

September 26, 2024

BY EMAIL AND U.S. MAIL

Illinois Health Services & Facilities Review Board
Attn: John Kniery, Administrator
525 W. Jefferson Street, 2nd Floor
Springfield, IL 62761
DPH.HFSRB@illinois.gov

**Re: Applications for Change of Ownership from Ascension Health to Prime
Healthcare Services, Inc. (E-016-24 to E-026-24)**

Dear Members of the Board:

Ascension Health, one of the largest Catholic healthcare organizations in the nation, has applied for change of ownership exemptions related to the sale of 11 of its Illinois facilities to Prime Healthcare Services, Inc., a California-based, secular health system. Based on the information provided in Ascension's exemption applications and in response to the Board's questions thus far, it remains unclear how the change of ownership will affect the scope of reproductive, gender-affirming, and other essential health services available to Illinois residents. We urge the Board to carefully evaluate the proposed sale and its impact on this essential healthcare, including whether any religious restrictions on care are anticipated to transfer to the new owner.

Providers working in Catholic hospitals must adhere to the Ethical and Religious Directives for Catholic Health Care Services (ERDs) issued by the U.S. Conference of Catholic Bishops. The ERDs prohibit a range of reproductive health services, including contraception, sterilization, many infertility treatments, and abortion, even when a pregnant person's life or health is jeopardized by a pregnancy.¹ Catholic hospitals also routinely prohibit doctors from performing tubal ligations at the time of delivery, when the procedure is safest, thus forcing patients to undergo an additional surgery elsewhere after recovering from childbirth.

¹ U.S. Conference of Catholic Bishops, Ethical and Religious Directives for Catholic Health Care Services (ERDs), at 16-19 (6th ed. 2018), *available at* https://www.usccb.org/resources/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06_0.pdf.

Transgender and gender non-conforming patients suffer the same and other, similar harms when seeking healthcare, as the Conference of Catholic Bishops is unequivocal that, as a religious matter, it does not recognize transgender individuals or the propriety of gender-affirming care.² Catholic hospitals may also limit options for HIV/STI prevention, miscarriage management, and care for victims of sexual assault. Some end-of-life choices may also be restricted.³ The ERDs prohibit such care because the Conference of Catholic Bishops considers it “intrinsically immoral” and “intrinsically evil.”⁴

This is not a hypothetical problem or an isolated one, as the market saturation of Catholic hospitals has dramatically increased over the past two decades and throughout Illinois. By 2020, four of the 10 largest health systems in the United States were Catholic—with Ascension ranking as the second largest Catholic system and the fourth largest system overall. In Illinois, 30% of all hospitals and 28% of all staffed beds are Catholic, and 24% of births take place in a Catholic facility.⁵

Low-income women and women of color in Illinois are especially vulnerable to these restrictions on access to essential healthcare. In 2018, Catholic hospitals comprised more than 38% of options for five of the seven Illinois Medicaid managed care plans.⁶ People of color in Cook County have even fewer options: 93% of Black and Hispanic women were enrolled in one of the five plans with a heavily Catholic network, compared with 77% of white women.⁷ Likewise, women in rural communities may have little choice but to rely on religiously controlled institutions that are the sole providers of hospital services in their area.⁸

Given this context, one might imagine that the sale of a Catholic hospital to a secular healthcare organization would result in greater access to reproductive, gender-affirming, and other essential care. Unfortunately, the reality is not so clear-cut. Catholic hospitals and health systems often demand that secular purchasers continue to enforce the ERDs—and thus refuse to

² See, e.g., Public Comment Letter from U.S. Conference of Catholic Bishops to Department of Health and Human Services re: Grants Regulation (RIN-0945-AA19) (Sept. 5, 2023), at 2-3, available at https://www.usccb.org/sites/default/files/about/general-counsel/rulemaking/upload/23-0905_COMMENTS_HHSGrantsRule_FINAL.pdf.

³ See ERDs No. 55-61 (restricting end-of-life care to options deemed “morally legitimate” by the Church).

⁴ ERD No. 70 & n.48.

⁵ Tess Solomon, et al., *Bigger and Bigger: The Growth of Catholic Health Systems*, Community Catalyst, at Appendix B (Nov. 2020), available at <https://communitycatalyst.org/wp-content/uploads/2022/11/2020-Cath-Hosp-Report-2020-31.pdf>.

