Impact Report

How Closure of Daughters of Charity Hospitals Would Dramatically Reduce Patient Access to Essential Healthcare Services

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Closure of hospitals currently operated by the Daughters of Charity Health System (DCHS) would have a major impact on patient and community access to essential healthcare services in two of the largest metropolitan regions of California. That's the finding of an analysis released today by the California Nurses Association/National Nurses United, the largest U.S. and largest California organization of nurses. CNA represents 1,800 RNs at DCHS hospitals in California.

The Daughters of Charity Health System has stated that its hospitals are in very real danger of closing or filing for bankruptcy. Unless the hospitals are equitably and expeditiously transferred to new owners who will pledge to properly finance and maintain the vital patient services currently offered by DCHS, the system will run out of operating funds and the community will lose access to lifesaving healthcare. Additionally, thousands of hospital employees would face the loss of employment, causing hardship for their families with the additional economic harm for the communities where they live.

In an effort to avoid outright liquidation of these critical public health institutions, the Daughters of Charity Health System announced that it was for sale and began accepting proposals from numerous potential purchasers. After an exhaustive bidding process, on October 10, 2014, the Daughters of Charity announced that it intended to sell its facilities to Prime Healthcare. The proposed sale is currently awaiting the approval of Attorney General Kamala Harris, who has the legal responsibility to ensure that any sale of a non-profit hospital is in the public interest.[1]

The approval process will culminate in a week of public comment beginning January 5th, with hearings to be held in each of the affected communities. Barring any new

[1] Sections 5914 and 5920, *et seq.*, of the Corporations Code imposes on the Attorney General the duty to review any transfers of ownership or control of a non-profit hospital to ensure the transaction is in the public interest, among other considerations.

developments requiring additional hearings, the Attorney General must choose by February 5 to (i) consent to the proposed transaction as written, (ii) deny it outright, or (iii) grant conditional consent and impose conditions to protect the public interest.

Either the Attorney General agrees to permit Prime—a sufficiently capitalized operator that has agreed to protect all hospital services, facilities, and jobs—to purchase this hospital system under certain conditions necessary to protect the public interest, or alternatively, the hospital system will likely slide towards bankruptcy and the public's right to access lifesaving healthcare will quickly decay.

The purpose of this analysis is to review what major health services are currently provided by DCHS hospitals, and, thus, how their loss would affect residents of those communities.

Essential Healthcare Services Provided in the Public Interest

The Daughters of Charity Health System (DCHS) is comprised of five hospitals spread throughout California: St. Vincent Medical Center, a 366 licensed bed, general acute-care hospital located in Los Angeles; St. Francis Medical Center, a 384 licensed bed, general acute-care hospital located in Lynwood; O'Connor Hospital, a 358 licensed bed, general acute-care hospital located in San Jose; Saint Louise Regional Hospital, a 93 licensed bed, general acute-care hospital located in Gilroy; and Seton Medical Center, a 357 licensed bed, general acute-care hospital located in Daly City.[2]

As general-acute care hospitals, the nurses at these facilities provide 24-hour, inpatient health care to their communities, in patient units devoted to the following services: Emergency, Medical/Surgical, Perinatal, Pediatric, Intensive Care, Coronary Care, Acute Respiratory Care, Burn, Intensive Care Newborn Nursery, and Rehabilitation Care, as well as an extensive range of specialty services.

All of these acute care services are essential to the health and well-being of the community. Certainly, the patients themselves immediately grasp the essential nature of the lifesaving care they receive at these hospitals. The patients' collective experience is reflected in the hospital utilization and other data prepared by the California Office of Statewide Health Planning and Development (OSHPD).[3] These data demonstrate that the health care services, provided by the caregivers at DCHS, are essential to the broader healthcare system and public health of this state. Moreover, the data show that these hospitals are especially essential institutions for communities of color, the poor, and

[2] Additionally, DCHS operates Seton Medical Center Coastside, a 116 licensed bed skilled nursing facility with 5 licensed general acute-care beds located in Moss Beach.
[3] Section 127285 of the Health and Safety Code requires every hospital to file with OSHPD an Annual Utilization Report that contains utilization data for its licensed services.

others whose access to healthcare is obstructed because of social and/or economic barriers.

Unfortunately, these data also illustrate that the entire healthcare system in California would suffer if DCHS could not close its contemplated transaction with Prime Healthcare.

