HEALTH ACCESS
CALIFORNIA

May 11, 2016

Scott Chan
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11100
San Francisco, CA 94102
Via E-mail to: scott.chan@doj.ca.gov

Re: Proposed Change in Control and Governance of St. Joseph Health System and Providence Health & Services

Dear Mr. Chan:

Health Access California, the state health care consumer advocacy coalition working for quality, affordable healthcare for all Californians, appreciates this opportunity to comment on the proposed change in control and governance of St. Joseph Health System ("St. Joseph") and Providence Health & Services ("Providence"). Should the Attorney General approve this transaction, it must include strong, enforceable conditions that ensure vital health care services, including reproductive health services, continue to be available to the communities served by the hospitals.

Health Access sponsored much of the underlying legislation which grants the Attorney General authority to review, approve, deny or impose conditions on hospital transactions. We, and our coalition partners, have offered substantial comment on other non-profit hospital transactions and health industry mergers, and offer our comments based on that experience.

The Attorney General should condition this transaction on keeping all existing hospital services and emergency rooms open for at least ten years.

The Health System Combination Agreement commits to maintain hospitals and emergency departments for five years. It also commits to continue "key service lines," as defined by the hospitals in Exhibit 8.13, for at least five years. We find these commitments to be insufficient to ensure that the communities served by these hospitals will continue to have access to all existing services. The Attorney General should require all existing services, not just those the hospitals consider to be "key", to be maintained for a minimum of ten years to ensure that patients can continue to rely on the critical services provided by these hospitals.

The Attorney General should condition this transaction on the provision of the full range of reproductive health services.

St. Joseph and Providence hospitals adhere in full or in part to the Ethical and Religious Directives ("The Directives") for Catholic Health Care Services, which are issued by the

United States Conference of Catholic Bishops (USCCB). The Directives prohibit a range of reproductive health services, including contraception, sterilization, many infertility treatments, and abortion, even when a woman's health or life is jeopardized by a pregnancy.

According to the Health Impact Statements prepared for the Attorney General, there is variation in how hospitals affected by this transaction implement The Directives, and not all of the hospitals follow The Directives completely. Tubal ligations and abortions are provided "when the pathology is determined to present a medical need and/or a clear and present danger to the patient." According to the Health Impact Statements, these procedures were performed at all the hospitals in 2014, despite prohibitions in The Directives.

The Health Impact Statements mention that reproductive health services are available at other area providers, including other hospitals and clinics. Patients cannot simply choose to go to another provider for reproductive health services. First, a woman's provider might have admitting privileges at St. Joseph or Providence only, which means she is forced to choose between receiving care from a provider with whom she has a relationship or finding a new provider that has admitting privileges at another hospital. Second, health insurance and coverage is a barrier. If a woman's health plan only has a St. Joseph or Providence hospital in the network, the woman would have to pay hundreds or thousands of dollars in out-of-network charges to receive care at an out-of-network hospital. Third, most women expect to be able to receive all medically necessary care at their hospital, and do not know that religious restrictions on services exist until it is too late. Finally, women living in rural areas, such as those served by St. Joseph-Eureka and Redwood Memorial Hospital, have no options for alternative facilities in their communities.

Under no certain terms should the Attorney General rely on assertions by St. Joseph and Providence that there will be no change in the reproductive health services provided. Any approval must be conditioned on an enforceable agreement to not diminish or eliminate the reproductive health services currently provided at each of the St. Joseph and Providence facilities. As we learned in the Hoag/St. Joseph merger, your office, along with obstetricians practicing at the hospital and the community were told there would be "no change" in services. Much to everyone's dismay, Hoag discontinued comprehensive reproductive health services after the merger. As a result, women were no longer able to obtain a legal medical procedure at a major hospital. The USCCB has since voted to revise The Directives to make them more applicable to merger and business partners of Catholic health systems.[1] In addition, in the documents filed for this transaction, the Co-Sponsors Council reserves the right to, "[m]onitor the application of the Ethical and Religious Directives within Providence St. Joseph Health and its Catholic subsidiaries, and in the case of non-compliance, require the correction of any anomaly." As a result, it is imperative that St. Joseph and Providence be required to maintain all existing reproductive health services post-merger. These services should be equally available to all patients, not just on a case-by-case basis.

Charity care must be brought up to the statewide average and adjusted upward to reflect on-going needs of the remaining uninsured and underinsured.

