New Jersey
Appleseed

March 28, 2016

Honorable Walter Koprowski, Jr.
Superior Court of the State of New Jersey
Essex County Courthouse
Wilentz Justice Complex
212 Washington Street, 8th Fl.
Newark, New Jersey 07102

Re. In the Matter of the Approval of the Sale of The Assets of Saint Michael's Medical Center, Inc. Pursuant to N.J.S.A. 26:2H-7.10 et seq.

Dear Judge Koprowski,

Please accept this short letter in lieu of a formal response objecting to the proposed Order for Final Judgment in the aforementioned application. I am writing to you on behalf of New Jersey Appleseed Public Interest Law Center, a nonprofit legal advocacy organization, that has participated in several administrative and judicial proceedings governing the conversion of nonprofit hospitals to for-profit status in New Jersey since the enactment of the Community Healthcare Assets Protection Act, ("CHAPA"), N.J.S.A. 26:2H-7.10 et seq.. However, in this case, I am not submitting additional documents, seeking to reply to the Attorney General's or Commissioner of Health's handling of our comments in the proceeding below, or more generally, seeking to influence the court's decision regarding whether to approve the proposed sale of Saint Michael's Medical Center to Prime Healthcare Services, LLC. ("Prime").

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Rather, I urge this court, like we did with respect to the sale of East Orange General Hospital to Prospect Medical Properties to include the conditions set forth in the Commissioner of Health's CN decision, dated March 7, 2016, which form the predicate for her conclusion that the proposed transaction "is not likely to result in the deterioration of the quality, availability, or accessibility of health care services in the affected communities." See attached CN approval decision, dated March 7, 2016 (referred to in Attorney General's recommendation to the Court, dated March 7, 2016 at page 65). These conditions are significant (though we are circumspect in our anticipation that the Commissioner will take the necessary steps to enforce them), especially those requiring the new owners to maintain and (hopefully, expand) inpatient and outpatient behavioral health services, coordinate and participate in the Greater Newark Healthcare Coalition, post audited financial statements and share those statements at an annual public meeting, create an Advisory Board with at least two members from the Commissioner of Health, report to the Commissioner the hospital's payor mix and the number and percentage of total hospital admissions that come in through the emergency room, report to and give the Department of Banking and Insurance veto authority over proposed out-of-network cost sharing plans, and, more generally, urge the hospital to reduce or eliminate duplicative services and excess inpatient beds. These conditions are essential to ensure that this transaction does not simply preserve the status quo in Newark — a status quo that creates significant and longstanding healthcare disparities for those serviced by the current healthcare system in the City --- as well as reflect many of the concerns expressed by New Jersey Appleseed regarding Primer's track record. They are integral to the Commissioner's findings and conclusions of law under CHAPA, and each of them must be included in the Final Order issued under the Act.

Notwithstanding our limited purpose in submitting this letter, I am attaching some of the comments New Jersey Appleseed submitted to the respective regulators during the administrative processes required by CHAPA. The CHAPA process in this matter inordinately dragged on for several years, and New Jersey Appleseed intervened more strenuously during the beginning of the process when we believed that the public would have a better chance at influencing the state decision-makers. The attached comments represented our last efforts, after St. Michael's filed for bankruptcy, to try to get state regulators to reject the proposed sale. As an organization representing the public, we were not advocating for closure of this hospital, but transformation of this facility; and, we were not rejecting sale to a for-profit entity per se, but sale to an organization that employed a different business model than Prime --- a California corporation best known for importing its out-of-network business model into New Jersey, initially through CarePoint owner's admission of Prime's influence (CarePoint operates facilities in Jersey City and Hoboken), and more recently, through its acquisition of St. Mary's Hospital (Passaic) and St Clare's Health System.

In any event, as a public participant in the CHAPA process, New Jersey Appleseed often comments on the actions taken and efforts made by the board of trustees of the relevant hospital in genuinely engaging the community affected by the proposed transaction, and undertaking a process that is both transparent and responsive. Most recently, we applauded the actions taken by the Trustees of East Orange Hospital in this regard. Unfortunately, in this matter, we cannot say the same. As the Attorney General noted in his letter to this Court, dated March 7, 2016, the board minutes of Saint Michael's Medical Center were devoid of strategic discussions regarding the sale process and the proposed sale (something New Jersey Appleseed has never seen when reviewing CHAPA files over the past twelve or so years); and, no genuine effort was made since

early 2011 to inform the community about the changes needed at the Hospital, and engage various community based organizations in that process (in contrast, to last ditch efforts to organize some members of the community through a handful of clergy in 2015 to advocate for the sale to Prime).

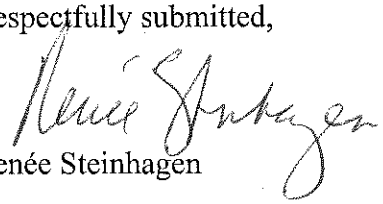
Accordingly, we are using this opportunity to simply express our disappointment with the Trustees and leadership of St. Michael's Medical Center, but understand the limited role of the equity court to actually require nonprofit hospital boards to satisfy their respective fiduciary duties in an alternative manner than that actually chosen by the board. In this matter, it is the opinion of New Jersey Appleseed, as an organizational member of the consumer-based New Jersey for Healthcare Coalition, an advocate for Newark recently established Medicaid accountability care organization, and an active supporter of the Greater Newark Healthcare Coalition, that under the circumstances presented in this case, the residents and taxpayers of Newark and the State would be better off with public ownership (with nonprofit management) of Saint Michael's Medical Center than with Prime's ownership.

The basis of our opinion is simple: The existence of approximately $252.5million in debt that New Jersey taxpayers will be paying off over the next decade, and the findings and conclusions of the Newark Navigant Report, recommending the downsizing and transformation of Saint Michael's Medical Center, to an out-patient facility. In other words, once the Trustees of Saint Michael's realized that they would not be able to repay the bond debt (or get any potential purchaser to assume that debt or any significant portion thereof), they should have expended their lobbying and public relations efforts to convince the current administration to take over the Hospital. In this way, public ownership would have guaranteed the transformation of the Hospital , in accord with the Newark Navigant Report, at the same time as ensured

repayment of the bonds with revenues generated by the facility rather than general taxpayer funds.

Instead, we are faced with a classic case where the narrow, private interests of the trustees and provider community associated with the Hospital have prevailed over the public good. Taxpayers will be paying off the debt, much of which was invested in a state of the art emergency department, without the attendant control needed to ensure that Newark residents will receive the care and services they actually need to improve current healthcare outcomes than the services that make its new owner the most profit.

Respectfully submitted,



Renée Steinhagen

Cc: Service List

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CATHLEEN D. BENNETT
Acting Commissioner

March 7, 2016

VIA UNITED PARCEL SERVICE

David A. Ricci
President/Chief Executive Officer
Saint Michael's Medical Center
111 Central Avenue
Newark, New Jersey 07102

Re: Transfer of Ownership – Saint Michael's Medical Center
CN# FR 13-0405-07-01
Acquisition Cost: $62,200,000
Expiration Date: March 7, 2021

Dear Mr. Ricci:

I am approving your certificate of need (CN) application submitted on April 1, 2013, pursuant to N.J.A.C. 8:33-3.1, for the transfer of the ownership of St. Michael's Medical Center, Inc. (St. Michael's or SM), a New Jersey non-profit corporation, to Prime Healthcare Services - Saint Michael's, LLC (Prime St. Michael's or Applicant), a Delaware Limited Liability Company. Prime Healthcare Services, Inc. (PHSI) is the sole member of Prime St. Michael's. PHSI has its own board of directors, of which Dr. Prem Reddy is the Chairman. Prime Healthcare Holdings, Inc. (PHHI) is the sole shareholder of PHSI. Dr. Reddy is the sole director of PHHI. The sole shareholder of PHHI is the KASP Trust whose sole grantor is Dr. Reddy. It should also be noted that Dr. Reddy is the sole director of Prime Healthcare Management, Inc. (PHMI), which will provide administrative support to Prime St. Michael's in such areas as finance, laboratory, clinical operations, radiology, supply chain, etc. PHMI is solely owned by Dr. Reddy's Family Trust. A transfer of ownership of an entire general hospital is subject to the full CN review process, in accordance with N.J.A.C. 8:33-3.3(a)1. I evaluated this application according to the standards set forth in statute (N.J.S.A. 26:2H-1 et seq.) and by administrative rule (N.J.A.C. 8:33). I am satisfied that the application submitted by Prime St. Michael's is consistent with those requirements. The application is being approved at the acquisition cost noted above.

This CN approval is limited to the transfer of ownership of St. Michael's, a general acute care hospital with 358 beds. Categorically, the bed composition would be 281 Medical/Surgical beds, 36 Adult ICU/CCU beds, 35 Adult (Open) Acute Psychiatric beds and 6 Adult (Closed) Acute Psychiatric beds. The hospital's service complement would include the existing 7 Inpatient Operating Rooms (ORs), 2 Adult Cardiac Surgery ORs, 6 Adult Cardiac Catheterization Laboratories, 1 Cystoscopy Room, Acute Hemodialysis services, 2 Linear Accelerators, 2 Fixed CT Units, 1 Closed MRI Unit and 1 Sleep Center.

According to the Applicant, in late 2010, Catholic Health East (CHE) determined that it was necessary to make operational and financial changes, and engaged a professional services firm to develop and implement an operational turnaround plan. The year-end closing for 2010 revealed an operating loss of $23 million. Applicant states that, during the first quarter of 2011, and then through the summer of 2011, two operational plans, the second plan more robust than the first, were developed and implemented to turn around performance. However, due to continuing declines in volumes and revenue, the FY 2011 year-end loss from operations was $27 million. It became clear to the Board of Directors that the hospital's current path was not sustainable.

After an in-depth analysis of current market and utilization changes, the Board of Directors unanimously agreed to seek a joint venture or other strategic partnership that would improve St. Michael's ability to continue to provide inpatient and outpatient healthcare services to the community. This process began in February 2012 with CHE management retaining an outside financial organization to determine all options that might exist for St. Michael's, including the sale of the hospital. In November 2012, CHE management accepted the offer from PHSI to acquire St. Michael's and continue its mission to the community.

Prime St. Michael's CN application clearly expresses its commitment to the continuity of services in Newark for at least five years. The Applicant has indicated that it intends to operate the hospital as a general acute care hospital following the transfer of ownership and maintain the existing service complement and programs at the hospital's existing location in Essex County. Prime St. Michael's also plans to hire substantially all current hospital employees who are employed at St. Michael's. In addition, Prime St. Michael's has made a commitment to invest $25 million in capital expenditures over the first five years.

For the reasons that follow, I am approving, with conditions, the application submitted for the transfer of ownership of St. Michael's to Prime St. Michael's. My decision to approve this CN application is consistent with the recommendation of the State Health Planning Board (SHPB), which unanimously recommended approval of CN# 130405-07-01 at its February 4, 2016 meeting. In reaching this decision, I considered the CN application for the transfer of ownership of St. Michael's, completeness questions and responses, the public hearing transcript, written comments and exhibits, Department of Health (Department) staff recommendations, SHPB recommendations, the Final Report for Greater Newark Healthcare Services Evaluation

(Navigant Report) issued by Navigant Consulting, Inc. (Navigant), St. Michael's Response to the Navigant Report, dated April 6, 2015 (SM's Response), the hospital's Supplemental Response to the Navigant Report, dated May 5, 2015 (SM's Supplemental Response), Navigant's Response to Saint Michael's Medical Center Comments on the Greater Newark Healthcare Services Evaluation Report, dated May 11, 2015 (the Navigant Response), and a letter from the Department of Human Services, Division of Mental Health and Addiction Services (DMHAS) submitted in support of Prime St. Michael's application. The referenced materials are incorporated and made a part of this final decision.

Public Hearing

As part of the review process, the SHPB is required to hold at least one public hearing in the service area of the health care facility within 30 days of the application being declared complete by the Department. A public hearing was held on December 15, 2015, from 6:00 pm until 8:00 pm, at the New Jersey Institute of Technology, located at 323 Martin Luther King Boulevard in Newark, NJ. There were over 200 individuals in attendance, and thirty-two of them spoke - all in favor of approval of the application. Several speakers noted hospital closures over the years, particularly in the Newark area, and maintained that the hospital was clearly needed. A number of speakers stated that the community could not, and should not, suffer the loss of another hospital and the array of health services, jobs and economic benefits it brings to the many vulnerable members of the community. Others noted the investment in the hospital promised by PHSI. Approval of the application was endorsed by all elected officials who spoke (Councilwoman Mildred Crump, Councilman Joseph McCallum and Councilwoman Gayle Chaneyfield-Jenkins of the Newark City Council; Freeholder Britnee Timberlake, President of the Essex County Freeholder Board; and State Assemblyman Thomas Giblin). Several speakers also praised PHSI as a good corporate entity. Members of St. Michael's Board of Directors noted the high bar that was set for a potential buyer of the hospital and stated that Prime St. Michael's was the best choice in the interest of the hospital and its values and the community as a whole.

In response to a completeness question, the Applicant stated that it expected letters of support from elected as well as public officials and community leaders. Response to Completeness Question #32, Round 1, dated June 26, 2013. Letters of support were received from Councilman Augusto Amador (East Ward), Council Member-at-Large Carlos M. Gonzalez, Mayor Luis A. Quintana (City of Newark) and Councilman Anibal Ramos, Jr. (North Ward). In addition, several hundred letters of support were received from residents of Newark and surrounding communities, employees of St. Michael's, community groups and local healthcare providers.

Two groups, New Jersey Appleseed (Appleseed) and the Committee of Interns and Residents/SEIU Healthcare (CIR), submitted written comments expressing concerns that PHSI's record in California and in other states is suspect in a number of areas and should be taken into consideration by the Department and the SHPB during its review. Specifically, Appleseed stated that PHSI's business model does not serve the public interest and is "antithetical" to the recommendations of the Navigant Report referenced below. According to Appleseed, there are "deeply disturbing aspects of" PHSI's business model, including a pending Medicaid fraud investigation, allegations in three pending lawsuits of up-coding, excessive admissions through the emergency department rather than the utilization of observation status, rendering unnecessary medical services, use of an out-of-network insurance model, and "other abusive, if not illegal practices." Among the conditions Appleseed proposed was the appointment of a monitor under N.J.S.A. 26:2H-7.11(i). CIR, which states that it is the nation's oldest and largest housestaff union, representing more than 14,000 interns, residents and fellows, also expressed concern regarding allegations that some of PHSI's business practices "have crossed an ethical or legal line." In particular, CIR expressed "doubts that [PHSI's] intended operation of the hospital based on its track record, public statements, and either indifference or hospitality to the legitimate questions raised by the Navigant Report about the state of healthcare in the greater Newark [area] will yield a positive outcome for the patient population of Newark." CIR also noted that it was "further concerned that [PHSI's] intended operation of Saint Michael's Medical Center post-sale might yield a real and credible threat to the continued operation of University Hospital in an economically secure fashion.

