



February 21, 2017

Via U.S. Mail and Electronic Mail

Department of Health
Certificate of Need Program
Mail Stop 47852
Olympia, WA 98504-7852

Re: Certificate of Need Application 17-09

Dear Ms. Nidermayer,

The undersigned organizations are pleased to offer the following comments relating to CHI Franciscan Health's ("CHI Franciscan") Certificate of Need Application 17-09 (CN 17-09). We write to request that (1) prior to making a determination on CN 17-09 the Department of Health ("DOH") resolve all pivotal unresolved issues; and (2) DOH not approve CN 17-09 unless conditions are attached that ensure patients have access to a full range of affordable, lawful, quality medical services in Kitsap County and at Harrison facilities, and that no patient is refused access to such services on the basis of CHI Franciscan's religious doctrine. Such conditions are necessary to protect the public interest.

As you know, CHI Franciscan is proposing to relocate 242 of the 253 acute care beds from CHI Franciscan Harrison Medical Center's ("Harrison") Bremerton campus to its Silverdale campus. This proposal is part of CHI Franciscan's plan to invest almost \$500 million in an expanded Silverdale campus. It is our belief that CHI Franciscan's overwhelming presence in Kitsap County limits its residents' access to quality health services in contradiction to the purpose of the Certificate of Need ("CON") program. As such, without the inclusion of the conditions articulated above, CHI Franciscan's proposed relocation does not meet CON determination of need requirements (WAC 246-310-210) as it fails to meet the health care needs of the community, and specifically the health care needs of low-income individuals, women and the terminally ill.

A. CHI Franciscan Has Cornered the Market on Kitsap County Health Care

As you are aware, one of the legislature's stated purposes of the CON process is to "provide accessible health services... while controlling increases in costs...." However, rather than ensuring access to affordable health services, CHI Franciscan's overwhelming presence in Kitsap County limits patients' access to care.

Harrison is the only non-military acute care hospital located within Kitsap County, with an active staff that includes 333 physicians. CHI Franciscan, following a 2013 affiliation, is the sole corporate member of Harrison.¹ If a patient cannot receive services at Harrison, the next closest acute care hospitals that are not owned by CHI Franciscan require an approximately hour-long ferry ride, with an associated \$30 ferry ticket, or an approximately 45 minute drive, with an associated \$6 bridge toll.

Since 2013 CHI Franciscan has also continued to expand its presence in Kitsap County, acquiring independent practices and, most recently, affiliating with The Doctor's Clinic, which employs about 80 primary care doctors and specialists in eight locations in Kitsap County. The result of these affiliations and acquisitions is that the majority of health care providers in Kitsap County are either employed by or contracted with CHI Franciscan. Indeed, it is our understanding that there are practice areas in Kitsap County where every single one of the specialists in the county is employed by or contracted with CHI Franciscan.

B. CHI Franciscan Limits Kitsap County's Residents' Access to Quality Health Care Services on the Basis of Religious Doctrine

Having such a large proportion of health care in the county provided by one health care entity – CHI Franciscan - obviously decreases price competition and results in a lack of meaningful choice among health care providers for the consumer. This lack of consumer choice is a huge problem when providers like CHI Franciscan restrict or deny services on the basis of religious doctrine.

CHI Franciscan is a Catholic health care system bound by the Ethical and Religious Directives for Catholic Health Care Services ("ERDs"). These 72 directives forbid or severely restrict many reproductive and end-of-life health care services, including contraception, vasectomies, fertility treatments, tubal ligations, abortion, Death with Dignity, and advance directives that are contrary to Catholic teachings. Adherence to the ERDs may also increase the likelihood that LGBTQ individuals and families will face discrimination in seeking to access health care services consistent with their medical needs.

¹ Page one of CHI Franciscan's CON application states that "CHI Franciscan Health System (CHI Franciscan) is the sole corporate member of Harrison." This is contrary to prior assertions made by Harrison that the sole corporate member of Harrison is a secular entity – Franciscan Health Ventures. This is also contrary to page 8 of the CON application which states that in 2013 Franciscan Health Ventures became the sole corporate member of Harrison.