O'Connor Hospital

- Of the 272,426 emergency room visits in the San Jose-area in 2013, the most recent reporting year, O'Connor Hospital's Emergency Department accepted 49,454 visits, or 18% of total visits.[4]
- Over half of the patients who reported to O'Connor's Emergency Room identified as Latino, and approximately 47% relied on Medi-Cal for payment.
- O'Connor Hospital provided healthcare for 52,175 patient days, equating to roughly 15% of San Jose's total patient days.
- Of those patient days, 3,850 were spent in intensive care, and over 11,000 days of critical care were devoted to coronary patients.
- O'Connor also delivered more than 3,200 babies in 2014, representing a quarter of all the babies born in San Jose that year.
- Finally, O'Connor discharged over 16% of San Jose's hospitalized patients—11,751 in total.

It is apparent that other area hospitals could not easily absorb the influx of patients that would result from a closure of O'Connor Hospital or a curtailment of its acute care services. This is due to the fact that San Jose's other acute care facilities—Good Samaritan/Regional, Kaiser, and Valley hospitals— experienced a 95% occupancy rate for staffed beds in 2013,[5] meaning there was virtually no excess capacity. Indeed, these hospitals were so busy that the local Emergency Medical Services authority placed one or more of San Jose's Emergency Rooms on diversion for over 800 hours in 2013, during which time the affected hospitals were unable to accept any patients.

It is evident that O'Connor Hospital is integral to San Jose's healthcare system and public health. A decision to delay or obstruct the sale of DCHS would therefore imperil the health and safety of the millions of people who comprise that community.

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[4] All figures and percentages are drawn from OSHPD's hospital databases, which can be found at http://www.oshpd.ca.gov/HID/DataFlow/HospMain.html.

[5] The Staffed Beds Occupancy Rate is calculated as follows: Number of Patient Days/ (Staffed Beds X Number of Days in a Year). The Available Beds Occupancy Rate is calculated as follows: Number of Patient Days/ (Available Beds X Number of Days in a Year). In the aggregate for the O'Connor Market area hospitals, the Available Beds Occupancy Rate is 53.37%. If the DCHS hospitals were to close, it is highly questionable whether the remaining area hospitals could absorb the displaced patients because they would be required to greatly increase their staffed bed capacities in a short period of time.

Similar patterns occur at each of the DCHS hospitals.

Seton Medical Center

Local authorities placed Seton Medical Center's Emergency Department on diversion for over 1,200 hours in 2013. This was probably due to the fact that 29% of visits to Seton's Emergency Department were classified as either "severe without threat"[6] or "severe with threat"[7]—the two highest patient acuity classifications for emergency room visits.

Predictably, in light of these facts, Seton provided a quarter of the area's intensive care services, as measured by patient days. Of the patients who relied on Seton's lifesaving care, a significant majority identified as Asian or Latino. Finally, almost 30% of patients were enrolled in Medi-Cal, the highest proportion for any hospital in the market.

St. Louise Regional Hospital

St. Louise Regional Hospital is the only acute care hospital serving the Gilroy community. Thus, if the hospital was closed, the 23,809 patients who visited St. Louise's Emergency Department last year would have to travel 25 miles to reach the next nearest hospital. Since over 45% of these patients relied on Medi-Cal, such extensive travel would be especially burdensome to the St. Louise patient community.

Similarly, patients requiring intensive care services—almost 1,500 patient days were spent in St. Louise's ICU—would be unable to receive lifesaving healthcare in their own community.

By all appearances the nearest hospitals would not have the capacity to care for these additional patients because nearly all of their staffed beds are always occupied: in 2013, Watsonville Community Hospital experienced a staffed bed occupancy rate of 101%, Salinas Valley's staffed beds were 100% occupied, and 95% of Hazel Hawkins Memorial Hospital's staffed beds were devoted to patient care.[8] Thus, all of St. Louise's healthcare services are essential to the community it serves.

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[6] OSHPD defines "severe without threat" as "An Emergency Department visit that requires a detailed history/examination, and medical decision-making of moderate complexity. Usually, the presenting problems are of high severity, and require urgent evaluation by the physician but do not pose an immediate threat to life or physiologic function. Example: [ED] visit for an elderly female who has fallen and is now complaining of pain in her hip and is unable to walk."

[7] Defined as "An Emergency Department visit, which requires a comprehensive history/examination, and medical decision-making of high complexity. Usually, the presenting problems are of high severity and pose an immediate significant threat to life or physiologic function. Example: [ED] visit for a patient exhibiting active, upper gastrointestinal bleeding."

[8] In aggregate, the Available Bed Occupancy Rate for area hospitals was 54.74%.