I acknowledge these concerns, which are addressed in some of the recommended conditions found later in this approval letter. The Department also consulted with the Office of the Attorney General as to its investigation of PHSI under the Community Health Care Assets Protection Act. The Department is unaware of any finding that a Prime entity or any of its principals are guilty of any criminal action related to the operation of hospitals in any state.[1]

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[1] Allegations of wrongdoing by PHSI gave rise to a request by Appleseed for appointment of a monitor. Staff supports requiring facilities to use consultants for particular purposes but the use of a general monitor will not be a condition. In past instances where the Department has appointed an independent health care monitor, the cost of the monitor substantially outweighed the benefits derived from the monitor. A general monitor is typically not as effective as state oversight. The Department is able to oversee compliance and monitor care through the following mechanisms: ongoing evaluation of compliance with Certificate of Need (CN) Conditions; regulatory enforcement such as plans of correction, on-site revisits and civil monetary penalties, as necessary; on-site monitoring visits, which are unannounced; review of facility reporting, including financial performance; complaint investigations; and consultation with Centers for Medicare and Medicaid Services, as necessary. In addition, the Department has authority to have direct input into fiscal and management decisions of a financially distressed hospital. N.J.S.A. 26:2H-5; 2H-5.1b. The Department also may place conditions on CNs that are tailored to for-profit purchases.

Navigant Report

In July 2014, the New Jersey Health Care Facilities Financing Authority (HCFFA) engaged Navigant Consulting, Inc. (Navigant) "to evaluate the current inventory of healthcare services in the Greater Newark area to determine whether there is duplication of services, unused capacity, or an insufficiency of necessary services in this area, and if so, propose recommendations to the Commissioner of the New Jersey Department of Health ... for consolidation or regionalization of services." Navigant Report, p. 3. On March 2, 2015, Navigant issued its report, setting forth its findings and recommendations. The Department believes the Navigant Report is a valuable tool to help it fulfill its responsibility for the development and administration of the State's policy with respect to health care planning, including hospital and related health care services.

Several of the Navigant Report's findings are of particular relevance to the review of the current application. For example, Navigant concluded that "there is currently excess inpatient capacity in every inpatient bed type (pediatrics, obstetrics, psychiatry, and medical/surgical)[, and that] this surplus is expected to increase in the future." Navigant Report, p. 84. Navigant also found that "there appears to be substantial duplication of services and relatively few unique services in the Planning Area." Id. In addition, Navigant noted that

> [p]hysicians on staff at the Planning Area hospitals have a higher average age than nationally and their practice model ... is predominately solo and small group practices. This combination of an older age profile and a traditional practice mode will make replacing Planning Area physicians who retire or otherwise leave practice increasingly difficult, given that newly trained physicians are choosing hospital employment or large group practice settings.

Navigant Report, p. 86.

Finally, Navigant notes that "[t]here appears to be a high degree of fragmentation in the organization and delivery of healthcare services in the Planning Area as evidenced by the significant and increasing excess bed capacity and the comparable paucity of accessible, appropriately distributed ambulatory care facilities in the Planning Area." Id.

Navigant also found that St. Michael's "financial position does not appear sustainable and would likely require a significant additional ongoing subsidy without fundamental changes in the organization's operations and/or business model." Navigant Report, p. 49.

With respect to payer mix, Navigant found that St. Michael's discharges from Medicare were higher proportionally than those for the Planning Area overall.

St. Michael's Bankruptcy Filing:

On August 10, 2015, St. Michael's filed for bankruptcy under Chapter 11 of the Bankruptcy Code. The Bankruptcy Court set November 3, 2015 as the deadline by which potential purchasers were to submit bids for the purchase of St. Michael's.

Only one other potential purchaser, Prospect St. Michael's, Inc. (Prospect), submitted a bid by the November 3rd deadline, and on November 5, 2015, St. Michael's conducted an auction. On November 6, 2015, St. Michael's and the Applicant entered into the First Amended and Restated Asset Purchase Agreement (Amended APA), which replaced the Asset Purchase Agreement that was submitted with the application. On November 9, 2015, the bids resulting from the auction were presented to St. Michael's Board of Directors, and the Board determined that Prime St. Michael's was the successful bidder. The Board designated Prospect as the "Back-up Bidder," meaning that if Prime St. Michael's fails to close as a result of its breach or default, the assets may be sold to Prospect.

On November 12, 2015, the Bankruptcy Court held a hearing to consider the proposed bids and, at the conclusion of the hearing, the Court approved the Board's designation of Prime St. Michael's as the Successful Bidder, and Prospect as the Back-up Bidder. The only transaction that is currently before the Department is the acquisition by Prime St. Michael's as set forth in the Amended APA.

DMHAS:

DMHAS submitted a letter in support of Prime St. Michael's application, dated September 4, 2015, noting that "SMMC provides a range of voluntary and involuntary inpatient behavioral-health services, as well as an intensive outpatient [alcohol and substance use] day program."

DMHAS indicated that it currently contracts with St. Michael's for 24 slots in the outpatient substance use treatment service. Eliminating the outpatient treatment slots at St. Michael's would create a gap in needed services, leaving DMHAS to secure substance use treatment services from other addiction treatment providers.

According to DMHAS, St. Michael's currently has a behavioral health unit that consists of 14 voluntary beds and six involuntary (DMHAS-designated Short Term Care Facility) beds. If these beds were decreased or eliminated, DMHAS states that the decrease or elimination would "take away the choice for individuals to obtain mental health treatment in their community." In addition, DMHAS notes that

> overall system data from the County System Review Committee, responsible for reviewing the Essex County acute care system, indicates that the need for inpatient behavioral health resources exceeds the current inpatient services provided. The system in Essex County consistently notes system delays such as screening programs being unable to place

persons within 24 hours of physician certification. This is evidenced by the fiscal year 2015 data which reflects 251 episodes in Essex County where placement was not possible within 24 hours of a physician certificate, equaling approximately 20 cases per month. These delays will increase if the number of involuntary beds is decreased.

DMHAS also notes that St. Michael's behavioral health services "have been in a state of transition for the past five years" and "[i]ncreased oversight of the [DMHAS-designated Short Term Care Facility] beds by the new ownership is recommended to ensure that we maximize the use of these beds."

The Applicant's Concerns Regarding Certain Conditions

During the SHPB's February 4, 2016 meeting, counsel for the Applicant raised concerns about several of the conditions proposed in the staff recommendations and asked for changes to those conditions. First, Prime St. Michael's expressed concerns regarding Condition 12, which requires the establishment of a Local Governing Board. The Applicant wanted the condition to provide that Prime St. Michael's was only obligated to operate a Local Governing Board for five years. John Calabria, on behalf of the Department, explained that the intent was to require the Applicant to maintain the Governing Board as long as the hospital was under Prime St. Michael's management. The Applicant also requested that the requirement in Condition 12 requiring Prime St. Michael's to submit certain information to the Department on a quarterly basis, be changed to submission on an annual basis. The SHPB declined to recommend either proposed change to Condition 12.

Prime St. Michael's also expressed concerns regarding Condition 18, which relates to the creation of an Advisory Board. The Applicant asked that any reference to the Advisory Board's directive to "supervise" Prime St. Michael's compliance be changed to review, assess, or evaluate. The SHPB recommended that the Department consider such language changes.

Finally, Prime St. Michael's asked that Condition 19 be revised to take out the requirement that the Applicant post its quarterly financial statements on its website. Initially, counsel for the Applicant argued that posting the unaudited quarterly financial statements would be "onerous and burdensome." However, in response to questioning from the chairperson of the SHPB, the Applicant's President of Operations acknowledged that such quarterly financial statements would be presented to the hospital's Local Governing Board (required by Condition 12) and, thus, would not be onerous or burdensome to post on its website. Nevertheless, he noted that placing these unaudited statements on the hospital's website and making them available to the public would be "unique." He also questioned the necessity of doing so and suggested that it might entail more work. The members of the SHPB then discussed the Applicant's concerns regarding Condition 19. Some members of the Board opined that unaudited quarterly financial statements were not necessary and could be difficult to understand, while others thought such statements were an important transparency tool

for the public, especially for a hospital that has been in financial distress. After discussion, the SHPB voted on whether to recommend that change and decided by a vote of three to two to recommend that the phrase "and quarterly financial statements" be deleted from Condition 19.

Analysis

N.J.S.A. 26:2H-8, as well as N.J.A.C. 8:33-4.9(a), provide for the issuance of a CN only where the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, will not have an adverse economic or financial impact on the delivery of health services in the region or statewide, and will contribute to the orderly development of adequate and effective health care services. In making such determinations, I must take into consideration: (a) the availability of facilities or services which may serve as alternatives or substitutes; (b) the need for special equipment and services in the area; (c) the possible economies and improvement in services to be anticipated from the operation of joint central services; (d) the adequacy of financial resources and sources of present and future revenues; (e) the availability of sufficient manpower in the several professional disciplines; and (f) such other factors as may be established by regulation.

As to the specifics of this application, N.J.S.A. 26:2H-8(a) requires that I consider the availability of facilities or services which may serve as alternatives or substitutes. The Applicant has demonstrated that while there are alternative hospitals within the primary service area of St. Michael's, Essex County residents would likely experience limitations on access in health care services if St. Michael's were to close or significantly downsize its outpatient services. Navigant found that St. Michael's discharges from Medicare were higher proportionally than those for the Planning Area overall; this suggests that if St. Michael's were to close, the Medicare population would be negatively impacted. The acquisition of the hospital by Prime St. Michael's will preserve the current level of health care services in the area. I have taken into consideration the decision of St. Michael's Board of Directors and their fiduciary accountability to the community served by St. Michael's. In its application, Prime St. Michael's stated that it had no intentions to downsize services or reduce any service currently provided at St. Michael's and that this will provide for accessibility and continuity of health care in this community. I have also taken into consideration that there are other hospitals in Essex County that may serve as alternatives for the inpatient services at St. Michael's, but find that, at least in the near term, this transfer of ownership will not significantly impact the ability of these hospitals to coexist, or adversely impact the current level of care or services in the area. I also recognize that in its Response to Completeness Question #3, dated June 24, 2015, Prime St. Michael's acknowledged that it would work with the Department to expand or consolidate beds or services as necessary. I read this to mean that the Applicant is willing to consider the expansion of outpatient services as well as the consolidation or reduction of inpatient beds and services, both of which are in line with what the Navigant Report recommends.

I agree that the proposed transfer of ownership, as opposed to closure of St. Michael's, will preserve appropriate access to health care services for the community, including the medically indigent and medically underserved population. A number of the speakers at the public hearing spoke of the importance of the hospital in the community as a provider of health care, a major employer, and a contributor to the financial viability of Newark through tax payments.

I also find that the requirement at N.J.S.A. 26:2H-8(b) to consider the need for special equipment and services in the area would be met in this case. One example is the need for inpatient and outpatient behavioral health services in Essex County and, specifically, how data suggests that the current need for inpatient behavioral health resources exceeds the current level of those services provided. Decreasing or eliminating these services provided by Saint Michael's would exacerbate that problem. Prime St. Michael's agrees to offer the same services that are currently licensed at the present facility.

With respect to N.J.S.A. 26:2H-8(c) regarding the possible economies and improvement in services to be anticipated from the operation of joint central services, there are economies of scale to be realized by this acquisition. For example, in response to completeness questions, PHSI stated that PHMI "will provide administrative support to Prime St. Michael's in such areas as finance, laboratory, clinical operations, radiology, supply chain, etc." In addition, PHSI has allocated corporate money to establish an integrated information technology system among its acquired hospitals (St. Mary's, St. Clare's Dover and St. Clare's Denville) and this pending hospital acquisition (St. Michael's) in New Jersey. This integrated system would allow these hospitals and their physicians to share both medical and patient information and is expected to be completed within 18 to 24 months.

N.J.S.A. 26:2H-8(d) requires me to examine the adequacy of financial resources and sources of present and future revenues. A financial analysis of Prime St. Michael's application undertaken by the Department indicates that the Applicant will have sufficient resources to implement and sustain the project. In the first nine months of 2015, PHSI generated a positive bottom line of $161 million, which translates to a 6.7% profit margin. As of September 30, 2015, PHSI had $108 million in cash on hand. In addition, in October 2015, PHSI completed a financing that provides a $400 million line of credit and a $200 million term loan. These loans will provide funds for acquisitions and working capital for PHSI facilities, including Prime St. Michael's. As evidenced by the St. Michael's bankruptcy filing, I am convinced that continuation of the operating losses at St. Michael's could put the future of the hospital at risk and lead to the hospital's closure.

With respect to N.J.S.A. 26:2H-8(e), regarding the availability of sufficient manpower in the several professional disciplines, I am satisfied that there will be sufficient qualified personnel because Prime St. Michael's plans to operate all of the existing beds and services presently at St. Michael's and retain substantially all of the current employees when the transfer of ownership is completed. Prime St. Michael's

plans to actively recruit new physicians and encourage those physicians who previously utilized the hospital to once again return to provide care. Part of Prime St. Michael's plan is to work in conjunction with community leaders and their own medical staff as well as surrounding hospitals to identify health care needs for more specialized services and recruit appropriate medical staff to fill any service gaps. Prime St. Michael's also plans to implement a community outreach program to provide more accessible primary care in an effort to change the community culture of using the Emergency Department as a primary care provider thereby allowing the Emergency Department to function as intended for the delivery of emergency care.

N.J.S.A. 26:2H-8(f) requires consideration of such other factors as may be established by regulation. Therefore, I have taken into consideration the applicable administrative rules governing the services subject to full review (i.e., N.J.A.C. 8:33-1.1 et seq.). Prime St. Michael's is in compliance with the access requirements set forth in N.J.A.C. 8:33-1.1 et seq. and N.J.A.C. 8:33-4.10(a). Specifically, the Applicant will continue to maintain its commitment to the community to preserve access to health care for the residents, including the medically indigent and medically underserved populations. Prime St. Michael's states that it will provide care in accordance with N.J.S.A. 26:2H-18.64 and N.J.A.C. 8:43G-5.2(c) regarding the provision of healthcare services regardless of the patient's ability to pay or payment source.

N.J.A.C. 8:33-4.9(a) requires a demonstration by the Applicant that this transfer of ownership shall not have an adverse impact on the population being served in regards to access and quality of care. The Applicant indicates that the transfer of ownership of St. Michael's will preserve and enhance the financial viability of the hospital and allow it to continue as a general acute care hospital providing the same level of health care services in the community. Prime St. Michael's also intends to continue to serve the same payer mix,[2] thereby maintaining all of the established bridges to access and care. I find that denial of the CN transfer of ownership application would adversely affect the medically indigent and underinsured because the hospital is a major provider of emergency and urgent care for those populations.

With respect to the Navigant Report's findings identified above, I find the Applicant's responses to the Department's completeness questions related to the Navigant Report to be somewhat troubling. For example, Prime St. Michael's calls the Navigant recommendations "completely tainted," and states that "none of the Navigant recommendations provide useful information." Response to Completeness Question #1, dated June 24, 2015. The Applicant cites SM's Response and Supplemental Response to the Navigant Report as support for its view that the Department should disregard the Report. I disagree.

