



September 12, 2014

Atty. Gen. John Hoffman  
Office of the Attorney General  
P.O. Box 080  
Trenton, New Jersey 08525-080  
Att: Jay Ganzman, DAG

Re: Proposed Acquisition of St. Clare's Health System  
By Prime Healthcare Services, LLC.

Dear Mr. Ganzman:

I am writing to you on behalf of the Concerned Residents of Franciscan Oaks, a continuing care retirement community ("CCRC"), and New Jersey Appleseed to express our interest, concerns and questions regarding the proposed acquisition of St. Clare's Health System by Prime Healthcare Service, LLC. Appleseed's clients, who are a group of residents in Franciscan Oaks, which is owned and operated by St. Francis Life Care Corporation, a nonprofit whose sole corporate member is St. Clare's Health System (that is a subsidiary of Catholic Health Initiatives, Inc., CHI) are extremely concerned that the services, costs and mission of their retirement community will be adversely impacted by this acquisition as revealed in the documents filed with your office.

In specific, we believe that the Board of St. Clare's Health System and CHI did not adequately consider the nature of St. Francis Life Care Corporation when deciding to sell it to Prime, a company that appears to have neither the expertise to operate a CCRC nor the desire to do so, and thus, urge your office to consider withholding your approval of this aspect of the transaction. The documents indicate that CHI's overriding "intention from the beginning of the sales process to sell the entire St. Clare's Health System to one buyer and not in multiple transactions," (Answer to Question 15, no Bates stamp

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number), has overshadowed its obligation to ensure that the charitable assets and the residents of St. Francis Life Care Corporation are properly protected in this proposed sale of St. Clare's Health System to Prime.

First, NJ Appleseed wants to acknowledge the complexity of the proposed acquisition. It appears to be the first hospital conversion in the state that involves an out-of-state owner, and the first that involves a number of corporations, some of which do not hold acute care licenses.<sup>1</sup> Prime Healthcare Services advertises itself as an acute care, emergency-room driven operator of hospitals; not the operator of a visiting nurses association or a CCRC. Indeed, in its January 23, 2013 letter of intent, Prime Healthcare offered to maintain acute care services only at the Denville hospital for 5 years, not the other hospital locations, and noted its intention to sell St. Francis Life Care Corporation post closing. (SC27\_00009). I did not find any specific mention regarding its intentions with respect to the Visiting Nurse Association of St. Clare's, Inc. in the documents that I reviewed. In any event, it appears that CHI, as the sole member of the St. Clare's Health System did delineate specific criteria to govern its acquisition process and did employ several consultants to assist it with that process. Nonetheless, we believe that CHI did not adequately protect the mission and assets of St. Francis Life Care Corporation, even if your office determines that it acted appropriately with respect to the mission and assets of the hospital components of the entire St. Clare's Health System.

Our concerns regarding the fate of Franciscan Oaks all relate to the importance of protecting the residents from potential mismanagement that will jeopardize their sizeable financial investment and retirement security. Those concerns are basically threefold: The failure to sell the CCRC to a nonprofit entity that has the expertise to operate and hold its license; the failure to protect the assets of St Francis Life Care Corporation, including those assets held by St. Clare's Foundation that are dedicated to Franciscan Oaks; and the failure to ensure a role for the residents of the Oaks in the governance of their CCRC, especially in the future sale of that

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<sup>1</sup> We understand that the Attorney General is evaluating this application pursuant to his authority under CHAPA, however, we believe that his obligations to protect charitable corporations that do not hold acute care licenses stem from his authority under common law.

entity. Most importantly, the documents have left us with more questions than answers.

