October 20, 2015

VIA EMAIL
Wendi A. Horwitz
Deputy Attorney General
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
wendi.horwitz@doj.ca.gov

Re: Proposed Change in Control and Governance of Daughters of Charity Health System

Dear Ms. Horwitz:

Health Access California, the statewide health care consumer coalition committed to quality, affordable health care for all Californians, offers the following comments on the proposed transaction, which would result in BlueMountain Capital Management, LLC ("BlueMountain"), capitalizing and managing the Daughters of Charity Health System ("DCHS") hospitals with an option to purchase the health system after three years. Going forward, the system would be renamed Verity Health System of California ("Verity"). Should the Attorney General approve this transaction, it must include conditions that ensure vital health care 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 transactions in health care, and offer comments based on that experience.

The Attorney General should condition this transaction on keeping existing hospital services and emergency rooms open for at least ten years.
The Agreement to continue operating the facilities as general acute care hospitals and keep their emergency rooms for five years is limited and conditioned on "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. . . ."[1] The limited and conditional commitment to keep the hospitals open should be contrasted with the unconditional agreement to

[1] System Restructuring and Support Agreement (July 17, 2015), Section 7.6(b).

maintain existing chapels at the hospitals for five years, including "an appropriately staffed and funded pastoral care service."[2]

The caveats included in the Agreement allow Verity, BlueMountain and Integrity to have sole discretion over the continued availability of health services and obviate the promise to keep the hospitals open:

- *Subject to the availability of physicians on the respective Hospital's medical staff qualified to support such services.* A hospital has complete control over whether it has available physicians and other health professionals on staff qualified to provide services. This condition is unnecessary because hospitals that intend to continue operating as such must do what is necessary to attract and retain qualified people on staff. The inclusion of this condition obviates the commitment to keeping the hospitals and services open.

- *Subject further to such changes as may be necessary or appropriate based on community needs.* Under the Agreement, the determination of whether any changes in services are "necessary or appropriate based on community needs" is in the sole discretion of Verity, BlueMountain and Integrity. The Attorney General is responsible for ensuring that nonprofit hospital transactions do not negatively impact the health of the community and assure that California communities can count on their hospital being open and available when they need it. The Attorney General, not Verity, BlueMountain or Integrity, must determine what changes are necessary or appropriate or what the community needs are. The ACA, coupled with California's efforts to improve the health care system, have and will continue to transform California's health care system for the years to come. As a result, the Attorney General should maintain oversight over the hospitals and their service to the needs of the community.

- *Subject to market demand and financial viability of services.* Like the previous condition, the Agreement gives Verity, BlueMountain and Integrity sole discretion to assess market demand and financial availability and undermines any promise to keep the hospitals and services open. The Attorney General should retain authority to review any proposed changes to the hospitals and services provided.

- *Length of commitment to keep hospitals and services open.* The Attorney General should require services to be maintained for a minimum of ten years to ensure that the majority of DCHS patients, low-income and elderly patients, can continue to rely on the critical services provided by these hospitals.

[2] System Restructuring and Support Agreement (July 17, 2015), Section 7.6(c).

The Attorney General should require all current services, not just emergency care and general acute care hospital services, to be maintained for at least ten years.

The Agreement only includes a limited and conditional commitment to operate general acute care hospitals and a commitment to offer emergency room services, but does not include any provision for the continuation of existing health care services that are currently being offered beyond those required of a general acute care hospital. Section 1250.1(a) of the California Health and Safety Code defines "general acute care hospitals" as a health facility that provides the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital is not required to offer the broad array of services currently available at DCHS hospitals, including those outlined in the Health Care Impact Statements for the hospitals: behavioral health and psychiatric services, cancer services, gastroenterology, imaging and laboratory services, multi-organ transplant services, neonatal intensive care, nephrology, neurosurgery, obstetrics, oncology, pediatrics, orthopedics and joint replacement services, rehabilitation skilled nursing services, stroke services, and wound care services. Each of these services currently provided at DCHS hospitals are not required for licensure as a general acute care hospital.

The Agreement, by excluding any requirement that these services be continued, allows Verity, BlueMountain and Integrity to reduce or eliminate these services because they are not part of the eight basic services required of general acute care hospitals. The Attorney General should require all existing services, and not just those minimally required of general acute care hospitals and emergency services, to be maintained for ten years so communities that have relied on DCHS hospitals for decades can continue to access these important health care services.

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

The Agreement requires the general acute care hospitals and emergency room services to remain open to "ensure adequate access to Medicare and Medi-Cal patients"[3] 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 maintain and have contracts with commercial carriers and Qualified Health Plans offered through Covered California. The Attorney General must condition any approval of this transaction on continued participation in Medicare and Medi-Cal,

[3] System Restructuring and Support Agreement (July 17, 2015), Section 7.6(b).

as well as contracting with managed care programs and other forms of health coverage to ensure that patients are not denied access to healthcare services.

The Attorney General should require charity care and community benefit programs to be maintained at current levels for at least ten years.

The Agreement requires charity care to be maintained at current levels for at least five years.[4] The Term Sheet for the Agreement, however, suggests there may be less need for charity care due to lower rates of uninsured resulting from implementation of the Affordable Care Act (ACA) and Medi-Cal expansion. The presumption that there is less need for charity care does not account for the realities health care consumers face in a post-ACA world. Charity care must, at a minimum, be maintained at current levels.

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 DCHS. Recent analyses indicate that nearly 3.5 million Californians remain uninsured[5], 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.[6] 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.[7] 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.[8]

[4] System Restructuring and Support Agreement (July 17, 2015), Section 7.6(a).
[5] 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
[6] 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
[7] 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
[8] 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.