It is not unusual for CHI Franciscan to require its affiliates to abide by the ERDs. Indeed, news articles state that when The Doctor's Clinic affiliated with Franciscan, it became bound by the ERDs.² Whether Harrison is explicitly bound by the ERDs and restricts care on that basis is a pivotal unresolved issue (discussed below). However it is clear that Harrison, since its affiliation with CHI Franciscan, does restrict access to certain types of care.

i. Restrictions on Death with Dignity

One example of such a restriction is Death with Dignity services. Death with Dignity services are no longer as accessible in Kitsap County because Harrison, since affiliating with CHI Franciscan, prohibits its doctors, as Harrison employees, from prescribing Death with Dignity medication. This prohibition occurred despite repeated assurances that Harrison would continue to provide all of the same health services after its affiliation. Due to Harrison's actions patients now have less access to care. Further, as noted by Kitsap County doctors, there is now a growing need for independent (non-CHI Franciscan) doctors to provide Death with Dignity services to patients with whom they have no prior relationship – a less than ideal situation.³

Harrison even limits doctors' ability to independently provide Death with Dignity services on their own time by refusing to provide doctors with liability insurance. This lack of liability insurance serves as a huge practical barrier for doctors, and results in fewer doctors providing Death with Dignity services in the county.

ii. Restrictions on Pregnancy Terminations

Another example of a restricted service is pregnancy terminations – including miscarriage management. Harrison's reproductive health policy provides that “[a]t no time may direct actions to terminate life be performed or permitted.” The policy then states that if a woman's life is in danger, Harrison doctors are expected to provide best practice treatment options, even if that results in the termination of a pregnancy.⁴ This policy is not only confusing, but it seems to deny terminations to women with nonviable pregnancies, and would require women to suffer physically and emotionally through an inevitable miscarriage until the point where her life is in danger. These practices do not follow standard of care. Kitsap County women should

² See Martin, Kate (2016, Aug. 31). CHI Franciscan inks partnership with Kitsap's The Doctor's Clinic. *thenewtribune.com*. Retrieved from <http://www.thenewtribune.com/news/business/article99160152.html>.

³ Doctors and community members have also stated that since the affiliation some Harrison doctors have felt pressured to not discuss Death with Dignity with their patients.

⁴ Harrison Medical Center Reproductive Healthcare Services, *available at* [https://www.chifranciscan.org/uploadedFiles/Patients and Visitors/HarrisonReproductiveHealthcareServices2017.02.01.pdf](https://www.chifranciscan.org/uploadedFiles/Patients_and_Visitors/HarrisonReproductiveHealthcareServices2017.02.01.pdf) (“At no time may direct actions to terminate life be performed or permitted. In circumstances wherein a woman's life is in danger, providers at Harrison are expected to follow best practices of surgical and non-surgical treatment options even if it results in termination of the pregnancy.”) Adding to the general confusion of the policy, there is also a separate section of the policy that does not address terminations but states that Harrison's clinicians adhere to best practices when it comes to complex pregnancies.

not only be assured “best practice” care when their life is at risk – such care should always be provided, no matter the circumstance.⁵

iii. DOH must impose conditions on CN 17-09

By restricting health care services on the basis of religious doctrine, Harrison is limiting patient access to care - specifically care that disproportionately impacts women, terminally ill patients who often are not healthy enough to travel to obtain care, and low income individuals who may not be able to pay the cost of transportation to another provider. As such, we request that if DOH approves CN 17-09, it attach conditions that ensures patients have adequate and affordable access to a full range of quality medical services in Kitsap County and at Harrison facilities.⁶

C. A Pivotal Unresolved Issue Exists: Whether Harrison Is Bound by the Ethical and Religious Directives

Prior to making a determination on CN 17-09 it is important that, as required by the CON process, DOH seeks additional information on any pivotal unresolved issues. Such an issue exists here – specifically whether Harrison is bound by the ERDs.

