

JAY INSLEE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov

June 28, 2013

Kathleen Taylor, Executive Director
ACLU of Washington
901 Fifth Avenue, Suite 630
Seattle, WA 98164

Dear Ms. Taylor:

Thank you for your letter concerning the rise in mergers and affiliations among hospital systems in our state and across the nation. As you point out, these actions raise a number of concerns relating to the type and scope of health care available in our state. I am very concerned for the potential of these relationships to lead to restrictions in constitutionally protected care for Washingtonians.

I have asked my staff to fully investigate the issues raised in your letter. We have met with representatives from your organization, as well as with legislators, regulators, hospitals, the Attorney General's Office and concerned citizens. Thus far, we have not identified any situations in which Washingtonians have been denied access as a result of these mergers and affiliations. If you are aware of any such situations, I encourage you to share this information with the Attorney General's Office or my staff. We are, however, closely examining a number of scenarios that may put at risk certain access to care rights and give rise to difficult legal issues. The Attorney General's Office has assured me that the office will thoroughly explore the ability to intercede on behalf of the public interest.

It is critical that the state learn as much as possible about each merger, corporate restructuring, or affiliation and the changes in the industry generally. As a chief regulator and major purchaser of health care services, the state must be vigilant in ensuring that these proposed mergers, restructuring, and affiliations occur in an open, public manner and receive the scrutiny necessary to determine that important hospital facilities and services continue in the best interests of the public. There are still unanswered questions about how hospitals will operate following a potential merger, restructuring or affiliation and what services will continue to be available, and under what modifications. I believe the state should use its legally available tools to ensure a more transparent, thorough, and systematic review of these proposals.

To that end, I have asked my staff to explore options to provide an open, transparent process to analyze the need for the affiliation, restructuring, or merger to not only maintain and enhance competitiveness, but also ensure cost containment and continued access to quality care. The



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Department of Health's (DOH) Certificate of Need (CoN) program plays an important role. I also agree with you that a Community Health Needs Assessment (CHNA) should be part of an ongoing broader community health improvement process. The Office of Financial Management (OFM) produced a substantive report in 2010, but the resources provided did not allow OFM to supplement the data to the degree they would have liked. Due to further budget cuts, no further report has been published, nor does OFM plan to do so in the foreseeable future. However, OFM has informed me that it will initiate a review for specific access to care concerns noted in your letter. Once that review is completed in the fall, it may provide further information to help inform policymaking.

With that said, I believe the CoN rules need to be updated and modernized in light of health care reform and these dynamic changing times. I do not believe, however, it is necessary to complete a CHNA before making critical updates to the CoN rules, nor do I have the legal authority to issue the type of proposed moratorium requested in your letter.

As a result, I have directed DOH to immediately begin rulemaking to update the CoN process. Considering the importance of health care reform, CoN reforms are necessary because some affiliations, corporate restructuring, mergers, and other arrangements result in outcomes similar to the traditional methods of sales, purchasing and leasing of hospitals. This is particularly critical when control of part or all of an existing hospital changes from one party to another. The CoN process should be applied based on the effect of these transactions on the accessibility of health services, cost containment and quality, rather than on the terminology used in describing the transactions or the representations made in the preliminary documents.

To further improve transparency for consumers, DOH will collect and make available relevant hospital policies related to end of life, reproductive services and patient non-discrimination. DOH's rulemaking process shall also consider the factors in RCW 43.06.155, the Principles and Policies in the implementation of health reform, including the guarantee of choice for patients.

Thank you for bringing this important matter to my attention.

Very truly yours,



Jay Inslee
Governor