

February 20, 2013

Janis Sigman, Manager
State of Washington Department of Health
Certificate of Need Program
Mail Stop 47852
Olympia, WA 98504-7852

Dear Ms. Sigman:

On behalf of several state and national advocacy and legal organizations, we are writing to provide the Department of Health's Certificate of Need Program written comments on an application submitted by the Catholic health system PeaceHealth to lease and operate United General Hospital, which is owned by Skagit County Public Hospital District No. 304. As you consider this lease agreement, we urge the Department of Health to ensure that community access to reproductive health and end-of-life care options are not adversely affected.

According to press reports, the 50-year lease agreement is expected to offer the District greater access to specialist care, which will help improve hospital revenue. Under the proposed transaction, the District will lease the land and facilities to PeaceHealth and provide ongoing tax support for United General and health services in the District. PeaceHealth will be contracted to provide the management and operation of the hospital, periodically reporting to the District's Commission, which will retain limited authority over the agreement.

Because this application involves a religious health system that adheres to restrictive health care policies assuming management of a publicly-owned, taxpayer-supported critical access hospital, we are seeking reassurances from the Department of Health and PeaceHealth that the proposed transaction will not result in the introduction of any religious restrictions on health care services at United General. If PeaceHealth is unable to provide these assurances, we request that the transaction not be approved. The imposition of religious restrictions at United General Hospital would significantly undermine the public health priorities of Skagit County and the state of Washington, as well as the Certificate of Need Program's stated mission of protecting health care quality and access for the residents of Washington State.¹

Preservation of United General's Current Menu of Services

It is our understanding that any facility run by PeaceHealth limits its patients' access to certain services because PeaceHealth operates under *The Ethical and Religious Directives for Catholic Health Care Services* (the *Directives*),² which guide the provision of care at Catholic-affiliated institutions. Not only do the *Directives* forbid abortion, they also forbid a range of commonly used reproductive health services, as well as certain treatment options at the end of life.³ As a

¹ WASH. REV. CODE §70.38.015(1).

² United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services* (June 2009), available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf>.

³ *Id.* at 31. *Directive 59* allows health care providers to ignore patients' advance directives, including specific requests to end nutrition and hydration.

result, patients are denied certain services, as well as counseling, referrals and information regarding treatments of which they may not be aware. See attached for more detailed examples of how the *Directives* affect health care.

Typically, when nonsectarian hospitals partner with Catholic hospitals, they are asked to ban services that run contrary to the *Directives*. Although United General does not have an obstetrical unit, it otherwise provides a wide range of health care services at its facilities, in accordance with medically-accepted standards of care. A lease agreement with PeaceHealth puts at risk the availability of comprehensive family planning services, STD reduction counseling, emergency reproductive care and end-of-life counseling and referrals at United General Hospital.

Request: *We would like the Determination of Need Program staff to seek reassurances, in writing, from PeaceHealth officials that, under the terms of the operating agreement, United General Hospital will not be required to adopt religiously-based health restrictions or discontinue any services because of its affiliation with a Catholic health system. .*

Assurances that Hospice of the Northwest Will Not be Required to Follow the *Directives*

Hospice of the Northwest, which is co-owned by United General Hospital and Skagit Valley Hospital, currently has excellent, patient-centered policies related to the Death with Dignity Act (DWDA). Unlike providers that follow the Catholic *Directives*, Hospice of the Northwest allows its medical director to act as the consulting physician for qualifying patients for the DWDA (one of the two physicians required); does not prohibit its staff from discussing the DWDA with patients; allows nurses and social workers to choose to be present at the time of Death with Dignity; refers patients directly to Compassion and Choices of Washington; and generally provides a supportive environment for patients who want to explore the option of Death with Dignity. None of these policies would be allowed under the *Directives*. United General has promised the advocacy community that the *Directives* would not be imposed on Hospice of the Northwest. However, the lack of any legally binding document to that effect leaves open the possibility that PeaceHealth could try to impose the *Directives*' restrictions on Hospice of the Northwest.

Request: *We seek written reassurances from PeaceHealth that, under the terms of the operating agreement, Hospice of the Northwest will not be operated by PeaceHealth, and therefore, will not be required to comply with the Directives.*

Preservation of United General Hospital's Current Menu of Services if PeaceHealth Merges with Franciscan Health System

PeaceHealth and Franciscan Health System (Franciscan), a division of Catholic Health Initiative (CHI), have approved a letter of intent to form a new health system. While both systems are sponsored by the Catholic Church, they have a history of interpreting the *Directives* differently. If this proposed merger were to go forward, health care restrictions based on religious doctrine at any facilities operated by PeaceHealth could become even more restrictive because Franciscan follows a stricter interpretation of the *Directives*.

For example, if PeaceHealth and Franciscan form a partnership, Franciscan may seek greater control and authority over Hospice of the Northwest, resulting in restrictions that could hinder providers from giving patients access to information and referrals about aid-in-dying.

Request: *We urge that PeaceHealth guarantee, in a legally binding document, that there would be no restrictions introduced at United General Hospital or any affiliated facility should PeaceHealth merge with Franciscan.*

Assurances that the Department of Health Will Not Allow a Public Hospital to Impose Religious Restrictions

Approval of this lease agreement without assurances that all services will be preserved would result in a tax-supported health care facility being subject to religious restrictions that limit access to health care services and information. The Establishment Clause of the United States Constitution prohibits the imposition of religious restrictions on land or in a facility that is owned by a governmental entity or, at a minimum, requires the governmental entity to mitigate the effect of the religious imposition.