St. Michael's primary objection to the Navigant Report is its assertion that implementation of Navigant's recommendations would create an "unregulated monopoly

[2] According to Applicant, in year 2014, St, Michael's payer mix was 46% Medicare; 15% Medicaid; 9% Blue Cross; 2% Commercial Insurance; 1% Self Pay; 7% Indigent and 20% Other, which totals 100%.

in inpatient hospital services in the Newark area." SM's Response, p. 1. Navigant refutes that assertion, noting that residents

> would continue to have access to the ten (10) hospitals (in addition to the hospitals in the Planning Area) located within a 15-mile radius of downtown Newark. And as the report clearly showed, many residents of the Greater Newark area are already traveling to facilities other than the five hospitals included in the report, as approximately 33% of the residents of the Planning Area defined in the study leave the Greater Newark area for their inpatient care. Secondly, the State of New Jersey currently has a well-defined regulatory system in place that includes Certificate of Need requirements, so the assertion that the recommendations would create an "unregulated monopoly" are clearly overstated and incorrect.

Navigant Response, p. 1.

As noted above, several of the findings in the Navigant Report are of particular relevance to the review of the current application, including excess inpatient capacity and duplication of services, physician practice models in the region, and the lack of accessible, appropriately distributed ambulatory care facilities in the Planning Area compared to the significant and increasing excess bed capacity. With respect to excess inpatient capacity and duplication of services, Prime St. Michael's states that it "does not believe that services should be reduced merely because they are 'duplicative'" (Response to Completeness Question #2, dated June 24, 2015), but indicates that, "[o]nce the transfer is complete and we have had an opportunity to carefully evaluate the needs of the community, Prime is willing to work with the Department to expand or consolidate beds or services as necessary." Response to Completeness Question #3, dated June 24, 2015.

With respect to Navigant's finding that "[p]hysicians finishing their training today overwhelmingly seek employment opportunities, as opposed to pursuing solo practices or joining small groups," which are the practice models currently employed in Newark, the Applicant limited its response to hospital employment, without addressing the region's higher average age than nationally, and the trend toward newly trained physicians choosing large group practice settings over the practice models currently employed in the service area. Response to Completeness Question #9, dated June 24, 2015.

Finally, when asked whether the Applicant was willing to explore discussions with any of the area providers to identify and reduce unnecessary or duplicated services, or enhance ambulatory care services that would provide greater access to the community served by St. Michael's, Prime St. Michael's responded that it "will engage in, where appropriate, efficiency enhancing joint ventures with other hospitals in the market in order to improve ambulatory care," but "cannot agree with its competitors to reduce services, outside an integrated joint venture." Response to Completeness Question #2, dated June 24, 2015.

Despite my concerns regarding Prime St. Michael's response to the Navigant Report, I find that there is sufficient evidence of the Applicant's commitment to address many of the issues identified in the Report. A national health-care services delivery company, PHSI has shown its ability to respond to the rapidly changing reimbursement and care-delivery models in health care in other states. The Applicant's objective in this transfer of ownership is to reshape the healthcare delivery system at St. Michael's and provide more efficient and effective services, without causing any disruption in the continuity of care for its patients. Moreover, based on DMHAS' concerns set forth in its September 4, 2015 letter of support, I find that there is a need in the community for the behavioral health services currently provided by St. Michael's, and that "[i]ncreased oversight of the [DMHAS-designated Short Term Care Facility] beds by the new ownership is recommended to ensure that we maximize the use of these beds."

I find that Prime St. Michael's has provided an appropriate project description, information as to the financial impact of the transfer of ownership, including operating costs and revenues, services affected, equipment involved, source of funds, utilization statistics, and justification for the proposed project (N.J.A.C. 8:33-4.10(b)), assurance that all residents of the area, particularly the medically underserved, will have access to services (N.J.A.C. 8:33-4.10(a)), and assurance that it will meet appropriate licensing and construction standards (N.J.A.C. 8:43G-1.1 et seq. and N.J.A.C. 8:33-4.10(d)).

In accordance with factors set forth at N.J.A.C. 8:33-4.10, the Department analyzed PHSI's track record in various states where it has operated. Hospital regulators in California, Nevada, Pennsylvania, Rhode Island and Texas provided track record information for each PHSI-owned hospital in these states. In addition, in response to a completeness question, the Applicant provided a written attestation, dated November 30, 2015, stating that no hospitals owned, operated or managed by PHSI have been subject to any track record violation set forth in N.J.A.C. 8:33-4.10(d)4 or 5, with the exception of two facilities in California, both of which corrected the cited deficiencies. Department staff identified no track record violations sufficiently serious to warrant denial of the application.

Finally, I address Prime St. Michael's request that Conditions 12, 18 and 19 be revised. With respect to Prime St. Michael's request that Condition 12 be revised, I agree with the SHPB's recommendation that no change is necessary. Regarding the Applicant's request that the term "supervise" in Condition 18 be changed, I agree, and have made changes to more accurately describe the scope of the Advisory Board's oversight. With respect to Prime St. Michael's request that the phrase "and quarterly financial statements" be deleted from Condition 19, I decline to make such a change. The requirement that the Applicant post its quarterly financial statements on its website is based on a report issued by the Department in 2014, entitled "Hospital Financial Transparency."[3] In that report, the Department recommended that quarterly unaudited financial statements "be made available to the public on each hospital's website within 60 days of the end of the quarter except when it conflicts with the SEC or other federal

[3] See http://nj.gov/health/documents/hospital_transparency_report.pdf.

requirements. . . . The reporting of quarterly unaudited financial statements would not overly burden hospitals because the information is routinely prepared." Hospital Financial Transparency at p. 15. Representatives of Prime St. Michael's acknowledged in response to questioning by the SHPB that quarterly financial statements will be prepared for the Local Governing Board. Although a bare majority of the SHPB voting members recommended that the reference to quarterly financial statements be removed from Condition 19, I believe those who voted to remove the reference may not have fully appreciated the importance of hospital financial transparency. Therefore, I decline to make the recommended change to Condition 19.

Approval With Conditions

Based on the foregoing, I am approving the application for the transfer of ownership of St. Michael's to Prime St. Michael's. My decision to allow this transfer of ownership is based on the fact that the operation of St. Michael's under the proposed new ownership would be beneficial to the population in its service area and will preserve access to health care services for the community, including the medically indigent and medically underserved population, and will preserve and appropriately utilize DMHAS' behavioral health beds. This transfer of ownership will strengthen the financial viability of St. Michael's, making it better equipped to provide the health care services needed to serve the core population of its primary service area. I believe that this approval will not have an adverse impact on the other existing hospitals in Essex County or the surrounding counties. There is no existing data to suggest that this transfer of ownership would alter St. Michael's relationship with the other existing Essex County/regional hospitals or adversely impact the health status of any of the communities served by all hospitals in Essex County and surrounding counties.

My decision to approve this application also factors in the Applicant's plans to rebuild the healthcare delivery system at St. Michael's by enhancing its medical and non-medical supportive technology, and its intention to implement the initiatives set forth in Condition 14 below.

Finally, I acknowledge that St. Michael's has had a commitment to the residents in its service area, and I believe that this approval will enable the hospital, under its new ownership, to maintain its commitment to the community into the foreseeable future. For the reasons set forth in this letter and noting the recommendations of the SHPB and DMHAS, I am approving Prime St. Michael's application for the transfer of ownership of St. Michael's subject to the following conditions:

1. The Applicant shall complete the Office of Attorney General Community Health Care Assets Protection Act, N.J.S.A. 26:2H-7.10 et seq., review for the proposed transfer of ownership of assets of St. Michael's to Prime St. Michael's.

2. The Applicant shall file a licensing application with the Department's Division of Certificate of Need and Licensing (Division) to execute the transfer of the ownership of the assets of St. Michael's to Prime St. Michael's.

3. The Applicant agrees to retain substantially all of the current employees at St. Michael's. Six months after licensure, Prime St. Michael's shall document to the Division the number of full-time, part-time and per diem employees retained and provide the rationale for any workforce reductions.

4. Within 60 days of licensure, the Applicant shall notify the Division, in writing, of specifically who is responsible for the safekeeping and accessibility of all St. Michael's patients' medical records (both active and stored) in accordance with N.J.S.A. 8:26-8.5 et seq. and N.J.A.C. 8:43G-15.2.

5. Prime St. Michael's shall participate in meetings that address inpatient and outpatient medical and behavioral health care trends, needs, service reallocations, consolidations, and Regional Planning Collaboratives necessary to ensure a quality, accessible system of care for Newark and the surrounding areas.

6. Within twelve months of licensure, and annually thereafter for five years, Prime St. Michael's shall provide the Division with a written report detailing:

   a. Its plan to reduce unnecessary and duplicative services and excess inpatient beds, if any;

   b. Its plan for addressing the need to expand or add ambulatory care services; and

   c. Capital improvement plans, including physical plant improvements, equipment upgrades and additions (including IT), and other capital projects.

7. Prime St. Michael's shall invest in programs designed to improve public health, community health services, and health and wellness and, within twelve months of licensure, shall provide the Division with a written sustainability plan detailing how it intends to ensure the financial viability of such programs. Prime St. Michael's investment in such programs shall be coordinated with its development and implementation of the Community Health Needs Assessment (CHNA) referenced in Condition 12 below.

8. Prime St. Michael's shall participate in, cooperate with, and support the Greater Newark Healthcare Coalition (GNHC) in its regional planning activities and services.

9. Prime St. Michael's shall operate St. Michael's as a general hospital, in compliance with all regulatory requirements, including the operation of behavioral health services as designated by DMHAS and other State agencies, including, but not limited to, the Department of Children and Families, currently involved with St. Michael's provision of behavioral and mental health services. Any changes involving either a reduction, relocation

out of St. Michael's current service area, or elimination of clinical services or community health programs offered by St. Michael's former ownership shall require prior written approval from the Department and shall be subject to all applicable statutory and regulatory requirements.

10. Prime St. Michael's shall continue compliance with N.J.A.C. 8:43G-5.21(a), which requires that "[a]ll hospitals . . . provide on a regular and continuing basis, out-patient and preventive services, including clinical services for medically indigent patients, for those services provided on an in-patient basis." Within 30 days of the issuance of the license and every six months thereafter for a period of five years, Prime St. Michael's shall submit documentation of compliance with this condition to the Division. Such documentation of clinical services shall include, but not be limited to, a list of all physician specialties, the number of physicians within each specialty and the number of those physicians within each specialty that accept Medicaid reimbursement.

11. Prime St. Michael's shall comply with federal Emergency Medical Treatment and Active Labor Act requirements, and provide care for all patients who present themselves at St. Michael's without regard to their ability to pay or payment source, in accordance with N.J.S.A. 26:2H-18.64 and N.J.A.C. 8:43G-5.2(c), and shall provide unimpaired access to all services offered by the hospital.

12. Within 60 days of licensing, Prime St. Michael's shall establish a Local Governing Board for the hospital responsible for (a) representing the Acute Care Hospital in the community and taking into account the views of the community in its deliberations; (b) participating in Prime St. Michael's community outreach programs; (c) supervising the Hospital's Charity Care policies and practices; (d) monitoring financial indicators and benchmarks; (e) monitoring quality of care indicators and benchmarks; and (f) developing and implementing a CHNA that aligns itself with "Healthy New Jersey 2020," the State's health improvement plan and health promotion and disease prevention agenda for the decade.

The Local Governing Board shall adopt bylaws and maintain minutes of monthly meetings. Prime St. Michael's shall submit to the Division, on a quarterly basis, a current working description of the Local Governing Board's authorities, roles and responsibilities, governance authority, and shall clearly define those in comparison to its working relationship with the national PHSI Board. On an annual basis, Prime St. Michael's shall provide the Division with the Local Governing Board's roster and advise the Division of any significant changes to the Local Governing Board's policies governing Board composition, governance authority and Board appointments made during each year that the hospital is in operation. The Local Governing Board shall maintain suitable representation of the residing population of St. Michael's service area who are neither themselves employees of, nor related to employees or owners of, any parent, subsidiary

corporation or corporate affiliate. A member of the Advisory Board established pursuant to Condition 18 shall be an ex-officio member of the Local Governing Board.

13. Within 30 days of licensing, Prime St. Michael's shall provide the Division with an organizational chart of the hospital and each service that shows lines of authority, responsibility, and communication between PHSI and hospital management and the Local Governing Board.

14. Every twelve months for the next five years, starting on the date a license is issued to Prime St. Michael's, Prime St. Michael's shall report to the Division the progress on the implementation and measured outcomes of the following initiatives noted in the application and in this approval letter (a through j below) to improve the operational efficiency and quality of care at St. Michael's, and shall present the most current report to the public at the hospital's Annual Public Meeting:

    a. The establishment and progress in management of a proposed Accountable Care Organization (ACO), its growth, and how the ACO is clinically and administratively integrated with the hospital;

    b. Measures that the ACO has taken to support the orderly development of efficient and effective health-care services and improve the quality of patient care management, thereby reducing unnecessary emergency department visits;

    c. Negotiations with health insurers on new contracts to increase better access for patients at St. Michael's;

    d. Efforts to fill service gaps to actively recruit new physicians and encourage those physicians who previously utilized the hospital to once again return to provide care;

    e. The plan to work in conjunction with community leaders and their own medical staff as well as surrounding hospitals to identify health care needs for more specialized services and recruit appropriate medical staff to fill any service gap;

    f. Plans to increase the operational efficiencies of the Emergency Department by decreasing "wall time" (the time paramedics and EMT's are required to wait in the Emergency Department) to increase overall community access;

    g. Plans to implement a community outreach program to provide more accessible primary care in an effort to change the community culture of using the Emergency Department as a primary care provider thereby allowing the Emergency Department to function as intended for the delivery of emergency care;

h. Collaborations with the GNHC;

i. Plans to expand outpatient services and reduce or eliminate duplicative services and excess inpatient beds; and

j. Compliance with Conditions 7 and 12.

15. Within 90 days of licensure, Prime St. Michael's shall develop and participate in a Community Advisory Group (CAG) to provide ongoing community input to the hospital's CEO and the hospital's Local Governing Board on ways that Prime St. Michael's can meet the needs of the residents in its service area. This would include participating in the development and updating of the CHNA referred to in Condition 12.

a. Prime St. Michael's shall determine the membership, structure, governance, rules, goals, timeframes, and the role of the CAG in accordance with the primary objectives set forth above, and within 60 days from the date of formation of the CAG, shall provide a written report setting forth that information to the hospital's Local Governing Board, with a copy to the Division and subject to the Department's approval.

b. Prime St. Michael's may petition the Department to disband the CAG not earlier than three years from the date of licensure and on a showing that all of the requirements in Condition 15 have been satisfied for at least one year.