⁶ Stephanie Goldberg, *Harder to Exercise*, Crain’s Chicago Business (July 12, 2019), available at <https://www.chicagobusiness.com/health-care/why-illinois-newly-recognized-fundamental-right-getting-harder-exercise>; Sarah Garcia-Ricketts, et al., *The Role of Religiously-Affiliated Hospitals in Reproductive Health Care for Women with Public Insurance in Cook County, Illinois*, at 3 (Sept. 2020), available at <https://ci3.uchicago.edu/wp-content/uploads/2020/09/The-Role-of-Religiously-affiliated-Hospitals-in-Reproductive-Health-Care-for-Women-with-public-insurance-in-Cook-County.pdf>.

⁷ Garcia-Ricketts at 3-4.

⁸ Solomon at 4, 15.

provide certain healthcare services—even after a change in ownership.⁹ At these “zombie” institutions, the restrictions outlast any attachment to a religious entity and subject the communities they serve to religious beliefs they may not share.¹⁰ Indeed, when Prime Healthcare acquired three Catholic New Jersey hospitals in 2020, it agreed to allow the hospitals to continue imposing the ERDs under its purportedly secular management.¹¹

Yet the continued applicability of these religious restrictions is not inevitable. For example, when Prime Healthcare purchased St. Francis Medical Center in California in 2020, it did so on the condition that “[t]here shall be no discrimination against lesbian, gay, bisexual, or transgender individuals at St. Francis Medical Center, and no restriction or limitation on providing or making reproductive health services available at St. Francis Medical Center, its medical office buildings, or at any of its facilities.”¹² This approach not only serves the interests of the community in improved access to essential healthcare; it also represents a prudent decision to avoid the litigation risk posed by allowing continued sex discrimination by a public accommodation.¹³

At least five of the hospitals included in the sale presently before the Board—Ascension St. Mary-Kankakee (E-017-24), Ascension St. Mary-Chicago (E-018-24), Ascension St. Joseph-Joliet (E-019-24), Ascension Mercy-Aurora (E-022-24), and Ascension Resurrection-Chicago (E-023-24)—currently provide OB/GYN and reproductive healthcare services, with over 3,000 collective admissions annually. But Ascension’s change in ownership applications do not reveal whether the terms of its sale require Prime Healthcare to uphold the current religious restrictions on scope of services. Each application includes the same boilerplate statement that “at this time, no changes to the scope of services or the levels of care provided at the facility are currently anticipated to occur within 24 months of the proposed transaction,” while providing that Prime

⁹ See, e.g., Claire Bushey, *Rush Oak Park to keep Catholic abortion policy*, Crain’s Chicago Business (July 9, 2013), available at <https://www.chicagobusiness.com/article/20130709/NEWS03/130709876/rush-oak-park-hospital-to-keep-catholic-abortion-policy>.

¹⁰ See Elizabeth Sepper, *Zombie Religious Institutions*, 112 Nw. U. L. Rev. 929, 941-47 (2018), available at <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1328&context=nulr>; *id.* at 945 (describing Ascension’s requirement that private investment firm Oak Hill Capital Partners maintain the ERDs in perpetuity as part of its for-profit joint venture, regardless of any future change in ownership).

¹¹ Solomon at 21-22.

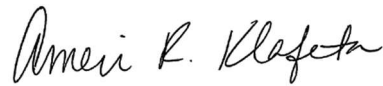
¹² Conditional Approval of Verity Sale of St. Francis Medical Center to Prime Healthcare, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/nonprofithosp/ag-decision-verity-071620.pdf?>.

¹³ See, e.g., *In re Darolyn Lee*, No. 2018CP2109 (Ill. Hum. Rts. Comm’n Mar. 6, 2020) (finding substantial evidence for a charge of sex discrimination by a public accommodation based upon a hospital’s refusal to provide the petitioner with contraception).

will assess the clinical services provided at each hospital and may modify, add, or discontinue services at a future date.¹⁴

We therefore respectfully ask the Board to critically evaluate the terms of the proposed sale of the Ascension facilities and their potential impact on access to reproductive, gender-affirming, and other essential healthcare across the State.

Sincerely,

Handwritten signature of Ameri R. Klafeta in black ink.

Ameri Klafeta
Director, Women's and Reproductive Rights Project

Handwritten signature of Allison Siebeneck in black ink.

Allison Siebeneck
Senior Supervising Attorney, Women's and
Reproductive Rights Project

¹⁴ See, e.g., Application for Change of Ownership Exemption re: Ascension Resurrection, Attachment 6 (Criterion 1130.520(b)(9)).