Desert community in many ways. It includes a free public health library, a volunteer program for patients in the high desert, and the support of other health care related charities. The Viterbi Valley Community College named their medical health clinic, Dr. Prem Reddy Medical and Health Center, and the health program the "Dr. Prem Reddy School of Health Business" in honor of his \$1 million donation to the program. The Weber University of Health Sciences in Fremont, California, named its largest hospital the Dr. Prem Reddy-Larson Hall in honor of his many contributions to education in the health care field.

Dr. Reddy also founded the Prime Health Service Foundation, a 501(c)(3) non-profit organization. In 2004, the foundation was the recipient of the "Best of High Desert" award for "Best of High Desert" award. The award was given by the "Best of High Desert" award.

Executive Board	Board	Member	Member
Prem Reddy, M.D., Chairman of the Board	Chairman	Medical	Chairman
Sirus Farivar, M.D., Physician	Member	Medical	Member
M. Michael Mahdad, M.D., Physician	Member	Medical	Member
Cathy Green, Community Member	Member	Medical	Member
Timothy Ryan, Community Member	Member	Medical	Member
David Bloom, M.D., Physician	Member	Medical	Member
Mark Bell, M.D., Physician	Member	Medical	Member
Virg Narbutas, Regional CEO	Member	Medical	Member

Governing Board

- Prem Reddy, MD (Chairman)
- Sirus Farivar, MD
- M. Michael Mahdad, MD
- Cathy Green
- Timothy Ryan
- David Bloom, MD
- Mark Bell, MD
- Kumar Raja, MD
- Virg Narbutas

Direct financial relationships to for-profit's Prime:

- Prem Reddy and his family own Prime
 - Mark Bell is a principal at EMA, which has contracts at 10 Prime facilities (including PHSF)
 - Virg Narbutas is regional CEO for PHSI in OC and on Prime's nearby PHSI hospital boards
- Most other directors are doctors at the hospital.

Recap

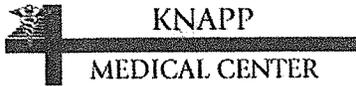
- A troubled history
- Extensive self-dealing
- Incongruous financials
- Inurement through controlled competition
- Nonprofit boards' lack of independence

“None of our boards manage the hospital. Even though technically they are the ultimate authority, but under our management that doesn’t happen.

We don’t have a voting member saying, ‘No’. I never heard one. Even though I’m the Chairman of all the Boards, I never heard somebody objecting to the proposal we make.”

–Dr. Prem Reddy, 1/2013

EXHIBIT "C"



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SECTION: NEWS

Important News From Knapp Medical Center

Posted on Mar 18, 2013

Based on recent media reports and the City of Weslaco's decision to join in the lawsuit filed by the Weslaco Health Facilities Development Corporation, there appears to be significant confusion about the Prime Healthcare Foundation and the recent transaction involving Knapp Medical Center. The actual facts are:

- Prime Healthcare Foundation founded and funded by Prem Reddy, MD, FACC, FCCP, ("Dr. Reddy") and his family, is a 501(c)(3) nonprofit public charity, and its status has been recently reaffirmed by the IRS following a routine audit.
- Prime Healthcare Foundation is governed by an independent board of directors which includes two elected city councilmen and a business executive who serves on the Board of Directors of the world famous Boys Town organization;
- Prime Healthcare Foundation has more than \$400 Million in assets with no debt. Prime Healthcare Foundation owns and operates four non-profit hospitals in California, all of which were donated debt free to the foundation by Dr. Reddy: (1) Encino Hospital Medical Center (150 beds); (2) Huntington Beach Hospital (131 beds); (3) Montclair Hospital Medical Center (102 beds); and (4) Sherman Oaks Hospital (153 beds); These hospitals have been nationally recognized for quality of patient care including Montclair Hospital Medical Center being recognized twice as the Top 100 Hospital in the Nation.
- On January 1, 2013, Prime Healthcare Foundation became the sole member of Knapp Medical Center and its subsidiaries as part of a transaction between Prime Healthcare Foundation and Knapp Community Care Foundation ("KCCF"). As part of this more than \$200 Million transaction, the following has occurred or will occur:
 - Knapp Medical Center remains a non-profit hospital and health care delivery system rendering hospital and healthcare services through Knapp Medical Center, Knapp Surgery Center, and Knapp Medical Group with charity care policies which are the same as those historically provided by Knapp Medical Center so as to ensure access to healthcare to those residents of the Rio Grande Valley with low income and/or resources;
 - KCCF received more than \$100 Million to support its mission of improving access to healthcare for low income, uninsured or medically underserved populations, identifying new and supporting existing healthcare programs, providing direct medical, dental, and mental healthcare for low income, uninsured or medically underserved populations and the initiation of programs that support and facilitate access to healthcare services. The \$100 Million received by KCCF has and will include payments of approximately \$23 Million from the Prime Healthcare Foundation and a transfer of more than \$80 Million in investments from Knapp Medical Center to KCCF;
 - Prime Healthcare invested no less than \$134 Million into Knapp Medical Center by, among other

- things, (a) cash payments of at least \$23 Million; (b) the retention by Knapp Medical Center and Prime Healthcare Foundation of more than \$56 Million in debt related to the bonds issued by the Weslaco Health Facilities Development Corporation; (c) Prime Healthcare Foundation depositing \$45 Million to secure payment of the bond-debt; and (d) Prime Healthcare Foundation's commitment to invest no less than \$10 Million for capital improvements at the hospital;
- No payments whatsoever being made to any member of the Knapp Medical Center Board of Directors or the KCCF Board of Directors as part of the transaction;
 - KCCF is governed by a Board of Directors which is separate and apart from Knapp Medical Center's Board of Directors who are John Lackey, Brian Humphreys, Norma Montalvo, Rudy Salinas, Bertha Suarez and Abraham Tanus;
 - Knapp Medical Center is governed by a local governing board comprised of local community leaders, local physicians, and the hospital's management team, including Dr. Michael DeCandia, Luis Leon, Ph.D., Dr. S. Gopal Krishnan, Brian Humphreys, Dr. Miguel Tello, Dr. Prem Reddy and Rudy Salinas.
 - The residents of Weslaco and the surrounding communities are well served by the transaction between Prime Healthcare Foundation and KCCF because:
 - The transaction resulted in two non-profit organizations (Knapp Medical Center and KCCF) that are committed to providing care and improving access to healthcare for low income, uninsured or medically underserved populations with KCCF having more than \$100 Million to achieve its mission;
 - Knapp Medical Center remaining a non-profit hospital and health care delivery system rendering hospital and healthcare services to Weslaco and the surrounding communities with the same charity care policies that have historically resulted in care provided to low-income patients;
 - Knapp Medical Center having access to the financial wherewithal of the Prime Healthcare Foundation;
 - The residents of Rio Grande Valley having received over \$130 million of charitable contribution from California donated by Dr. Reddy and his family.

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