As noted in the Health Impact Statements, many uninsured and under-insured people rely on these hospitals for healthcare services. The transaction agreement merely requires the affected hospitals to maintain levels of financial support for charity care based on the average costs for FY 2014-2015.

This commitment is wholly inadequate because all of the affected hospitals have significantly reduced the amount of charity care in recent years. For example, St. Mary Medical Center's charity care charges have decreased from a high of $43.6 million in FY 2011 to a low of approximately $20.4 million in FY 2015. We note that this figure includes bad debt, which should not be considered in the same vein as charity care, where care is provided to a consumer with no expectation of payment. The Health Impact Statements attribute the drop in charity care to the reduction in the rate of uninsured patients due to implementation of the Affordable Care Act. In addition, most of the hospitals range from 1.2% to 2.6% of gross patient revenue for charity care, which is lower than the statewide average of 2.7%. For this reason, we agree with the Health Impact Statement's recommendation that the Minimum Charity Care Amount for each hospital should be based on the average of the last five years. We would also add a requirement that the hospitals, bring their average gross patient revenue for charity care up to the statewide average. Even then, we think this amount is insufficient to address the needs of the uninsured and underinsured.

We do, however, disagree with the Health Impact Statement's suggestion that the Attorney General "consider adjusting the required commitment to charity care based on available data from time periods after implementation of the ACA." We strongly dispute the presumption that there is less need for charity care because it does not account for the realities health care consumers face in a post-ACA world.

While California's robust implementation of the ACA has reduced the rate of uninsured, there remains a sizable uninsured population, particularly in the communities served by these hospitals. Recent analyses indicate that nearly 3.5 million Californians remain uninsured[2], which includes the undocumented, who are legally excluded from coverage under the ACA, as well as individuals who are exempted from the ACA's individual mandate for affordability or other reasons. In addition, consumers with new coverage options through Covered California still face affordability issues, particularly if they are enrolled in plans with expensive out-of-pocket costs, such as high deductibles and cost-sharing.[3] Therefore, even patients with coverage through Covered California still need the financial assistance provided by hospital charity care programs.

Charity care continues to play a critical role in the health care safety net, both for those who do not have coverage and those who have coverage that is unaffordable to them. The post-ACA landscape requires hospital charity care programs to evolve and adapt to meet the changing needs of the health care safety net. For example, charity care programs can continue to serve the uninsured in their communities, fill coverage gaps for the "churn" population (those who will continue to move in and out of eligibility for Medi-Cal or Covered California premium subsidies), or provide complementary services to those newly covered by Medi-Cal or Covered California.[4] In addition, hospitals can leverage the reductions in uncompensated care to offer more generous financial assistance to a broader range of patients, including those who have health plans but still struggle to pay medical bills.[5]

In addition to providing health care services for those that cannot afford them, St. Joseph and Providence hospitals must continue working with their communities to support and create programs that improve the overall health of their communities by addressing health disparities that impact communities of color, low-income communities, and other underserved populations such as LGBTQ populations. Research shows that the social determinants of health, including low

education, racial segregation, low social supports, income inequality, and area-level poverty negatively impact the health and well-being of the populations that constitute the majority of California.[6] These social and economic inequities are prevalent in many of the communities served by St. Joseph and Providence hospitals, justifying the need to maintain, if not increase, charity care and community benefit programs.

The Attorney General should ensure all Californians continue to have access to St. Joseph and Providence Hospitals, not just those enrolled in Medicare and Medi-Cal.

The Health System Combination Agreement commits the hospitals to continue their existing Medicare and Medi-Cal contracts for five years, but fails to address the needs of patients who have other forms of health coverage or no coverage at all. The state has an interest in ensuring that all Californians have access to the full range of care they need, regardless of the source of their health coverage. Given the dominance of managed care in California's Medi-Cal and Medicare markets, the hospitals must maintain and have contracts with managed care plans if they are to be accessible to the populations served by these programs. In addition, the hospitals must also be required to maintain and have contracts with commercial carriers and Qualified Health Plans offered through Covered California to ensure that patients are not denied access to healthcare services. Any approval of this transaction must be conditioned on the enforceable commitments to continue contracting with Medicare and Medi-Cal for at least ten years, as well with commercial managed care and other forms of health coverage.