16. For the initial five years following the transfer of ownership, Prime St. Michael's shall submit annual reports to the Division detailing:

a. The investments it has made during the previous year at the hospital. Such reports shall also include a detailed annual accounting of any long- or short-term debt or other liabilities incurred on the hospital's behalf and reflected on the Prime St. Michael's balance sheet;

b. The transfer of funds from the hospital to any parent, subsidiary corporation, or corporate affiliate. Such reports shall also detail the amount of funds transferred, in order to document that assets and profits reasonably necessary to accomplish the healthcare purposes remain with the hospital. Transfer of funds shall include, but not be limited to, assessment for corporate services, transfers of cash and investment balances to centrally controlled accounts, management fees, capital assessments, and/or special one-time assessments for any purpose;

c. All financial data and measures required pursuant to N.J.A.C. 8:31B and from the financial indicators monthly reporting; and

d. A list of completed capital projects itemized to reflect both the project and its expenditure.

17. Within 15 business days of approval of this application, Prime St. Michael's shall provide a report to the Division detailing its plans for communications to St. Michael's staff, the community, including but not limited to elected officials, clinical practitioners, and EMS providers, concerning the approval of the transfer of the license and the availability of fully-integrated and comprehensive health services.

18. Prime St. Michael's shall agree to take steps to ensure transparency, provide quality care to patients, and provide assurances to the Department of its continued financial viability. St. Michael's shall designate an Advisory Board, which shall be comprised of at least three individuals. Three individuals shall be selected by St. Michael's and two individuals may be selected by the Commissioner of Health. The Advisory Board shall meet quarterly to (a) review and assess Prime St. Michael's compliance with the Capital Commitments, (b) evaluate Prime St. Michael's compliance with the charity care policies, (c) evaluate Prime St. Michael's compliance with the ethical and religious directives, (d) evaluate Prime St. Michael's compliance with maintenance of all pastoral services, and (e) review and assess Prime St. Michael's compliance with State and Federal laws, statutes, regulations, administrative rules, and directives and the impact on community health care access and quality, and all conditions in any approval letter, and report such findings to the Department. Department staff may attend meetings of the Advisory Board.

    Prime St. Michael's shall agree to release, discharge and hold harmless members of the Advisory Board from any and all claims, liability, demands, causes of action or suits that may be made by or on behalf of Prime St. Michael's, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns, and all persons acting by, through, under, or in concert with them, that arise out of or are incidental to acts, omissions or reports issued in good faith by the Advisory Board, in accordance with this Condition. This release shall not apply to any loss, damage, liability or expense incurred as a result of any unlawful or malicious acts or omissions by any member of the Advisory Board.

    The Advisory Board shall: (i) be independent of any Prime entity, having no current or previous familial or personal relationship to any Prime entity, its principals, board members and/or managers, or be owned by any Prime entity in whole or in part and (ii) shall be acceptable to the Department. A member of the Advisory Board shall serve as an ex-officio, non-voting member of the Local Governing Board referenced above in Condition 12.

    The Advisory Board shall also monitor the following, and these findings shall be reported semi-annually, in writing, to both the hospital's Local Governing Board and the Department:

- Levels of uncompensated care for the medically indigent;
- Emergency department admissions;
- Provision of clinic services;
- Compliance with standard practices related to coding of diagnoses;
- Rationale for termination of insurance contracts;
- Insurance participation and policies related to out-of-network charges;
- Compliance with Department licensing requirements related to staffing ratios and overtime, and Department of Labor and Workforce Development (DOLWD) Wage and Hour requirements;
- Compliance with all other CN conditions within the required timeframes required by each condition.

Prime St. Michael's shall provide information to the Advisory Board upon request, and in the form requested. The Advisory Board shall be active for a minimum period of at least two years and shall provide all reports, findings, projections, and operational or strategic plans to the Department and Prime St. Michael's Local Governing Board for assessment. In the event Prime St. Michael's does not fulfill the commitments set forth in this Condition, the failure may be considered a licensing violation subject to maximum penalty and/or license revocation.

19. Prime St. Michael's shall post on the hospital's website annual audited financial statements within 180 days of the close of the hospital's fiscal year, and shall post quarterly unaudited financial statements within 60 days of the close of the hospital's fiscal quarter. All annual and quarterly statements shall be prepared in accordance with Generally Accepted Accounting Principles. With respect to the posting of quarterly unaudited financial statements, Prime St. Michael's may include disclaimer language regarding the unaudited nature of the Quarterly Financial Statements on its website where such statements are posted.

20. Within 60 days of posting its Audited Annual Financial Statements to its website, Prime St. Michael's shall hold an Annual Public Meeting in New Jersey, pursuant to N.J.S.A. 26:2H-12.50, and shall make copies of those audited annual financial statements available at the Annual Public Meeting. The Advisory Board referenced in Condition 18 shall be invited to attend the Annual Public Meeting, and to hear concerns expressed by community members. Prime St. Michael's shall develop mechanisms for the meeting that address the following:

    a. An explanation, in layperson's terms, of the audited annual financial statement;

    b. An opportunity for members of the local community to present their concerns to Prime St. Michael's and the Advisory Board regarding local health care needs and hospital operations;

c. A method for Prime St. Michael's to publicly respond, in layperson's terms, to the concerns expressed by community members at the Annual Public Meeting; and

d. Prime St. Michael's shall develop these methods (a through c above) within 90 days of the date of this approval letter and provide them to the Division.

21. After the transfer is implemented:

a. Prime St. Michael's shall use its commercially reasonable best efforts to negotiate in good faith for in-network HMO and commercial insurance contracts, with commercially reasonable rates based on the rates that HMOs and commercial insurance companies pay to similarly situated in-network hospitals in the northern New Jersey region.

b. Prime St. Michael's shall convene periodic meetings with the Department and the Department of Banking and Insurance (DOBI) to review and evaluate all issues arising in contract negotiations within the first year of licensure and provide written documentation to the Department on a monthly basis during that first year which shall include, but not be limited to, a description of the number and subject of telephone calls, correspondence and meetings with existing HMO and commercial insurance carriers, as well as follow-up telephone calls, correspondence and meetings. At a minimum, Prime St. Michael's shall have monthly contact with the existing HMO and commercial insurers. If the existing HMO and commercial insurers fail to respond to requests for negotiations, then Prime St. Michael's shall notify the Department and DOBI to request assistance.

c. Within 10 days of licensure, Prime St. Michael's shall post on the hospital's website the status of all insurance contracts related to patient care between the hospital and insurance plans, including all insurance plans with which St. Michael's contracted at the time of submission of this CN application, April 2013. Prime St. Michael's shall also provide notices to patients concerning pricing and charges related to coverage during termination of plans.

d. Within the first year of licensure, Prime St. Michael's shall notify the Department of the status of notices to terminate any HMO or commercial insurance contract that will expand out-of-network service coverage. Prime St. Michael's shall meet with representatives from the Department and DOBI to discuss the intent to terminate such contract, willingness to enter into mediation, and shall document how it will provide notice to patients and providers, as well as the impact that such action is reasonably expected to have on access to health care.

e. During the first year from the date of licensure, Prime St. Michael's shall report to the Department, for each six-month period, the hospital's payer mix and the number and percent of total hospital admissions that came through the emergency department. For four years thereafter, St. Michael's shall report the aforesaid information to the Department on an annual basis.

22. In accordance with the provisions of N.J.S.A. 26:2H-18.59h, Prime St. Michael's shall "offer to its employees who were affected by the transfer, health insurance coverage at substantially equivalent levels, terms and conditions to those that were offered to the employees prior to the transfer." This condition does not prohibit good faith contract negotiations in the future.

23. Prime St. Michael's shall maintain compliance with the United States Department of Health and Human Services Standards for Culturally and Linguistically Appropriate Services in Health and Healthcare. Compliance shall be documented and filed with the Division with annual licensing renewal.

24. For at least five years, Prime St. Michael's shall not enter into any contract or other service or purchasing arrangements, or provide any corporate allocation, or equivalent charge to affiliated organizations within PHSI except for contracts or arrangements to provide services or products that are reasonably necessary to accomplish the healthcare purposes of the hospital and for compensation that is consistent with fair market value for the services actually rendered, or the products actually provided.

25. Prime St. Michael's shall submit any proposed plan including documented compliance with law and regulations as it relates to out-of-network cost sharing with patients to DOBI prior to the implementation. Prime St. Michael's shall not implement any out-of-network cost sharing plans if DOBI objects thereto.

26. Prime St. Michael's shall comply with requirements of the DOLWD's Division of Wage and Hour Compliance that address conditions of employment and the method and manner of payment of wages.

27. Prior to licensure, Prime St. Michael's shall identify a single point of contact to report to the Division concerning the status of all of the conditions referenced within the time frames noted in the conditions.

28. All of the conditions shall also apply to any successor organization to Prime St. Michael's who acquires St. Michael's within five years from the date of CN approval.

Failure to satisfy any of the aforementioned conditions of approval may result in sanctions, including license suspension, monetary penalties and other sanctions in accordance with N.J.S.A. 26:2H-1 et seq. and all other applicable requirements. Acceptance of these conditions will be presumed unless written objections are submitted to the Department within 30 days of receipt of this letter. Upon receipt of such objections, this approval will be deemed suspended and the project shall be re-examined in light of the objections. We look forward to working with you and helping you to provide a high quality of care to the patients of St. Michael's. If you have any questions concerning this Certificate of Need, please do not hesitate to contact John Calabria, Director, at (609) 292-8773.

Sincerely,

Cathleen D. Bennett
Acting Commissioner

c: John A. Calabria, DOH

New Jersey
Appleseed

January 15, 2016

ELECTRONIC MAIL

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Re: Proposed Sale of Saint Michael's Medical Center to Prime Healthcare Services, LLC

Dear DAG Ganzman and Director Calabria:

In conjunction with the January 5, 2016, public hearing regarding the proposed sale of Saint Michael's Medical Center ("SMMC") to Prime Healthcare Services, LLC ("Prime"), we are writing to provide our comments pursuant to the Community Health Assets Protection Act ("CHAPA"), N.J.S.A. 26:2H-7.11. These comments are made on behalf of New Jersey Appleseed Public Interest Law Center ("New Jersey Appleseed"), and are intended to assist the Attorney General in his role as "protector, supervisor and enforcer of charitable trusts and charitable corporations." N.J.S.A. 26:2H-7.11. They supplement our written comments submitted to DHSS pursuant to the CN process on December 23, 2015 (which we incorporate herein), and our verbal statement presented at the CHAPA hearing.

New Jersey Appleseed
Public Interest Law Center of New Jersey
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It is our understanding that CHAPA "codifies" the Attorney General's common law responsibilities with respect to nonprofit hospitals, and supplements his "authority under the common law to act in the public interest to oversee and protect charitable trusts and charitable corporations." Governor's Conditional Veto Message, Assembly Bill No. 1439-L.2000, c.143. The Act also delegates a portion of these responsibilities to DHSS that must affirmatively find that the proposed transaction "is not likely to result in the deterioration of the quality, availability or accessibility of health care services in the affected communities." N.J.S.A. 26:2H-7.11(b).

A review of the factors the Attorney General must consider when determining whether a "fundamental corporate change that involves transfer of ownership or control of charitable assets or a change of the nonprofit's mission or purpose" (in the event of a for-profit conversion) N.J.S.A. 26:2H-7.11, is in the public interest indicates that CHAPA also codifies the common law fiduciary duties of directors of nonprofit corporations. Those duties include the duty of obedience to purpose,[1] the duty of care and the duty of loyalty. See Peregrine and Schwartz, "The Nonprofit Board's Duties When Considering a Change of Control," Health Law Analysis, (April 2008)p. 26-27. Although CHAPA applies certain criteria to all proposed acquisitions regardless of the nature of the acquiring entity, and applies certain criteria only to for-profit acquisitions (due to the fact that in the latter circumstance, the board has decided to abandon the hospital's charitable mission), all the Acts' strict standards for board review and approval are intended to assure that the board does not exceed or fail to carry out the corporation's charitable purpose. Id. at 27. In this way, CHAPA's review criteria supplant the application of the common law business judgment rule. Id.[2]

New Jersey Appleseed recognizes the importance of adhering to standards set forth in CHAPA in order to ensure against (i) deterioration in the quality of and access to community-based health care services, and (ii) unnecessary loss of hospital

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1 Peregrine and Schwartz, "The Application of Nonprofit Corporation Law to Health-Care Organizations," American Health Lawyers Association, (2002), p.40-41.

2 It most also be noted that the fact that the Bankruptcy Court may have found that the transaction contemplated by the Asset Purchase Agreement is in the best interest of the Debtor, its creditors, and its estate, such a finding does not answer the relevant question here: whether the proposed transaction is in the best interest of the public--i.e., CHAPA's primary concern.

assets otherwise irrevocably dedicated to charitable health care purposes. We respectfully urge both the Attorney General and the Commissioner of Health to consider the long-term effects of this transaction on the quality, accessibility and affordability of health care services in the Greater Newark area, and not to permit short-term political considerations to overwhelm such considerations. We want SMMC to become financially viable, and to continue to exist, but not at the expense of University Hospital, other area hospitals and the state taxpayer. Specifically, we want SMMC to continue to exist as a community hospital that is "right" sized, provides the very services needed in the community (as outlined by the various community needs assessments undertaken by the Newark's Department of Health and Community Wellness) in contrast to emphasizing surgical interventions and admissions through the emergency room, as Prime is known to do; a hospital that emphasizes well-being, mental health and prevention over acute care treatment.

We understand that when the board initially requested bids in 2012, there were several New Jersey-based and out-of-state healthcare institutions who demonstrated interest in SMMC, including a nonprofit bidder. Based on public comments made by SMMC officers, we have concluded that the SMMC Board did not even consider that bid, and summarily dismissed it as a bid to "close the hospital" rather than a bid to transform the facility into an ambulatory care center or a smaller, acute care facility with more outpatient and ambulatory services. We further understand that the second round of bidding resulted in competition between two for-profits that unfortunately both employ the same out-of-network/emergency room admissions model, and both bids did not make any serious attempt to pay off the public debt on the hospital. Furthermore, despite Board members' description, at the public CHAPA hearing, of a rigorous selection process in which they were fully engaged, the board minutes we reviewed (that were produced to the Attorney General) were devoid of any such discussions. In fact, this was the first CHAPA transaction that New Jersey Appleseed reviewed, where the full Board minute meetings that were produced were devoid of any discussion of the sale process at all.

Rather that engage in an transparent selection process in which Board members discussed the various issues implicated by this transaction in open Board meetings(most importantly, the obligation to the public to deal with the $230 million loan that was given to SMMC when it closed St, James and Columbus Hospitals and was purchased by Catholic Healthcare East, "CHE"), the Board seemed to hunker down, select Prime, ignore the

findings of the "Final Report for: Greater Newark Healthcare Services Evaluation," dated March 2, 2015, (hereinafter the "Newark Navigant Report", file for bankruptcy[3] and then, after a public auction, select Prime over another for-profit that offered a different, more appropriate business model and indicated a willingness to implement some of the recommendations in the Newark Navigant Report.