The Structure of the Sale. According to the Asset Purchase Agreement in the files submitted to the Attorney General, Franciscan Oaks is an included asset in the transaction, Prime intends to sell that asset at some future date, and if Prime secures more than \$40 million for that asset, it must remit to CHI the net proceeds of that transaction above that purchase price. (APA, dated May 2, 2013). We did not see any commitment to secure a new operating license for the CCRC (in contrast to a commitment by St. Clare's to secure all regulatory approvals, including DOH's approval of the transfer of the hospitals' operating licenses) nor any explanation of the structure of the transaction. Indeed, in a letter sent to the Concerned Residents of St. Francis Life Care Corporation from Steve Denenhltz, Bureau of Homeowner Protection in the DCA, dated February 10, 2014, he stated that "As of this date an application for certification has not been received from Prime Health Care or any other purchaser for Franciscan Oaks and is not expected prior to an approved CHAPA filing." (emphasis added). But see N.J.S.A. 52:27D-335(a) (requiring DCA Commissioner to approve Prime's acquisition of ownership in the CCRC "prior to completion of the sale or transfer of the facility's ownership interest.")

That is, based on the information provided in the files, we are still unsure whether St. Francis Life Care Corporation is going to remain a nonprofit corporation or is it going to become a for-profit corporation? Will St. Francis Life Care Corporation dissolve and a new entity hold its assets? Will Prime Health Services just replace itself as the sole member of the corporation in lieu of St. Clare's Health System? Will, and is, St. Francis Life Care Corporation authorized to remain the holder of the license to operate the CCRC upon change of its sole member (given the fact that under New Jersey law and DCA regulations the Certificate of Authority to operate a CCRC is not transferable, N.J.A.C. 5:19-2.1)? What will be the governing structure of the "new" corporation under Prime given that the Board of St. Francis Life Care Corporation is currently dominated (3 out of 5 members) by personnel from St. Clare's Health System, in particular the hospital in Denville?

Our inability to decipher certain basic facts from the information provided to your office inhibits our ability to determine whether the Boards of CHI, St. Clare's Health System and St. Francis Life Care Corporation, satisfied their fiduciary

duties to the corporation and the residents of the Oaks when deciding to enter into this transaction. Nonetheless, it should be noted that my clients believe that St. Francis Life Care Corporation must remain a nonprofit in order to succeed. They believe that a change of status to a for-profit will inhibit the Oaks ability to compete against the other nonprofit CCRCs in New Jersey; and, due to that change in status, that expected reductions in services (i.e., food quality, programs, trips and capital improvements) will adversely affect the Oaks' ability to attract new residents.

Protection of St. Francis Life Corporation's Charitable Assets.

There is much discussion in the documents submitted to the Attorney General regarding the nature of the different contracts held by residents of the Oaks and why certain revenue or reserves are labeled "liabilities." (See, APA, where Prime agrees to assume "all liabilities of SFLCC reflected as 'Deferred revenue from advance fees'," which as of June 30, 2012 was approximately \$46,314,000). Various budgets are submitted, but basic information about the transaction is not revealed. Did St. Clare's Health System or CHI undertake a fair market value of Franciscan Oaks? The applicant's answer to Question No. 19. Mentions a "valuation prepared by Principle Valuation" but we did not see a separate market valuation for each component of St. Clare's Health System. Did either try to transfer the entity to another nonprofit CCRC operator? What was the role of the Board of St. Francis Life Care Corporation in the decision-making? Did each or any one of the boards of these three entities take any action to protect the charitable assets of St. Francis Life Care Corporation, which includes approximately \$119,000 currently in the SFLCC Benevolent Funds, which monies were donated by residents and earmarked for those SFLCC residents who may temporarily require financial assistance, but which is held by St. Clare's Foundation?

As a preliminary matter, we simply do not know how much money CHI is receiving for St. Francis Life Care Corporation. The APA, §2.13, merely states that the "Parties shall use good faith efforts to mutually agree upon an allocation of the Purchase Price among the Acquired Assets."<sup>2</sup> On the other hand, we

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<sup>2</sup> In addition, we note that the documents indicate that, "In the subsequent sale of Franciscan Oaks by Prime, Prime anticipates the transaction being a similar cash-free transaction that will require the buyer to fund the [liquid]

do know that if Prime sells "substantially all of the SFLCC assets to an unaffiliated third party," it must remit to CHI the net proceeds from that sale that exceed \$40m. (APA, \$12.21). Does this mean that CHI is receiving \$40m. for the Oaks? If that is the case, are there any net proceeds from the sale of the Oaks that must be placed in a conversion foundation, if in fact St. Francis Life Care Corporation is becoming a for-profit?