St. Vincent Medical Center

Although St. Vincent Medical Center is part of the larger Los Angeles healthcare system, it offers services that cannot be readily replicated elsewhere. For instance, St. Vincent hosts the Korean Pavilion and Asian Pacific Liver Center, both of which are dedicated to caring for historically underserved communities in a culturally sensitive environment.

St. Vincent is also one of a very small number of LA hospitals that specialize in organ transplants, an especially critical service. St. Vincent also hosts the House Clinic, a world renowned leader in complex ear surgeries. Continued access to these specialty services is absolutely essential to St. Vincent's community, a majority of whom rely on Medi-Cal for healthcare.

Conditions Necessary to Protect the Public Interest

In early 2014, when confronted by the likelihood of sale and the possibility of a system dismemberment, DCHS nurses met to collectively formulate a set of principles that would protect the hospitals, patients, and the community.

In their discussions, DCHS nurses identified five principles that they determined a transaction must embody in order to ensure the community's right to healthcare and thus earn the nurses' support. These principles required the eventual purchaser to agree to (1) operate all DCHS hospitals as acute care facilities, (2) maintain all existing hospital services, (3) give reasonable assurances against a short-term bankruptcy, (4) keep all promises made to retirees, and (5) honor caregivers' right to collectively bargain for their mutual aid and patient protection. Once adopted, these principles both guided the nurses' assessment of each prospective purchaser's good faith, and set the conditions for public support.

Only Prime's Offer for DCHS Satisfied the Conditions Necessary to Protect the Public Interest

The nurses made these principles known to all prospective purchasers who would agree to listen. Of those various candidates that lodged bids for the hospitals, only Prime satisfied the conditions necessary to guarantee safe patient care and continued community access to these essential institutions of public health. The nurses' support for this transaction is based these commitments, the evidence of which is found in Prime's written agreements.

In its Definitive Agreement[9] with DCHS, Prime agreed to the following terms, in numerical order:

7.3 Employees

(a) following the Closing Date, Prime Healthcare shall continue the employment of substantially all of the (i) unrepresented employees of the Hospitals, the DCHS Medical Foundation and CBS (excluding the System Office Employees), and (ii) employees working under a Collective Bargaining Agreement, or otherwise represented by a union and a continuing obligation imposed by Law to bargain with such union exists, each of whom are employed by DCHS as of the Closing Date, and who are in good standing and pass standard employee background checks, including any such employees who are on short-term or long-term disability or on leave of absence pursuant to the Family and Medical Leave Act of 1993 (each, a "Continuing Employee"). The Continuing Employees will receive substantially the same salaries or wages, and be given similar job titles and duties, as were provided by DCHS prior to the Closing Date.

These provisions guarantee the continued employment of virtually every caregiver in every classification at DCHS and its associated Medical Foundation. By agreeing to employ all employees, Prime satisfied a number of community conditions for the sale: it acknowledged its obligation to ensure patients receive safe care from the most experienced and valued caregivers, as well as its duty to recognize and bargain with all labor unions. This commitment is an unambiguous signal of Prime's intent to continue the operation of these hospitals.

The importance of this commitment cannot be overestimated. Any nurse will tell you that continuity of care is integral to safe, effective, and essential healthcare. At a basic level, such care is achieved when there are enough licensed regular staff to provide all necessary care. By agreeing to employ all of DCHS' caregivers, Prime has preserved the nurses' community and thus maximized their ability to provide safe patient care.

7.4 Pension Liabilities

(a) Effective as of the Effective Time, Prime Healthcare shall cause the Defined Benefit Church Plan and the Defined Contribution Church Plans to be amended as necessary to satisfy the requirements of ERISA and the Code and shall administer and fund the plans in accordance with the requirements of ERISA and the Code. Prime Healthcare shall assume responsibility for all DCHS' liabilities, be they contingent, interim or otherwise, under the Defined Benefit Church Plan and the Defined Contribution Church Plans as of the Effective Time. For the avoidance of doubt, Prime Healthcare shall be responsible for making, or causing DCHS to make, all contributions necessary to satisfy the funding requirements of ERISA and the Code with respect to benefits accrued under the Defined Benefit Church Plan as of the Closing Date, whether the

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[9] A copy of the Definitive Agreement is available from the Office of the Attorney General, http://oag.ca.gov/charities/nonprofithosp. Readers may also request copies of all transaction documents by contacting Ms. Maria Elena Hernandez at mariaelena.hernandez@doj.ca.gov or by telephone at (213) 620-6339.

obligation to make such contributions results from the conversion of the Defined Benefit Church Plan to a plan that is not a "church plan" or a determination that the Defined Benefit Church Plan did not qualify as a "church plan" prior to the Closing Date.