Accordingly, as currently described in the documents provided by the parties to the Department of Health and Senior Services ("DHSS") and the Attorney General, we believe that the proposed sale is not in the public interest. See N.J.S.A. 26:2H-7.11(b). The proposed sale is "likely to result in the deterioration of the quality, availability or accessibility of health care services in the affected communities," id., and constitutes a transformation of charitable assets that was not the best alternative to carry out the Hospital's healthcare mission.

Though more fully explained in our comments submitted pursuant to the CN process, our chief concern addressed to the Commissioner is:

> **The preferred business model employed by Prime, as it has been described by staff members within the company as well as the more than a decade's worth of data about the effect of Prime ownership on California hospitals, will have a negative outcome for the patient population of Newark. We are further concerned that Prime's intended operation of SMMC creates a credible threat to the continued operation of University Hospital, an essential healthcare facility, in an economically-secure fashion, leading to either greater direct taxpayer support for that institution to ensure its solvency or a deterioration of the quality, availability or accessibility of services.**

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[3] We also find SMMC's decision to file for bankruptcy highly suspect. For several years, the current corporate parent of SMMC, Trinty CHE financially supported the hospital and, we understand, had made a commitment to so for the full duration of the sale review period. That parent has both the operating reserves and a net operating income as a system to continue supporting the ongoing operation of the hospital. Therefore, to file for bankruptcy to "call the State's hand," as we have heard SMMC officials publically state, rather than to file for bankruptcy due to genuine insolvency, we believe is a misuse of the bankruptcy courts and should be investigated as such by the Attorney General.

With respect to the matters within the Attorney General's jurisdiction, the value and mission of SMMC's charitable assets have not been properly safeguarded and preserved in violation of CHAPA. Id. As detailed more fully infra at Point II, we have the following key concerns.

The Board did not exercise due diligence in negotiating the terms and conditions of the acquisition, especially with respect to securing repayment or assumption of the public debt.

There is no right of first refusal; nor provisions ensuring proper local governance of the hospital.

I. The Proposed Sale is "Likely to Result in the Deterioration of the Quality, Availability or Accessibility of Health Services in the Affected Communities."

As more fully stated in our CN comments, dated December 23, 2015, attached hereto, New Jersey Appleseed asserts that the business model employed by Prime and its track record as developed in files of Rhode Island regulators (which we noted in our CHAPA comments regarding the sale of St. Mary's Hospital to Prime) contradicts its commitment to the community that it will enjoy continued access to safe, affordable health services; let alone services that emphasize well-being, mental health and prevention over high tech surgical interventions and unnecessary admissions through the emergency room. The fact that many of the abusive practices that some of us have brought to your attention in previous hospital sales to Prime are based on allegations set forth in at least three lawsuits that, to the best of our knowledge, have still not been resolved (including a whistleblower action filed in federal court regarding emergency room admissions) and there is a pending Medicaid fraud investigation (concerning up-coding that may undermine the data underlying Prime's quality awards) that still has not been completed does not allay consumers' fears. As the information NJ Appleseed and the Committee of Interns and Residents have provided, Prime is "bad" actor and we fear that it will destablilize the cost and delivery of services in the Greater Newark area, rather than serve the people who currently rely on the Hospital. See http://www.wnyc.org/story/surplus-beds-affects-deal-newarks-landmark-hospital/(Comment of David Ricci indicating that it is Prime's intent to increase market share by competing with other hospitals rather than improving access to needed services).

In our CN comments, New Jersey Appleseed pointed out the Department's obligation under its CN criteria not merely to accept the allegations of the applicant but to make its own findings as to the impact the transfer of license will have on other urban hospitals. This obligation is explored in the New Jersey Supreme Court decision In re Application of Virtua-West Jersey Hospital Voorhees for a Certificate of Need, 194 N.J. 413, 436 (2008). Here, we highlight the Department's independent obligation to find that the proposed conversion will not result in the deterioration in health services in the City of Newawrk and its environs. We point to the impact analysis undertaken by the California Attorney General prior to denying the purchase of Victor Valley Hospital by Prime Healthcare Services, a purchase that had been approved by the relevant Bankruptcy Court, as an example of the analysis the DHSS must undertake prior to recommending approval of this transaction. See Effect of the Acquisition by Prime Healthcare Services Foundation, Inc. of Victor Valley Hospital on Availability or Accessibility of Healthcare Services, prepared by Medical Development Specialists (August 5, 2011). Short of such a report that looks at Prime's documented practices within the context of Newark, the Department has issued the Newark Navigant Report, which does make recommendations regarding SMMC, and it is those recommendations that must inform the Department's recommendation as to whether to approve the proposed transaction.

Furthermore, given the track record of the proposed operators of SMMC, DHSS must appoint an independent health care monitor for a period of three years in order to ensure the public that there will be no adverse health consequences to this sale. CHAPA permits DHSS to do so. N.J.S.A. 26:2H-7.11(i)(1).

It puzzles members of the public that the Board of SMMC implicitly determined that the needs of the community and the underprivileged patients that SMMC currently treats would be better served by Prime rather than either the State (if the Board had welcomed a credit bid from NJ HCFFA) or Prospect Medical Holdings, LLC. Prospect, though also a for-profit entity, had just committed to abiding by the principles of the Newark Navigant Report with respect to its purchase of East Orange General Hospital, and holds a track record in California that indicates that it does not employ an out-of-network/emergency room admissions model, but one driven by a partnership with physicians who already practice in the relevant urban community.

Notwithstanding the Board's selection, New Jersey Appleseed, on behalf of many residents who did not participate in the hearings, has grave concerns about this sale. DHSS cannot rely solely on potential whistle-blowers to advise them of violations of CN conditions or other business practices and policies that will have an adverse impact on patients and University Hospital; rather DHSS must have its own eyes and ears at the hospital to monitor activities that will impact on community health care access. Such activities must include levels of uncompensated care for indigent person, emergency room admissions, provision of unnecessary medical treatment, up-coding of proper diagnoses, termination of insurance contracts, waiver of cost sharing, excessive average daily charges, and nurse/patient ratios to maintain hospital quality and safety standards.

II. The Value and Mission of MHMC's Charitable Assets Have Not Been Properly Safeguarded As Required By CHAPA.

Pursuant to N.J.S.A. 26:2H-7.11(n), the Attorney General, in consultation with the Commissioner of Health and Senior Services, is directed to adopt regulations "to carry out the purposes of this act." To date, no such regulations have been issued. As a result, the opinions rendered by the Attorney General and the Orders issued by the Commission (which are then approved or modified by the Superior Court) are the primary source of legal interpretation and precedent governing hospital transactions that fall within the ambit of CHAPA. Each factor delineated in the statute must be considered and the Attorney General should explain why failure to satisfy any one factor does or does not impugn the transaction as a whole.

Most importantly, the Board did not adequately explore nonprofit options in a systematic way prior to deciding to convert, especially given the amount of debt that only a nonprofit entity would have been able to assume, and in the bankruptcy proceeding, it did not consider Prospect Medical Holding's track record when selecting Prime's bid over Prospect's bid. The Board's failure to protect state taxpayers in this "change of control" decision and to understand the paramount importance of its duty of obedience to the charitable purposes of the entity cannot be overlooked. Maintaining SMMC as either a public or nonprofit healthcare facility mattered more than selling it to a for-profit entity that may in fact negatively impact the delivery of all health care services in the City of Newark. The Attorney General must make clear that CHAPA's standards matter, they reflect a deep legal and moral

commitment to preserving charitable assets and ensuring that they should be followed, by other nonprofit hospitals seeking to sell charitable assets to for-profit entities, as closely as possible.

1. The Board did not exercise due diligence in negotiating the terms and conditions of the acquisition.

As noted above, the SMMC board has fiduciary duties to the corporation itself that are reflected in the various review criteria set forth in CHAPA. One of the primary factors to be considered is whether the board "exercised due diligence in selecting the other party to the acquisition and negotiating the terms and conditions of the acquisition" N.J.S.A. 26:2H-7.11(c)(2) and "whether the nonprofit board considered the proposed conversion as the only alternative or as the bet alternative to carrying out its mission." N.J.S.A. 26:2H-7.11(d)(5).

As noted above, our review of the documents submitted to the Attorney General in 2013 revealed very little information about the Board's selection process. See Letter from Renée Steinhagen to Jay Ganzaman, dated June 3, 2013. What was said, to members of the public over the past two years, however, was that the nonprofit bidder wanted to close the hospital, and Prime was the only for-profit bidder who agreed to follow the Catholic Directives. We simply do not know if the former characterization is accurate nor whether the Board of SMMC seriously considered approaching the State to take over the hospital. Given the fact that HCFFA had issued approximately $230million bonds on behalf of SMMC, and the 2008 FMV indicated that the Hospital was worth only $120million, there is a serious question as to why the Board did not explore right from the beginning alternative ways to maintain the healthcare mission of the hospital in a way that the taxpayer would not be on the hook for full repayment of the bonds. The documents we reviewed did not indicate that any other alternative way to preserve the Hospital's services was contemplated; just sell to Prime or Care Point or close the Hospital. There is no indication that SMMC approached the State to take over SMMC, especially, once the Newark Navigant Report was issued. Not to belabor the point, but NJ Appleseed urges nonprofit boards to think more creatively and to seek capital partners without selling the acute care license to the financier; thus enabling them to keep the hospital's nonprofit status, while bringing in new sources of capital. Here, however, we believe that SMMC's Board should have worked with the State to ensure that the facility could

stay open as a healthcare facility of some sort, but continue to support repayment of the public debt.

Nonetheless, once the Board did select Prime Healthcare Services, it had a duty to negotiate terms that protected the healthcare services needed by the community and the taxpayer's investment in the Hospital, especially in light of Prime's track record. NJ Appleseed believes that the Board did not meet its fiduciary duty in this regard when it (1) did not require the buyer to defease a higher value of the outstanding bonds that have been guaranteed by New Jersey taxpayers; (2) did not require the buyer to agree to transform the facility in the direction recommended by the Newark Navigant Report; (3) did not require Prime to create a fully operational local governance board, and (4) did not negotiate a right of first refusal.

The fact is that unlike the Hoboken Municipal Hospital Authority when it sold Hoboken University Hospital, an equally money losing entity, SMMC's Board did not demand full or even significant repayment of the outstanding bonds. In Hoboken, the hospital's board demanded full repayment of the approximately $52million in bonds that Hoboken taxpayers had guaranteed. As a municipal hospital board it was directly accountable to Hoboken taxpayers. Unfortunately, in the case of St. Mary's Hospital, where that nonprofit board left state taxpayers with approximately $22-25million in debt, and here, where the SMMC Board has left taxpayers holding the bag for over $180million in debt, these boards did not satisfy their duty to the taxpayers of New Jersey by failing to get the purchaser to assume, or in the case of a for-profit like Prime, to defease a higher value of the outstanding bonds. If they had, other alternatives would have been devised. The State, however, is accountable to state taxpayers, and accordingly, it should not approve this transaction.

Furthermore, based upon the past practice of Prime Healthcare Services, New Jersey Appleseed believes that Prime intends to sell the real estate assets of SMMC to Medical Trust Properties in the near term to realize a significant profit to cushion themselves against any operational losses, to acquire more hospitals, to raise the money it has committed to invest in SMMC or simply to reward Dr. Prem Reddy.

We base our belief on the fact that Prime has done so after almost every acquisition that it has undertaken (outside of New Jersey), and, at least in the case of the sale of St. Mary's Hospital it left open the possibility to do so when directly

asked by the Attorney General. Accordingly, in order to protect the public's interest in the preservation of charitable assets and the taxpayer's interest in those assets as collateral for HCFFA's loan, the Attorney General must condition this transaction, if approved, on a 5-year claw-back provision (the duration the new owners commit to operate SMMC as an acute care facility), which would result in 100% of the profits made on such sale to be handed back to HCFFA. This claw-back is justified by the fact that taxpayers are in effect investing $180million in this deal insofar as they have to pay back the outstanding bonds that are not covered by Prime's purchase price. A situation that New Jersey Appleseed believes the Board of SMMC should not have permitted to occur.

Secondly, it is our understanding of the APA, that Prime is committed to establishing only an advisory board here in New Jersey. The lack of a local bard with full fiduciary responsibility to the hospital is not acceptable. To the best of NJ Appleseed's organizational knowledge, SMMC, St. Mary's Hospital and St. Clare's Hospital System—all to be owned by Prime-- will be the only hospitals in New Jersey without a local board. Salem Memorial Hospital was bought by an out-of-state for-profit hospital system, and nonetheless, CHS established a local board that was legally responsible for the operation of the hospital; as was SMMC's current owner, which is also an out-of state hospital system.

2. There is no right of first refusal.

The public interest in preserving charitable assets also requires the Attorney General to direct SMMC to renegotiate the purchase agreement to secure a right of first refusal. N.J.S.A. 26:2H-7.11(d)(4). This factor is enormously important in this case, since there is a strong public interest in recapturing this asset as collateral for the outstanding bonds, but also as a health care facility that is an integral part of the transformation of the health care delivery system in Newark. A review of the APA filed prior to the bankruptcy proceeding indicates that there is no mention of a right of first refusal of any sort. A right of first refusal like that secured by the trustees of Salem Memorial Hospital or the more limited right negotiated by the trustees of Mountainside Hospital is absent from this transaction; further indicating the indifference of the SMMC's Board of Trustees to its fiduciary obligations to preserve the charitable mission of SMMC.

We understand from a comment made by one of the speakers at the CHAPA and statements made in the press by a community Coalition supporting the sale to Prime that Prime intends to "keep the SMMC Foundation." At this time, we do not know whether the current foundation maintains sufficient resources either to monitor the current transaction, accept a right of first refusal or even continue to exist. What we do know, however, that if such Foundation continues to exist it must be independent from Prime, and cannot support SMMC health programs or purchase equipment for SMMC, as Prime officials mentioned its function would be to certain attorneys representing some debtors, in the East Orange Hospital bankruptcy. Rather, as was the case when St. James Hospital was closed, any remaining funds in the SMMC Foundation must be subject to a cy pres hearing.

We also assume, given the number of years SMMC has existed, that there are endowment funds that must be similarly treated. See Crane v. Morristown School Foundation, 120 N.J.Eq. 583 (Err & App 1936)(endowment fund not available for use by creditors even though it became impossible to execute the terms of the trust due to insolvency; income from the funds should be devoted to a new school organized by the alumni). Accordingly, we respectfully request that participants in the CHAPA proceeding be deemed "persons of special interest" for purposes of standing at such future proceedings.

Thank-you for your anticipated consideration of our comments.

Sincerely,

Renée Steinhagen, Esq.
On behalf of NJ Appleseed

New Jersey
Appleseed

December 22, 2015

John Calabria, Director
Certificate of Need and Acute Care
Licensure Program
NJ Department of Health and Senior Services
Office of Legal and Regulatory Compliance
Market and Warren Streets,
P.O. Box 360
Trenton, New Jersey 08625-0360

Re: CN #FR13-0405-07-01, Application for Transfer of License of
St. Michael's Medical Center to Prime Health Care Services, Inc.