Since 2013 Harrison has continuously reassured concerned Kitsap County residents that, irrespective of its affiliation with CHI Franciscan, it has remained a secular entity. The prior CEO of Harrison made statements at community forums and to news outlets attesting to the fact that Harrison would remain secular, and a Harrison FAQ press release explicitly stated that Harrison would “continue operating as a secular non-religious, nonprofit community medical center.”⁷ Even after the affiliation was complete, in 2014, the president of Harrison stated that “[w]ith regard to the ethical

⁵ Additionally, at the time of the affiliation Harrison agreed not to provide “elective” pregnancy termination services. While Harrison claimed that it did not provide “elective” terminations prior to the affiliation, Harrison has now, irrespective of current or future community need, agreed to a policy that will deny a health care service to women.

⁶ Imposing conditions on CN 17-09 is not only important because of the health service restrictions cited above but because Catholic Health Initiatives, CHI Franciscan’s parent company, is currently negotiating an affiliation with Dignity Health – another religious health system. It is unclear whether additional restrictions could be placed on Harrison due to the impending affiliation. For example, during the affiliation Harrison negotiated to continue providing tubal ligations at its facilities, we do not know whether, absent DOH intervention, Harrison would continue to provide tubal ligations if proposed affiliation takes place.

⁷ See e.g. Kelly, Leslie (2013, Aug. 8). Harrison Affiliation to Move Forward. *Kitsapdailynews.com*. Retrieved from <http://www.kitsapdailynews.com/news/harrison-affiliation-to-move-forward/> (Quoting past Harrison CEO Scott Bosch stating Harrison would “remain secular with the same services that we have had prior to [the affiliation]”); see also Harrison Medical Center, Press Release, FAQs regarding affiliation (2012, Oct. 16), available at <http://harrison.testcrafting.com/home/news/199> (Harrison FAQ Press Release).

and religious directives, we're a separate entity so we'll remain secular and so we'll continue to follow the processes that Harrison has always had.”⁸

Yet despite these repeated assurances, a review of contractual provisions in various Harrison contracts suggests that Harrison may be bound by the ERDs. These contracts between Harrison and secular parties all cite to the ERDs. One such contract requires the contracting party to agree not to “cause [Harrison] to violate any policy or any terms related to the [ERDs] in any agreement applicable to [Harrison].” Another contract requires the contracting party to agree that “its performance . . . shall not cause [Harrison’s] affiliates to fall out of compliance with the [ERDs]... as interpreted by the local bishop.”

If Harrison is a secular entity, it is very confusing why ERD provisions such as the ones above would be present in Harrison contracts. If in fact Harrison is bound by the ERDs, then expanding Harrison’s Silverdale campus will not address the health care needs of Kitsap County residents as community health care needs will be subordinate to religious doctrine. As such CHI Franciscan should be required to submit further information to resolve this pivotal unresolved issue.⁹

D. The Certificate of Need Process Must Ensure Affordable, Accessible Quality Health Services are Available in Kitsap County

Our overarching goal is to ensure that all patients in Kitsap County have access in their local community to a full range of lawful, quality health services, and that no patient is refused access because of the religious doctrine of the organization controlling a hospital, clinic or other medical facility. We believe that by adopting the conditions recommended above and ensuring that all unresolved pivotal issues are addressed, DOH can be instrumental in accomplishing this goal and ensuring that affordable and accessible health care is available in Kitsap County.

Sincerely,



Leah Rutman, Policy Counsel
ACLU of Washington

Jennifer Allen, Director of Public Policy
Planned Parenthood Votes Northwest and Hawaii

⁸ See Tucker, Chris (2014, Dec. 22). New hospital president is on the job. *Kitsapdailynews.com*. Retrieved from <http://www.kitsapdailynews.com/news/new-hospital-president-is-on-the-job/>

Sally McLaughlin, Executive Director
End of Life Washington

Janet Chung Legal & Legislative Counsel
Legal Voice

Tiffany Hankins, Executive Director
NARAL Pro-Choice Washington

Lois Uttley, Director
MergerWatch