In addition to providing health care services for those that cannot afford them, DCHS 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.[9] These social and economic inequities are prevalent in the communities served by DCHS hospitals, justifying the need to maintain charity care and community benefit programs at current levels, if not higher.

The Attorney General Should Ensure That Hospitals Comply with State Hospital Seismic Safety Laws and Regulations.

The Agreement requires DCHS to ensure that the inpatient beds at Seton Medical Center will be seismically compliant as of January 1, 2020. State law requires that by 2020 all health care facilities must withstand risk of collapse after a strong earthquake, and most general acute care hospitals are in compliance with this standard. State law also requires hospitals to meet a more stringent requirement by 2030 in which all acute care hospitals must be deemed safe and reasonably capable of providing services to the public following an earthquake. It does not make sense to for a hospital to only be in compliance with the 2020 seismic safety standards only to close in 2030 if it is not in compliance with the standards that take effect that year. The Attorney General must condition this transaction on committing the necessary investments required to meet and maintain seismic compliance requirements beyond 2030.

Health Care Impact Analyses Highlight Additional Needs for DCHS Hospitals

Health Access California has also reviewed the Health Care Impact Analyses for each hospital dated October 2, 2015 and offer comments on these analyses.

DCHS hospitals are critical components of the healthcare safety net in their respective communities. St. Francis and St. Vincent's in Los Angeles County are located in medically underserved areas with a high proportion of Medi-Cal, Medicare, and of uninsured patients. The market role of hospitals such as St. Francis and St. Vincent's is being transformed by the ACA's transformation of coverage. Santa Clara County has expressed interest in purchasing both O'Connor and St. Louise, a testament to the need

See: http://share.kaiserpermanente.org/article/subsidized-care-and-coverage-medical-financial-assistance-program; http://share.kaiserpermanente.org/wp-content/uploads/2013/10/NCAL-Medical-Financial-Assistance-Policy-Final-9_1_14.pdf; and http://share.kaiserpermanente.org/wp-content/uploads/2013/12/scal_MFA-Policy-10-31-14.pdf.

[9] 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

for these hospitals in that county. Finally, St. Louise, Seton Daly City and Seton Coastside are not geographically proximate to other hospitals, making them the only source of care for people residing in those communities. As a result, the Attorney General needs to ensure these hospitals and the services they provide remain open and accessible to the communities they serve.

A network adequacy analysis is needed to ensure access for those with coverage from health plans. Health Access urges that a network adequacy analysis be completed, applying California's geographic proximity, particularly for St. Francis, St. Louise, Seton Daly City and Seton Coastside hospitals. California law requires a hospital to be within 15 miles or 30 minutes from a patient's home or workplace for commercial managed care and within 10 miles for Medi-Cal managed care. A network adequacy analysis will demonstrate that even hospitals which are not in severely underserved areas are necessary in order for health plans to comply with state network adequacy laws. The results of such a geographic adequacy analysis may lead to additional conditions to ensure continued access to these hospitals.

Hospitals must comply with post-2030 seismic safety requirements. The Health Impact Analysis notes several options for mitigating seismic safety concerns at Seton Hospital and notes that Daughters, BlueMountain, and Integrity will "make a decision by November 1, 2015 regarding how to best achieve seismic compliance at the Hospital." Among the options is one that does not guarantee compliance with seismic safety guidelines after 2030. The Attorney General must require compliance with seismic safety standards beyond 2030 so that hospitals are not closed due to a failure to comply with standards. 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 structure of this transaction requires heightened scrutiny and clear conditions to ensure services continue if the purchase option is exercised. Unlike the previous proposed sale of DCHS hospitals to a for-profit entity, this proposed transaction involves a change in governance where the hospitals remain as independent non-profit entities and are capitalized and managed by for-profit entities. BlueMountain has the option to purchase the hospitals and convert them to for-profit entities anywhere between the third and fifteenth anniversaries of closing. Therefore, any approval of this transaction must include conditions that account for the long duration of the option period and protect services in the event the purchase option is exercised and the hospitals are owned by a for-profit entity.

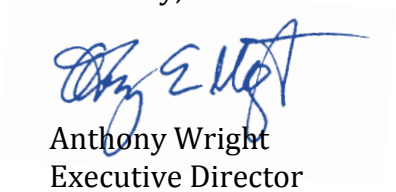
For example, under the proposed Agreement, BlueMountain can exercise its purchase option five years after the transaction closes and then immediately eliminate hospital services because the five-year commitment to maintain services in the Agreement would have expired. In the alternative, if the Attorney General were to condition approval of this transaction on maintaining services for ten years, BlueMountain could

exercise its purchase option nine years after closing, keep services open for one year, and eliminate them after the ten-year condition expires. Under either scenario, the Attorney General would no longer have jurisdiction over what changes take place at these hospitals because they would be operated by a for-profit entity after the purchase option is exercised. Health Access urges the Attorney General to impose conditions requiring the maintenance of services and charity care after the option to purchase is exercised.

DCHS hospitals have been, and need to continue to be, a critical component of the health care safety net in Los Angeles, Santa Clara and San Mateo Counties. Health Access California urges the Attorney General to ensure that the services provided by DCHS hospitals remain open and available to all patients who rely on these hospitals for their care. We believe including clear and enforceable conditions on this transaction will protect and preserve patient health and finances, maintain the integrity of public programs, protect valuable taxpayer resources, and strengthen the health system of each community.

Thank you for your careful consideration of this transaction. Please contact Tam Ma, Policy Counsel, at (916) 497-0923 x. 201 or tma@health-access.org if we can answer any questions for you.

Sincerely,



Anthony Wright
Executive Director