Dear Mr. Calabria:

Please accept this written submission on behalf of New Jersey Appleseed Public Interest Law Center. As stated herein, we request that the Department deny this Certificate of Need ("CN") application, because the business model implemented by Prime Health Care Services Inc., does not serve the public interest, and is antithetical to the recommendations of the "Final Report for: Greater Newark Healthcare Services Evaluation," dated March 2, 2015, publically known as the "Newark Navigant Report."

Notwithstanding our strong opposition to this sale, especially since the taxpayers of New Jersey will be compelled to finance this transaction to the tune of over $180 million, we acknowledge that this proposed sale has emerged out of a bankruptcy proceeding, and the Department may be more reluctant to reject this application than it was several months ago. Though as a public policy matter we lament what we perceive to be a misuse of the bankruptcy court, such criticism is best directed at the Attorney General's office, and will not be explained herein. Accordingly, short of rejecting this application (on the basis that the Department prefers the other bidder or desires NJ HCFFA to credit bid if the matter were to return to the bankruptcy court), we urge the Department to take an active role in ensuring that the proposed sale of the assets of Saint Michael's Medical Center ("SMMC") to Prime Healthcare Services, Inc. ("Prime"), does not "result in the deterioration of the quality, availability or accessibility of health services" in the communities currently served by SMMC. N.J.S.A. 26:2H-7.11(b). We

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believe that such action must include the development of strong, meaningful and targeted conditions that your Department intends to enforce. Such conditions must ensure maintenance of service to Medicaid, uninsured and other indigent patients at current levels (not just a percentage of volume), fair pricing and contracting, fair and legal debt collection processes, alignment of beds with the needs of the Greater Newark area, increased provision of out-patient clinics, participation in the Greater Newark Healthcare Coalition and any other regional health planning initiatives, proper use of the emergency room, financial transparency, and community accountability. For if the new operators of SMMC cannot be restrained from engaging in several practices that prevail at their California and other non-New Jersey hospitals, especially around Prime's emergency room practices, the transfer of license to them is likely to have an adverse impact on University Hospital, Beth Israel Hospital, Clara Mass Hospital, and East Orange General Hospital and the residents of the City of Newark. We also respectfully request the opportunity to submit additional comments and/or appear before the State Health Planning Board once the staff's recommendations on this application have been submitted to the Board.

Incorporation of CN Comments re Transfer of St. Mary's Hospital to Prime

Given the fact the proposed new owner of SMMC is the same company that purchased St. Mary's Hospital in Passaic,[1] we believe that NJ Appleseed's CN comments dated January 14, 2014, are relevant to the proposed transfer. Rather than repeat those comments, we hereby incorporate those comments herein and highlight our comments regarding Prime's track record. As we stated on pp 2-3,

> NJ regulators can mine the file developed by their counterparts in Rhode Island to find the deeply disturbing aspects of Prime's business model that it is trying to export to several states from California. These include, but are not limited to a pending Medicaid fraud investigation, allegations contained in now three pending lawsuits of upcoding, misuse of the emergency room (the recent whistleblower suit alleging excessive admissions through the emergency department rather than observation), "kidnapping" of patients, rendering unnecessary medical services, use of an out-of-network insurance model, and other abusive, if not illegal practices. Each of these complaints must be carefully scrutinized, and the Department must seriously consider whether this entity is the right owner for a New Jersey hospital. We know that the California AG has determined not to permit Prime to acquire more hospitals in that state,[2] and while other states desperate for capital to keep financially strapped essential hospitals open have permitted Prime to come in, if we do so in New Jersey we can only do so with very strict conditions to ensure that they do not further disrupt our hospital system that is the most expensive in the country, and some would say quite dysfunctional is some parts of the State.

[1] New Jersey Appleseed did not participate in the CN process regarding the sale of St. Clare's Hospital System to Prime.

[2] Since these words were written, the California AG entertained a hospital application by Prime; but, it is our understanding that Prime has rejected the conditions the AG imposed and has walked away from the transaction.

These comments still pertain, since it is our understanding that none of the mentioned investigations or allegations (set forth in court pleadings) have been resolved in Prime's favor.

Department's Obligation Pursuant to N.J.S.A. 26:2H-8 and N.J.A.C. 8:33-4.9

With respect to the Department's obligation pursuant to the CN process (governed by N.J.S.A. 26:2H-8 and N.J.A.C. 8:33-4.9), New Jersey Appleseed has often reminded the Department that the Commissioner has an obligation to "satisfy the legislative preference for a regulatory review that will serve as a check on undue harm to [New Jersey's] valuable, and vulnerable, urban hospitals," such as University, Beth Israel, Clara Maas and East Orange General hospitals. In re Application of Virtua-West Jersey Hospital Voorhees for a Certificate of Need, 194 N.J. 413, 436 (2008). In order to satisfy this obligation "to guard against severe or pervasive negative impacts on urban hospitals," id., the Commissioner must provide an analysis of the impact that a particular CN will have on the delivery of health care services in a region, and conversely, cannot just accept the proffers of an applicant. Id. at 435.

The importance of the Commissioner's obligation to provide an analysis of the impact that a particular CN will have on the delivery of health care services in a region is especially important in this case because the community has limited resources to secure and analyze relevant data which the Department routinely collects, and in some instances, may not release due to proprietary concerns. Specifically, the Department has access to data regarding emergency room admissions, service charges, readmission rates, quality indicators, insurance claims data, charity care levels by number of patients as well as cost, and other information that may provide an insight as to what is actually occurring on the ground in Newark. At this time, less than one year after Prime took over St. Mary's (and only months since it acquired St. Clare's Hospital System) members of the community are limited to anecdotal evidence as to the changes occurring at the facility, and whether Prime's ownership of St. Mary's has had a negative impact on St. Joe's Hospital, located in Paterson. Furthermore, there is reason to believe that Prime has remained in-network at St. Mary's as a temporary measure until it secures licenses for all the hospitals it would like to purchase in New Jersey.

Accordingly, we believe that it is the obligation of DHSS to do a thorough analysis of the Prime's current practices in other states prior to handing it yet another nonprofit hospital (i.e., a community, socially owned asset) . Examining the track record of a potential licensee is the heart of the Department's CN process, and the Department cannot shut its eyes simply because of the strength of the political connections that the new owner may have with the Governor or because this matter now emerges from the Bankruptcy Court. More specifically, the Department simply cannot accept empty promises nor empty rhetoric about improving quality while lowering costs for patients and taxpayers through continued "competition" without careful scrutiny as to what is really going on at Prime's out-of-state hospitals.

Toward that end, we are submitting a November 2014 report prepared by the research department of SEIU-UHW regarding "Emergency Department Practices at Prime Hospitals" in California. It was submitted during public processes governing the proposed sale of a hospital to Prime in California, and was considered by the Attorney General's Office in that State. The Report states,

> [A]n analysis of Medicare data show that ED practices at Prime hospitals should warrant greater scrutiny. Outpatient observations services, used to avoid unnecessary admissions, are extremely rare at Prime hospitals, while Prime's rate of admissions from the ED is well above most other large hospitals systems. If a hospital with a high ED admission rate has a lower rate of outpatient observation discharges, this might suggest overutilization of inpatient services. Id. at p. 1.

Promoting overutilization of inpatient services through the emergency department is a serious concern in the context of SMMC and its brand-new publically funded emergency room. We respectfully request that you consider this data in your evaluation of whether to transfer SMMC's license to Prime.

The Navigant Report and Commitments to Implement Its Recommendations

As you know, the New Jersey Health Care Facilities Financing Authority Department released the Newark Navigant Report on March 2, 2015, approximately two years after SMMC's submitted its initial CN application. The Report does an analysis of current and projected need for utilization of hospital services in the Greater Newark Area (in the context of volume and market share by zip code, population and growth by age, zip code and health insurance coverage, net migration by service line, hospital utilization rates, emergency department demand, physician age, and community need for ambulatory care and out-patient services) and makes recommendations to reduce beds, eliminate duplication of services and provide a continuum of care to residents that requires the transformation of the hospitals involved and better coordination among them. The Report directly states,

> Based on our analysis of the Planning Area, it is unclear how the transfer of the assets of any of the study hospitals through a sale to another party would resolve the underlying overcapacity and unnecessary service duplication in the Planning Area. Rather, such transaction would seem more likely to perpetuate the status quo than to facilitate the redeployment/transformation of resources to align capacity with need in the Planning Area. Transferring the assets of one or both of these hospitals would perpetuate – and probably intensify – the competition for the decreasing number of patients in the Planning Area. Nor would transferring the assets through a sale help and address the current degree of fragmentation of the healthcare delivery system in the market. And a sale of one or both of these facilities would be unlikely to facilitate the organization of physicians. In effect, sale of one or both hospitals would appear to continue the status quo, which would not address the excess capacity and unnecessary duplication of services. Newark Navigant Report at 86-87.

Accordingly, we request that the Acting Commissioner, like she recently did with respect to the Transfer of Ownership of East Orange General Hospital, CN #FR 140503-07-01, employ the Newark Navigant Report as a "useful planning tool" and impose conditions on the purchaser of SMMC to make the very changes to the hospital that are required, but which the Board of SMMC to date has resisted making. Letter to Martin Bieber from Cathleen D. Bennett, dated September 16, 2015, at p. 3. Reduction of licensed beds, increase in out-patient services,

elimination of duplicate services with other hospitals, and emphasis on primary and ambulatory care rather than increased admissions through the emergency department are what Newark needs, and what Prime should be required to provide if it wants to purchase SMMC.

Essential Conditions

From the above comments, it is apparent that New Jersey Appleseed is primarily concerned with the details of the transformation of health care contemplated in the Newark Navigant Report, and the introduction of the out-of-network/reliance on emergency room admission model that Prime is offering (based on its practices in its California hospitals) into the Greater Newark area. Accordingly, we request that in addition to the substantive requirements that the Commission should impose (as it did in the recent case of the transfer of East Orange General Hospital) to ensure reduction of in-patient beds, excess capacity, fragmentation of care, and other ills existing in the Newark hospital system, the Commissioner take action to ensure that the process of coordinating care and transforming services among and between the five-area hospitals analyzed in the Newark Navigant Report, be a public process involving all stakeholders. The transformation of healthcare in the Greater Newark area cannot be left to Prime, to be decided behind closed doors with or without the participation of University, Beth Israel, Clara Maas and East Orange hospitals. Physicians, community service providers, elected officials, insurance plans, consumer advocates and planners, and hospital administrators must all be engaged in a process, and the outcome must be accepted by all hospitals involved. University Hospital is a significant public asset; Beth Israel and Clara Maas are community assets; SMMC and EOGH will be private. Nonetheless, they are all licensed by the State and thus are subject to regulation and restraint to ensure the public interest. We therefore request that you condition the transfer of license to Prime on its participation in such a public process, and on its consent to implement the recommendations emerging from that process in addition to those now required by DHSS.

Second, the State must take action to prevent the introduction of the out-of-network model implemented by Prime in its California hospitals, and primarily CarePoint in Hudson County. NJ Appleseed understands that DHSS may prefer New Jersey legislators to take the first step, but administration and oversight of New Jersey's health care system is within its purview, and it must take all steps necessary to protect the health, safety and well-being of New Jersey residents as it relates to the State's healthcare infrastructure. Now, at the time, when Prime is requesting the State for the privilege of operating a hospital is the time to act. The State must require Prime to operate as an in-network facility and to require it to condition physician privileges on that requirement as well. In the alternative, we request that any approval of the CN application before you include the following conditions:

1. Prime must be required to assume and continue each of the current commercial insurance contracts of SMMC that were in effect on December 31, 2015, for at least 18 months after licensure;

2. As the California AG imposed, Prime must fully participate in Medicaid/New Jersey Family Care and must maintain contracts with all Medicaid Managed Care providers;

3. Upon transfer of SMMC to Prime and for one year thereafter, Prime shall not modify the charge master for Christ to increase any rate more than 10% of the charge in effect on December 31, 2015; and

4. If Prime provides notice to terminate any insurance contract at any time, or imposes excessive charges at least 10% above the statewide average, it may be ordered to pay rebates or subject to other appropriate remedies to be determined by DOBI and DHSS.

Consumers have been, and continue to advocate for strong insurance rate review with prohibitions against excessive and unreasonable health insurance premiums. Now is the time for consumers to focus on the role of physicians and hospital providers in causing excessive and unreasonable health care costs. We are doing so in our persistent efforts to prohibit balanced billing in the context of surprise medical bills. DHSS must take an aggressive stance on this issue as well and, in this matter, must condition the transfer of SMMC's license to Prime on requirements that will end, if not radically restrict Prime's historical reliance on admissions through the emergency room and remaining out-of-network.

Other Considerations

New Jersey Appleseed also urges DHSS to impose certain conditions we have previously supported with respect to other hospital conversions. Some are also specific to Prime based on the California AG's requirements which were tailored to restrain the known practices of that entity. Such conditions include:

1. With respect to Prime's post-transaction commitment for capital improvements and working capital, it must provide DHSS with information supporting such investments in the facility, in addition to any other debt incurred on the hospital's behalf;

2. Prime must hire at least 90% of Christ's current employees on a full-time basis, which must include 100% of those covered by the collective bargaining agreement, continue to maintain nurse/patient ratios sufficient to ensure safety and quality, and must continue to provide such employees with health insurance coverage;

3. Prime must make adequate commitments to continue to serve its fair share of indigent and underinsured persons in the community by accepting a specifically defined commitment to maintain not just the same level of charity care that is now provided at SMMC, but a minimum volume of charity care. Levels of charity care cannot be met by using bad debt and inflation;

4. Prime must create a Local Governing Board with full authority and fiduciary responsibility for SMMC. Such Board should consist of medical staff, physicians, the Chief Medical officer, a designated member from the Newark City Council, and community representatives of social service providers in the community, among other board members;

5. All Executive Officers of SMMC must be legally responsible to obey any conditions imposed by DHSS;

6. All Prime hospitals in the State must use and follow debt collection procedures that follow and comply with state and federal law;

7. In the event that Prime finances this transaction with a sale-leaseback, Prime must disclose and provide DHSS the terms of its lease and any conditions that may impact the delivery of care at SMMC;

8. Given the State HCFFA bonds assigned to SMMC, if Prime sells SMMC facility for more than the purchase price, within five years of its acquisition, NJ HCFFA will be able to capture revenues net post-transaction investment to be used to pay back bondholders;

9. A review of the CN Application also reveals that there are no commitments to ensure financial transparency. Historically, the Department has conditioned its approval of for-profit conversions by requiring the for-profit hospital to report to the Department all monies going into the entity, and all monies going out of the entity for a minimum of three years post-acquisition. We urge that the Commissioner to impose such condition herein.