In a document headed "St. Francis Life Care Corporation, Notes to Financial Statements (continued)" concerning its long-term debt, it seems that as of 2012 there was approximately \$35,410,000 in long term debt, most of which was owed at the time to CHI pursuant to a \$32.7m note CHI took in 2011 when it redeemed the Series 1997 NJEDA bonds, entitled Franciscan Oaks Project. Two years later, that amount may be significantly less, we just do not know.

In any case, if one were to allocate \$40m. of the \$100m. purchase price to the Oaks, then perhaps there should be a minimum of \$5m. that should be given to the St. Clare's Health Foundation to be used for CCRC purposes.

Again, the failure of the applicant to treat each corporate entity in the system separately makes it difficult for us to determine whether the Boards of CHI, St. Clare's Health System and St. Francis Life Care Corporation adequately protected the charitable assets of the corporation and the charitable proceeds of the sale to the extent they can be allocated to the Oaks.

#### Role of Residents in Governance.

St. Francis Life Care Corporation is a nonprofit corporation established under Title 15A, but is also regulated by DCA as a CCRC, pursuant to N.J.S.A. 52:27D-330 et. seq. Specifically, N.J.S.A. 52:27D-345(d) requires that the board of directors of a CCRC "consult and discuss with the representatives of the residents any proposed action that might significantly affect the well-being of the residents or the financial stability of the facility;" and, N.J.S.A. 52:27D-345(e) directs that the board itself must "include at least one resident as a full voting member of the board." Resident members are to be nominated by the elected representatives of the residents, though may be selected by the board of directors or other governing body.

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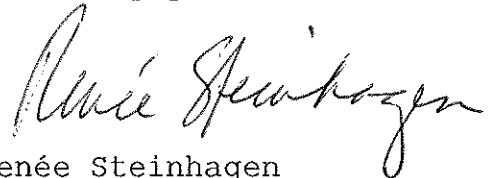
reserve requirement." (Answer to Question 19).

Currently, the five-member Board of St. Francis Life Care Corporation includes two (2) resident members. Though there is some question whether those two members were actually nominated by the residents, and whether one is a full-voting member, there is little doubt that such governance requirements have not been considered in the proposed transaction. Nowhere in the papers submitted to the Attorney General's office is there any mention of what the Board of the "new" St. Francis Life Care Corporation would look like, let alone whether it would include a voting member nominated by the residents of the Oaks. There is also nothing in the documents or answers to questions posed by the Attorney General indicating Prime's willingness to involve the Resident Council or the residents directly in any decisions of the corporation, including the proposed sale of the entity in the future.

Over the past two years, the proposed sale of Franciscan Oaks to a for-profit (first, Ascension Health Care; and now, Prime Healthcare Services) has been greatly disturbing to my clients, whose sizeable financial investments toward entrance fees and costs, as well as their carefully planned retirement futures, are at stake. Despite formal requirements of resident participation, the residents feel that they have not been properly consulted nor advised about the proposed changes in ownership and corporate status. The proposed sale of St. Francis Life Care Corporation to Prime, with the understanding that Prime will turn around and sell the facility to yet another third-party without any control or oversight of such sale, only adds to their angst. There is simply something wrong with selling a charitable, nonprofit catholic CCRC to a for-profit hospital operator who has stated its intent to sell the facility to some entity that has yet to be identified; we just do not see how CHI can justify such sale, especially in light of the charitable mission of Franciscan Oaks.

Thank you for your attention to this matter.

Sincerely yours,



Renée Steinhagen  
Executive Director

Cc: Concerned Residents of Franciscan Oaks