As noted in the Health Impact Statement, Little Company-Torrance does not have Medi-Cal managed care contracts. We agree that the low-income patient population in the service area would have increased access to healthcare services if the hospital were to contract with Medi-Cal managed care payers.

The Attorney General should ensure that hospitals comply with state hospital seismic safety laws and regulations.

Many of the hospitals affected by this transaction have structures that need to undergo construction to comply with the California Office of Statewide Health Planning and Development's (OSHPD) seismic safety standards. The Attorney General should require St. Joseph and Providence to meet seismic compliance requirements through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Saf. Code, § 129675-130070). This condition is essential to ensuring that acute care hospitals will be safe and reasonably capable of providing services to the pubic following an earthquake. We ask the Attorney General to require the parties to develop a capital plan with clear benchmarks similar to those required by OSHPD for compliance with the post-2030 seismic safety standards.

The Attorney General should ensure this merger does not lead to higher prices and less competition.

We have strong concerns that the St. Joseph/Providence merger will lead to higher prices as the hospitals gain greater market share and bargaining power. These higher prices means insurers,

employers, and consumers pay more for procedures such as hip and knee replacements, heart surgery, and maternity care. Studies have found hospital mergers lead to significant price increases (exceeding 20%) when the mergers occurred in concentrated markets.[7] However, consolidation in non-overlapping geographic markets, as is the case in the present transaction, also lead to higher prices. A recently released study found price increases of six to 10 percent in deals involving hospital consolidation in the same state, but different local markets. The findings in this study, which reviewed over 500 mergers hospital between 2000 and 2012, give us great pause regarding the combination of St. Joseph and Providence, which also spans multiple markets serving distinct patient populations. Similar to the cross-market mergers studied in the aforementioned study, deals such as this one tend to hurt consumers and purchasers. Given that hospital mergers almost always lead to higher prices, even if the hospitals are in completely different markets, we ask the Attorney General to scrutinize how this transaction will affect market competition and health care prices, and impose conditions to ensure that consumers and purchasers are not burdened by price increases.

We believe including clear and enforceable conditions on this transaction will protect and preserve access to critical medical care, including reproductive health services, protect patient health and finances, and strengthen the health system in the communities served by the St. Joseph and Providence hospitals. Thank you for giving these issues your highest level of scrutiny and for protecting the interests of consumers in this process.

If you have any questions or need further information, please contact Tam Ma, Policy Counsel, at tma@health-access.org or (916) 497-0923 x. 201.

Sincerely,

Anthony Wright
Executive Director

[1] http://www.modernhealthcare.com/article/20141111/NEWS/311119939
[2] UCLA Center for Health Policy Research and UC Berkeley Labor Center, *Which Californians Will Lack Health Insurance Under the Affordable Care Act*, January 2015. Available at: http://laborcenter.berkeley.edu/pdf/2015/remaining_uninsured_2015.pdf
[3] New York Times, *Unable to Meet the Deductible or the Doctor*, October 17, 2014. Available at: http://www.nytimes.com/2014/10/18/us/unable-to-meet-the-deductible-or-the-doctor.html?_r=0
[4] Center for Health Care Strategies, *Impact of the Affordable Care Act on Charity Care Programs*, September 2013. Available at: http://www.chcs.org/media/Charity_Care_Brief__090413_FINAL.pdf
[5] For example, in California, Kaiser Permanente is offering free hospital care for individuals with incomes up to 350 percent of the federal poverty guidelines, which converts to annual income of $84,875 for a family of four in 2015. See: See: http://share.kaiserpermanente.org/article/subsidized-care-and-coverage-medical-financial-assistanceprogram; http://share.kaiserpermanente.org/wp-content/uploads/2013/10/NCAL-Medical-Financial-AssistancePolicy-Final-9_1_14.pdf; and http://share.kaiserpermanente.org/wp-content/uploads/2013/12/scal_MFA-Policy- 10-31-14.pdf
[6] Office of Health Equity, California Department of Public Health, PORTRAIT OF PROMISE: The California Statewide Plan to Promote Health and Mental Health Equity, Report to the Legislature and the People of California, August 2015. Available at: https://www.cdph.ca.gov/programs/Documents/CDPH_OHE_Disparity_Report_Final_Jun17_LowRes.pdf
[7] Gaynor M, Town R., "The impact of hospital consolidation: Update", Robert Wood Johnson Foundation (June 2012). Available at: http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf73261.