10. Prime has also failed to provide information indicating that it will avoid conflicts of interest in patient referrals. Because this transfer of assets will result in a hospital that will now be accountable only to private investors, it is critical that DHSS compel HHO to adopt strict procedures to avoid conflicts of interest in-patient referrals. These procedures must be applied if healthcare providers, physicians, insurers, board members of the staff of the new SMMC are offered the opportunity to invest or own an interest in Prime or any of its affiliates. It is clear that a failure to adopt a conflicts of interest policy in patient referrals may have an adverse impact on the quality of services provided, and the capacity of the hospital to respond to the actual needs of the community; and .

11. Because of SMMC's past practices with respect to Community Advisory Groups (CAG), New Jersey Appleseed is especially concerned about SMMC's future accountability to the community. New Jersey Appleseed does want to point out, more generally, that the creation of hospital CAGs, whose members are appointed by hospital boards and typically include several locally elected officials, have not provided sufficient accountability anywhere in New Jersey, at least in communities where there has been an elimination of services or diminished access to services. If hospital CAGs were able to effectively monitor and ensure access to quality services as currently constituted, SMMC would not have been able to renege on its commitments to the Newark community upon the closing of Columbus and St. James Hospitals; Meadowlands, would not have been able to transform itself

into an enlarged ambulatory care center (as predicted by NJ Appleseed in its CHAPA remarks submitted at that time); and Bayonne Medical Center would not have been able to eliminate its obstetrics and gynecology department, contrary to the conditions set forth in its CN. New Jersey Appleseed does not have an immediate solution to this problem, but invites DHSS to redesign its CAG requirement so as to ensure community accountability.

As you know, CHAPA permits DHSS to hire an independent health care monitor (paid for by Prime for a period of three years to monitor and report quarterly on community health care access by the owners, including levels of uncompensated care for indigent persons. N.J.S.A. 26:2H-7.11(i). New Jersey Appleseed will address this issue in our CHAPA comments that will be submitted to the Attorney General on or after January 5, 2016.

Conclusion

As we have previously stated to DHSS, New Jersey Appleseed can no longer merely ask for imposition of conditions since many of those conditions do not seem to adequately restrain business practices that have an adverse impact on the delivery of health care in the State, and in many cases have negatively impacted the ability of a hospital system in an area to transform itself to meet the needs of its residents. We thus strongly urge the State Health Planning Board and DHSS to disallow Prime to operate SMMC, which we believe should be placed in the hands of an operator that will reorganize that facility in accord with the Newark Navigant Report. A denial of the CN application in this case does not mean the closure of SMMC. Rather, the Board of SMMC can return to the bankruptcy court and select Prospect Medical Holding's bid that it chose to overlook. NJ Appleseed believes that such alternative would place the license in a organization that has already stated its intent to align East Orange General Hospital with the recommendations of that Report. On the other hand, the NJ HCFFA may still decide to credit bid, and then lease the hospital to a nonprofit entity that will not only implement the recommendations of the Newark Navigant Report, but it also may be able to generate revenue to satisfy the bondholders. In this case, Newark needs a nonprofit operator that will adequately serve all the residents in the Greater Newark area and will contribute to solving New Jersey's systemic problems in its health care system rather than exacerbating them.

Respectfully submitted,

Renée Steinhagen

Renée Steinhagen
Executive Director

SEIU-UHW
Research Department
November 2014

EMERGENCY DEPARTMENT PRACTICES AT PRIME HOSPITALS

Prime Healthcare Services (Prime) had over 400,000 emergency department (ED) visits at its 14 California hospitals in 2013.[1] Its facilities and physicians are expected to provide these patients with the appropriate level of care to ensure optimal health outcomes. However, an analysis of Medicare data show that ED practices at Prime hospitals should warrant greater scrutiny. Outpatient observation services, used to avoid unnecessary admissions, are extremely rare at Prime hospitals, while Prime's rate of admissions from the ED is well above most other large hospital systems. If a hospital with a high ED admission rate has a low rate of outpatient observation discharges, this might suggest overutilization of inpatient services.

Reimbursements for observation services are often lower than those for an inpatient level of care. An inpatient level of care generally costs more to provide and accordingly receives greater levels of reimbursement – on average, about $5,000 more in Medicare reimbursement for an inpatient admission as opposed to a corresponding outpatient visit with observation, according to one study[2] – therefore a hospital may have a perverse incentive to admit ED visitors unnecessarily in order to receive the higher associated payments.

In fact, the U.S. Department of Justice recently settled with Community Health Systems, Inc. (CHS) for $89.15 million to resolve allegations that it violated the False Claims Act by billing Medicare, Medicaid, and Tricare for medically unnecessary admissions presenting in the emergency department from 2005-2010. The federal government alleges CHS's practices were part of a "corporate-driven scheme" to increase inpatient admissions of federal program beneficiaries over the age of 65 who could have been treated in an observation or outpatient setting.[3]

OUTPATIENT OBSERVATION SERVICES

When patients visit a hospital's emergency department to receive care, they are either treated in an outpatient setting or if their condition is acute enough in physicians' judgment, they are admitted to the hospital as inpatients. Some ED patients' conditions may appear to be acute enough that an admission could be warranted, but still the decision of whether to admit them or not is unclear until after a period of continued monitoring. For such patients, observation services – an outpatient level of care – may be more appropriate than an automatic admission.

[1] OSHPD Utilization Data 2013
[2] Report on Medicare Compliance, Vol. 15, Num. 37. "In Hospital Observation Struggle, Uncertain Outcomes May Justify Inpatient Admissions." October 23, 2006.
[3] United States Department of Justice, Office of Public Affairs, Press Release 8/4/14 (Accessed on 8/8/14).

OUTPATIENT OBSERVATION SERVICES AT PRIME HOSPITALS

An analysis of Medicare claims data shows that observation claims at Prime hospitals are exceedingly rare. Figure 1 shows the system's average observation rate among ED encounters between FFY 2007 and 2012.[4] Prime's average is ***below 0.5% in every single year***. The national average, on the other hand, was at roughly 4% in 2007 and has increased steadily since, reaching more than 6% in 2012. Observation claims for Medicare beneficiaries are so rare at Prime hospitals that we would not be able to report individual hospital rates for most years due to cell size suppression requirements intended to protect patient privacy.

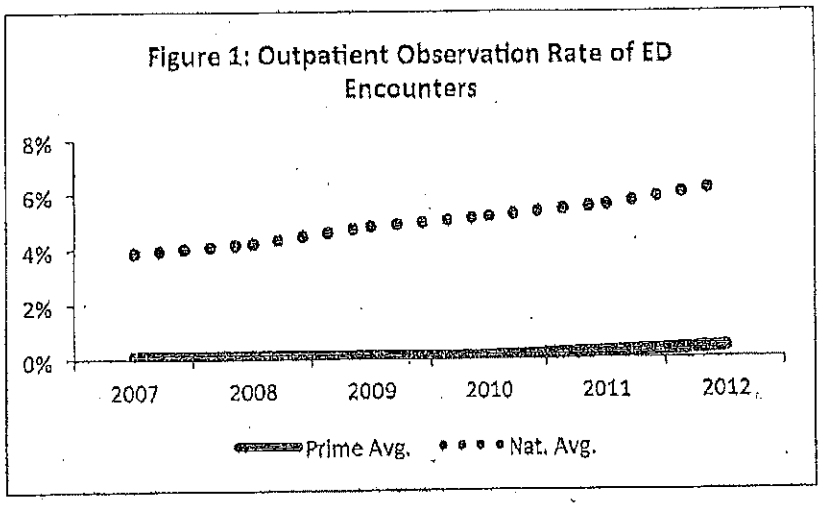
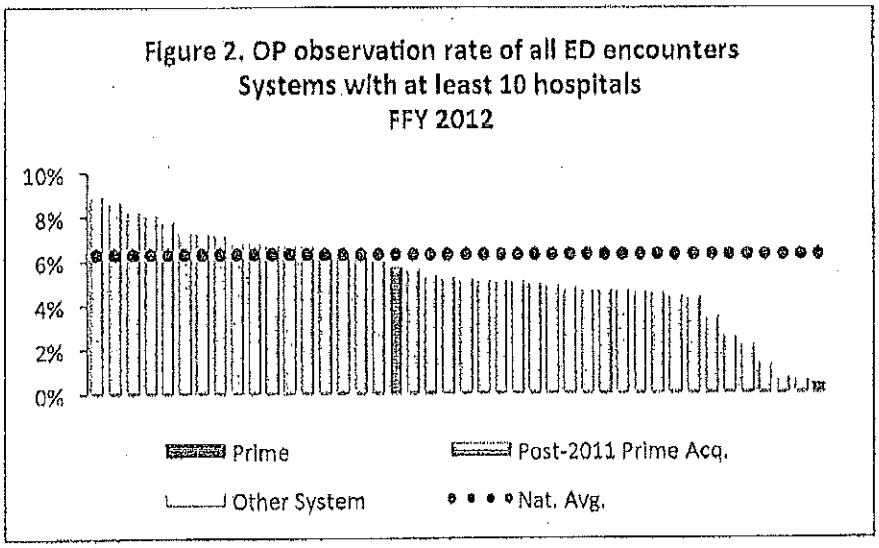


Figure 2 compares Prime's system average observation rate to those of other large systems in FFY 2012. While many other systems fall short of the national average rate, Prime's nearly 0% rate has few peers -- and this is at Prime's high point during the period of FFY 2007 to 2012. Prime's acquisitions from years following FFY 2011 have been included as a group in the chart as well. Grouped together, they produced a rate of nearly 6%; it will be important to see if their behavior changed in 2013, once data becomes available.

[4] We calculate a hospital's observation rate as its rate of ED outpatient discharges with observation charges out of all ED encounters. Observation charges are identified via Medicare claim revenue center codes. Additional methodology is available upon request.



ADMISSIONS AT PRIME HOSPITALS

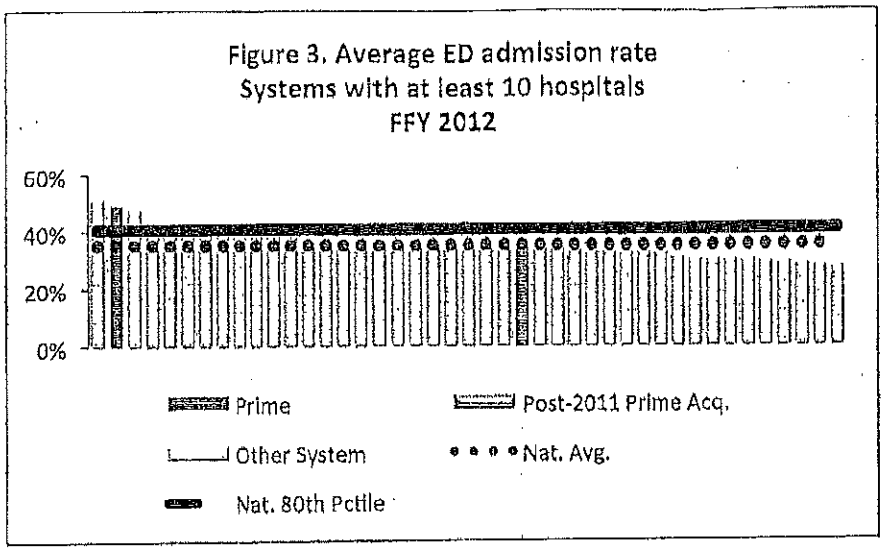
Compared to other hospitals, admission rates among Medicare ED encounters are higher at Prime-owned facilities. Furthermore, these practices appear to begin at many Prime hospitals after their acquisition by the system.

Figure 3 shows the average ED admission rate at Prime hospitals in FFY 2012, and it compares it to other large hospital systems as well as to national benchmarks.[5] As is immediately clear, Prime's system average[6] – represented by the red bar – is one of the highest among large systems in the country. Furthermore, not only does the Prime system's average of 49% exceed the weighted average national ED admission rate of 35%, it is also above the ED admission rate below which 80% of qualifying US hospitals fall. Indeed, 12 of Prime's 14 hospitals in FFY 2012 are above the 80th national percentile for ED admission rates. As a point of reference for future analysis, Prime's acquisitions from years following FFY 2011 have been included as a group in the chart, as they were either not under Prime's control during this year or they had just entered it within the year.[7] Collectively these hospitals – represented by the green bar – have an ED admission rate below the national average in FFY 2012.

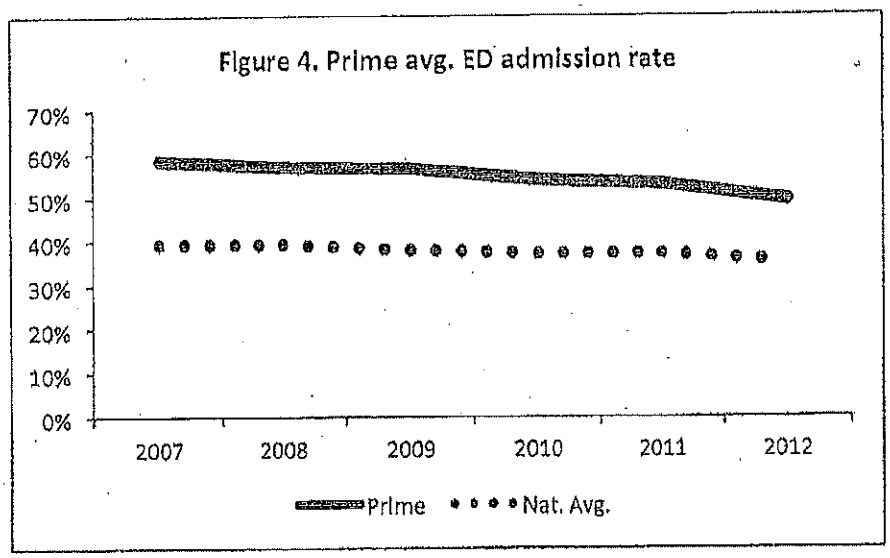
[5] Analysis performed using claims data from the Medicare Inpatient and Outpatient Standard Analytical Files (SAF). Only short-term acute care facilities were included in this analysis. ED claims were identified via their revenue center codes and/or HCPCS codes, following ResDAC's suggestions. See "How to Identify Emergency Room Services in the Medicare Claims Data," Technical Brief, ResDAC Publication Number TN-003. Only hospitals with at least 12 qualifying ED admissions and at least 12 qualifying ED outpatient discharges within a given year were included in this analysis. Additional methodology is available upon request.

[6] In this analysis, hospitals are included as part of the Prime system average calculations beginning in the first Federal Fiscal Year after their acquisition by Prime.

[7] These hospitals did not have a common system affiliation prior to acquisition by Prime, and most are located in states other than California. They are grouped together here only for comparison to the hospitals that are under Prime control as of FFY 2011.