With this provision, Prime has assumed responsibility for funding all past pension liabilities. This commitment is necessary to ensure the fulfillment of promises made to retirees and is essential to the preservation of the dignity. To comply with this provision, Prime must make a significant investment, another indicator of its serious intent to operate these hospitals for some time.

7.8 Charity Care; Other Related Matters

(a) Prime Healthcare agrees to treat indigent patients and to provide charity care in the service area of the Hospitals and will comply with all applicable Laws governing such matters. For a period of not less than five (5) years following the Effective Time, Prime Healthcare shall maintain policies for the treatment of indigent patients at the Hospitals similar to those currently in effect at such Hospitals (or replacement policies that are intended to provide a similar or greater benefit to the community), provided that for purposes of determining the amount of charity and indigent care Prime Healthcare provides at the Hospitals, Prime Healthcare must adhere to the definitions and methodology for calculating charity care costs established by the California Office of Statewide Health Planning and Development as set forth in the Accounting and Reporting Manual for California Hospitals and applicable Hospital Technical Letters issued in connection therewith.

(b) To ensure adequate access to Medicare and Medi-Cal patients, for a period of not less than five (5) years following the Effective Time, Prime Healthcare will continue to operate the Hospitals as general acute care hospitals under California Health and Safety Code Section 1250 and shall continue to offer an open emergency room, subject to the availability of physicians on the respective Hospital's medical staff qualified to support such services and subject further to such changes as may be necessary or appropriate based on community needs, market demand and the financial viability of such services. Prime Healthcare shall operate the Hospitals in accordance with all Laws, including adopting a policy to provide for an appropriate medical screening examination to any patient presented to the emergency room who has a medical emergency, or who, in the judgment of the staff physician, has an immediate emergency need. No such patient shall be turned away because of age, race, religion, gender, sexual orientation, payment source or inability to pay.

In these provisions, Prime has agreed to maintain all existing hospital services for at least five-years. This is the most protective language in any of the proposed purchase agreements.[10] Under these terms, Prime must continue to operate the five hospitals and provide all of the essential services identified above. Therefore, if enforced, this agreement will ensure that a hospital system that today teeters on bankruptcy will be fully functioning well beyond the current horizon.

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[10] All bids from every prospective purchaser contained language identical to Section 7.8 of Prime's agreement with DCHS.

7.9 Capital Commitment

> *Within three (3) years following the Effective Time, Prime Healthcare covenants and agrees that it will either spend or commit to spend at least One Hundred Fifty Million Dollars ($150,000,000) in capital expenditures at the Hospitals.*

Under this provision, along with its other guarantees, Prime has committed to invest a substantial amount of capital to sustain these institutions as acute care hospitals, staffed by a community of caregivers capable of providing essential patient care. These necessary commitments appear to be backed by Prime assets. The overall structure of the Definitive Agreement and associated documents reveals no financial incentive to a post-acquisition bankruptcy.

But bankruptcy is the only likely alternative to these proposed terms.

According to all sources, apart from Prime, the only additional serious bid for DCHS was made by Blue Wolf Capital. The nurses considered Blue Wolf's proposal and concluded that it failed either to accord with their principles or to satisfy any of the conditions necessary to protect the public interest. For these reasons, the nurses refused to support a Blue Wolf purchase.

The Decision on the Sale Should Focus on Preserving Vital Healthcare Services

Many issues have been raised about the potential buyers of the DCHS hospitals. CNA holds that the first condition of a decision on the sale of the DCHS hospitals should be on whether these hospitals and the critical healthcare services they provide to their affected communities will be openly and fully maintained to protect the health and safety of the patients and residents they serve, and meet the commitments to the employees who have worked in those facilities for years.

The Attorney General Should Impose Conditions on the Sale

CNA urges the Attorney General to exercise her statutory authority to monitor and enforce Prime Healthcare's compliance with the terms of the Definitive Agreement. Hospital operators like all those who bid for DCHS are not going to abandon the lucrative healthcare market. Regardless of the outcome of this transaction, companies like Prime will continue to exist and they will in all likelihood grow even larger. Since there is no foreseeable end to the consolidation of the healthcare industry, it would be prudent to use a transaction like the one now under review to obtain the kind of legally enforceable commitments necessary to permit the Office of the Attorney General to

ensure the continuation of essential healthcare services and the protection of the public interest.

The nurses have additional ideas about the types of conditions that would best secure the public interest, which will be further discussed at the upcoming public hearings.

This report was prepared by the California Nurses Association.