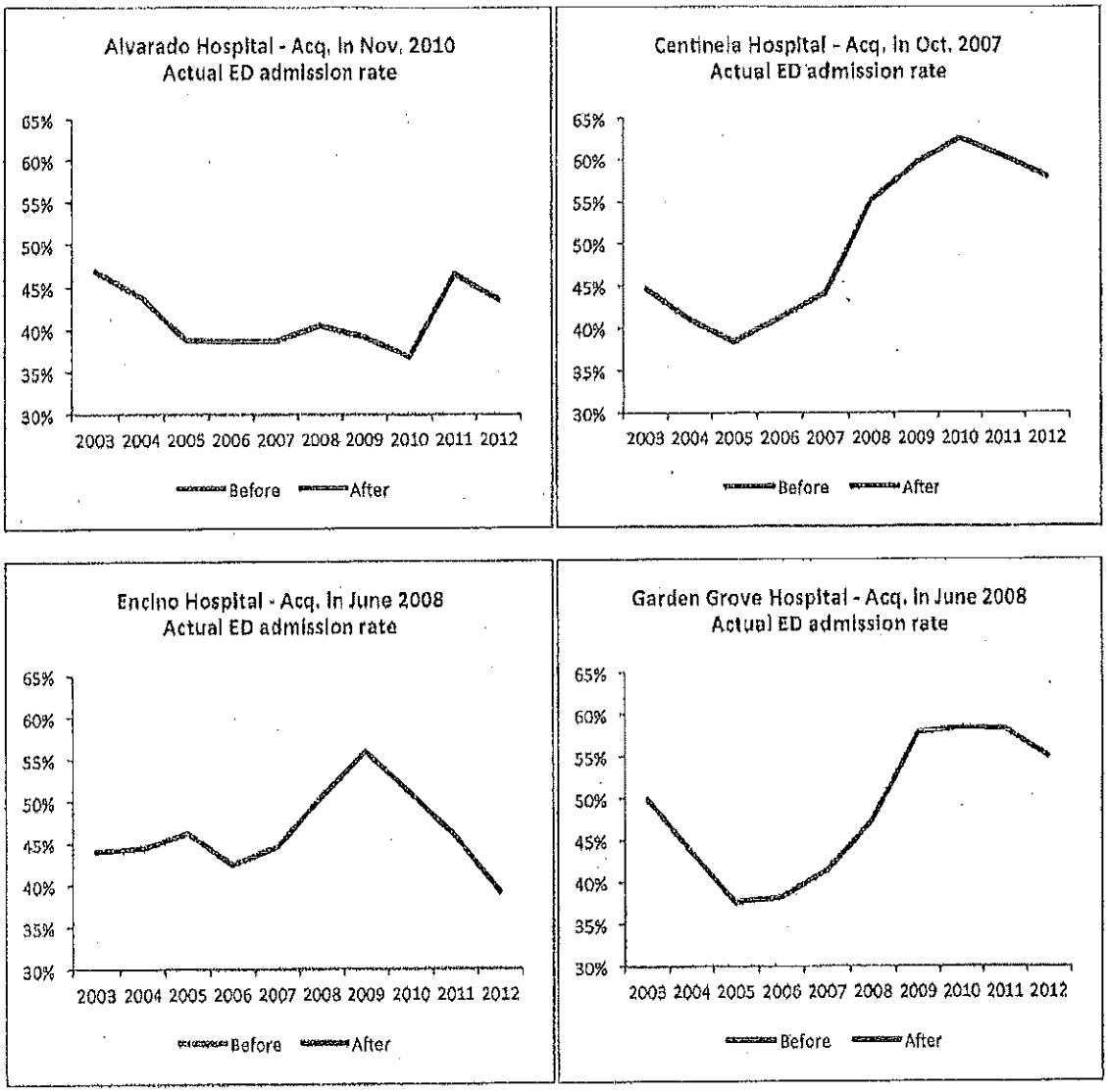
Prime's high ED admission rates are not limited to 2012. Figure 4 shows Prime's system average ED admission rate – and the corresponding national average – from FFY 2007 through 2012. While the number of Prime hospitals changes over this time due to acquisitions that occurred during the period, the system average remains consistently well above the national average. Over this span, the national average was somewhere between 35% and 40%, but Prime's system average hovered between about 50% and 60%.

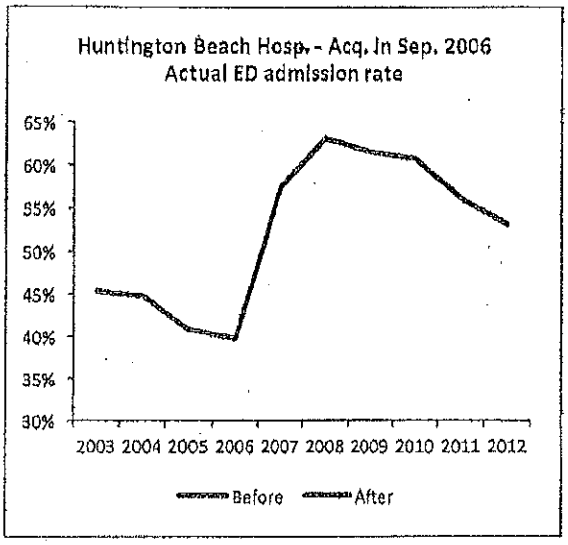


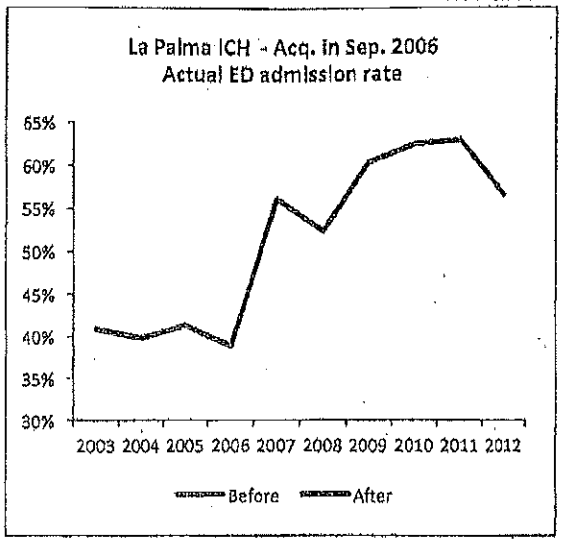
ED ADMISSION RATES AT INDIVIDUAL PRIME ACQUISITIONS

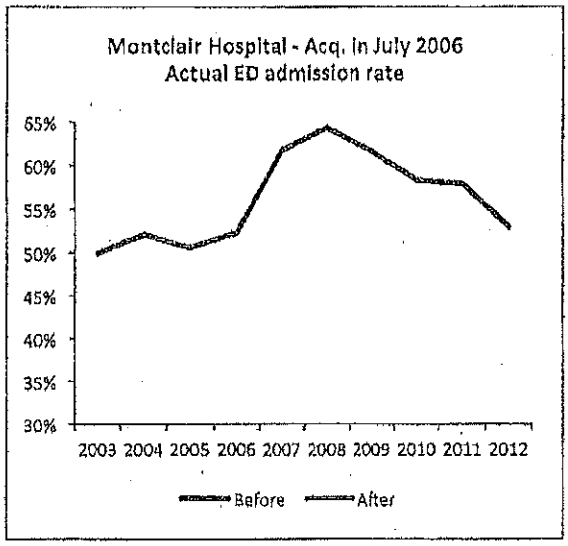
Exploration of Prime's acquisitions reveal that these high hospital ED admission rates appear to follow their acquisition by Prime. The following charts present the ED admission rate across years for hospitals acquired

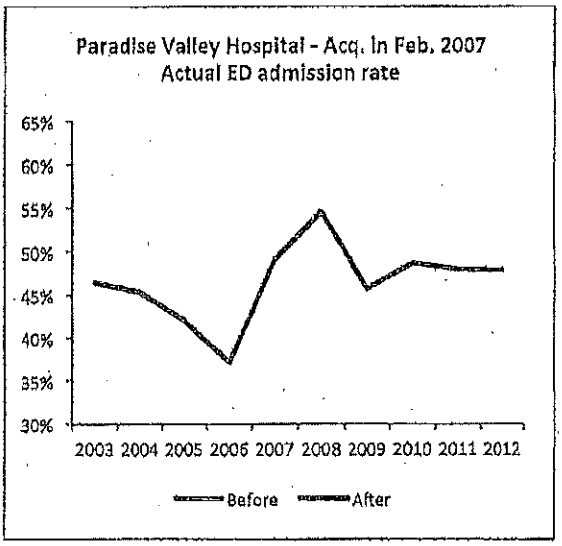
by Prime in FFY 2006 or later. A common result appears: a large jump in the hospital's admission rate within a year of acquisition, which then remains high in the years following.

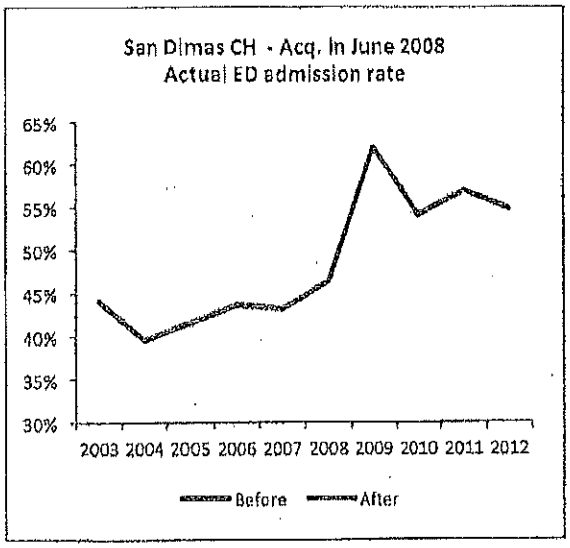


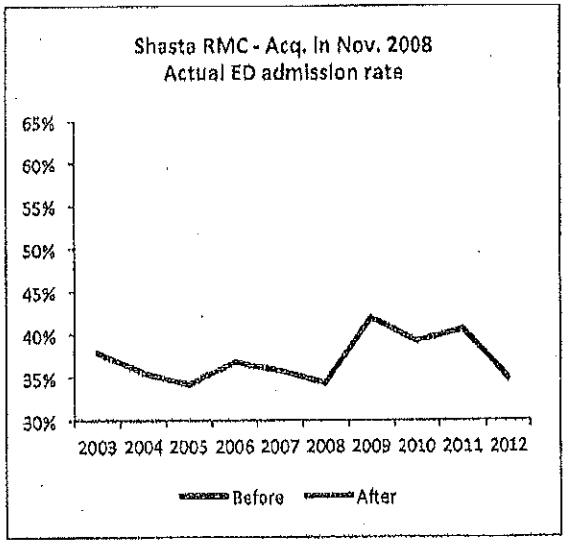

Huntington Beach Hosp. - Acq. in Sep. 2006
Actual ED admission rate
65%
60%
55%
50%
45%
40%
35%
30%
2003 2004 2005 2006 2007 2008 2009 2010 2011 2012
Before
After

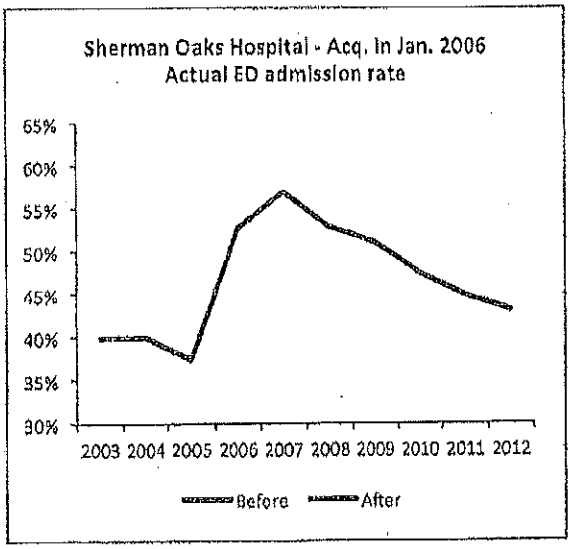

La Palma ICH - Acq. in Sep. 2006
Actual ED admission rate
65%
60%
55%
50%
45%
40%
35%
30%
2003 2004 2005 2006 2007 2008 2009 2010 2011 2012
Before
After

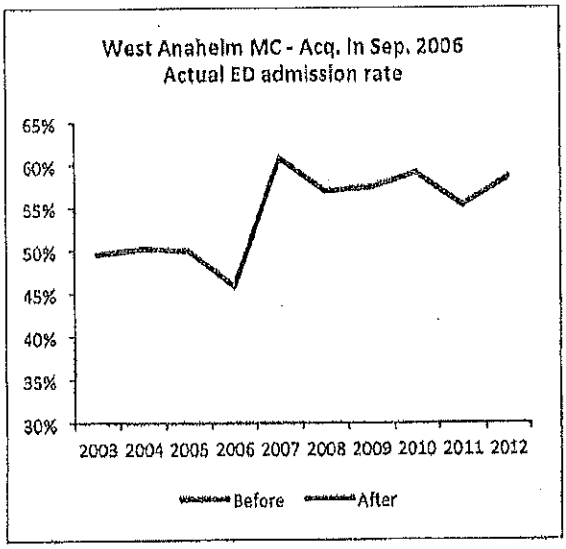

Montclair Hospital - Acq. in July 2006
Actual ED admission rate
65%
60%
55%
50%
45%
40%
35%
30%
2003 2004 2005 2006 2007 2008 2009 2010 2011 2012
Before
After


Paradise Valley Hospital - Acq. in Feb. 2007
Actual ED admission rate
65%
60%
55%
50%
45%
40%
35%
30%
2003 2004 2005 2006 2007 2008 2009 2010 2011 2012
Before
After


San Dimas CH - Acq. In June 2008
Actual ED admission rate
65%
60%
55%
50%
45%
40%
35%
30%
2003 2004 2005 2006 2007 2008 2009 2010 2011 2012
Before
After


Shasta RMC - Acq. In Nov. 2008
Actual ED admission rate
65%
60%
55%
50%
45%
40%
35%
30%
2003 2004 2005 2006 2007 2008 2009 2010 2011 2012
Before
After


Sherman Oaks Hospital - Acq. In Jan. 2006
Actual ED admission rate
65%
60%
55%
50%
45%
40%
35%
30%
2003 2004 2005 2006 2007 2008 2009 2010 2011 2012
Before
After


West Anaheim MC - Acq. In Sep. 2006
Actual ED admission rate
65%
60%
55%
50%
45%
40%
35%
30%
2003 2004 2005 2006 2007 2008 2009 2010 2011 2012
Before
After

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IN THE MATTER OF THE APPROVAL OF THE SALE OF THE ASSETS OF SAINT MICHAEL'S MEDICAL CENTER, INC. PURSUANT TO N.J.S.A. 26:2h-7.10, et seq.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: ESSEX CTY. Docket No. ESX-C-57-16 Civil Action CERTIFICATE OF SERVICE

I, RENÉE STEINHAGEN, hereby certifies:

1. On March 28, 2016, I caused to be served electronically and by regular mail a copy of

   New Jersey Appleseed's response to the Verified Complaint filed in this matter on:

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I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, that I am subject to punishment.

RENÉE STEINHAGEN

Dated: March 28, 2016