Governmental entities have successfully claimed an interest in the operation of private, non-profit hospitals based on the fact that the governmental entity owned the property and leased it to the private hospital or provided substantial funding for indigent care to the hospital. In 2012, Kentucky Governor Steve Beshear blocked a proposed merger between University of Louisville Hospital and Catholic Health Initiatives, which would have given control of the public University of Louisville Hospital to CHI, a religious health system that adheres to the *Directives*. In his statement regarding the decision, Gov. Beshear argued that the risks of the proposed merger outweighed the benefits, citing the “constitutional and public policy questions about the influence of a religious entity on a publicly-owned institution, especially regarding reproductive issues,” as one of the main points of concern.⁴

Request: *We would like the Secretary to provide assurances that the Department of Health will not allow the imposition of the Directives’ restrictions on the health care services currently offered at United General Hospital, which is owned by Skagit Public Hospital District No. 304 and subsidized by taxpayer money.*

Conclusion

United General Hospital is an essential source of critical medical care for Skagit County. While we appreciate the fiscal concerns that have caused the Hospital District to propose the long-term lease and operating agreement with PeaceHealth, reproductive health services and aid in dying cannot be ignored or sacrificed in the process. Not only do the restrictions on services required by the *Directives* run contrary to Washington’s public health goals,⁵ they are also contrary to two state laws: the Reproductive Privacy Act, which states that all individuals have “the fundamental right to choose or refuse birth control” and that every woman has, “the fundamental right to choose or refuse to have an abortion,”⁶ and the Death with Dignity Act,⁷ which permits terminally ill adults seeking to end their life to request lethal doses of medication.⁷ The citizens of

⁴ Governor Beshear’s Statement on Proposed Hospital Merger, WDRB.COM, <http://www.wdrb.com/story/16418014/gov-beshears-statement-on-proposed-hospital-merger> (last visited Feb. 15, 2013).

⁵ See Washington State Department of Health, *Strategic Plan, 2012-2016* at 61 (May 2012), available at <http://www.doh.wa.gov/Portals/1/Documents/1000/StrategicPlan2012-16.pdf>. The Strategic Health Plan Goals include “Goal 3: Everyone in Washington has improved access to safe, quality, and affordable care.”

⁶ WASH. ADMIN. CODE § 9.02.100.

⁷ WASH. ADMIN. CODE § 70.245.

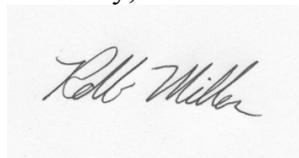
Washington State enacted both of these acts in order to protect fundamental rights to health care access.

In light of the effect that introduction of the Catholic *Directives* would have on delivery of services, information and referrals, we ask that you disapprove this proposal unless there are the following conditions attached, and the parties signal their compliance with them in writing:

1. PeaceHealth guarantees that the citizens of Skagit County seeking care at United General Hospital and/or Hospice of the Northwest will continue to receive treatment that is in accordance with medically-accepted standards of care, and will continue to have access to comprehensive family planning services, STD reduction counseling, emergency reproductive care and end-of-life counseling and referrals.
2. PeaceHealth guarantees that, in the event of a merger with Franciscan Health Systems or any other religiously affiliated health system following or simultaneous to execution of a lease with United General Hospital, no religious restrictions on health services will be introduced at United General Hospital.
3. The Department of Health will ensure that United General, a publicly owned and taxpayer supported hospital, does not permit the introduction of religious restrictions on health services.

The citizens of Skagit County deserve a hospital that will provide the full range of health care services, information and referrals that this community needs. If you have any questions regarding our comments, please contact Robb Miller at 206-669-0902.

Sincerely,



Robb Miller
Executive Director, Compassion & Choices-Washington


Monica Harrington
Co-chair, Washington Women for Choice


Kathy Reim
President, PFLAG Skagit/ Sedro-Woolly, WA
(Parents, Friends and Family of the Lesbian, Gay, Bi-sexual and Transgender Community)



Judy Waxman
National Women's Law Center



Lois Uttley
Director, The MergerWatch Project

Enc: "How *The Ethical and Religious Directives for Catholic Health Care Services* Affect Health Care Access"

Submitted electronically and via the United States Postal Service.

How *The Ethical and Religious Directives for Catholic Health Care Services* Affect Health Care Access

Because PeaceHealth is Catholic affiliated, it operates in accordance with *The Ethical and Religious Directives for Catholic Health Care Services* (*Directives*). The *Directives* do not merely restrict particular services, they ban even the provision of information about, counseling on, or referrals for the restricted services. Although PeaceHealth operates under a less restrictive interpretation of the *Directives*, Franciscan Health System, operates under a more restrictive interpretation. Oversight on issues pertaining to the application and interpretation of the *Directives* for Franciscan is under the authority of the local archbishop, who could rescind approval of allowed medical services at any time. PeaceHealth and Franciscan have both approved a letter of intent to form a new health system. Therefore it is important to be aware of how the health restrictions imposed by the *Directives* affect health care services.

Our concerns regarding health care access and quality are:

- The *Directives* forbid the use of modern methods of pregnancy prevention. Only “natural family planning” is permitted, and this is limited to only married couples. This restriction on contraceptive access is clearly inconsistent with the public health goals of reducing unintended and teen pregnancy and improving pregnancy outcomes for both mothers and babies and with the *Reproductive Privacy Act*. Because the unintended pregnancy rate is higher among certain racial and ethnic groups, this restriction on access to family planning services is also inconsistent with the state’s goal of reducing health disparities.¹ Public health experts universally support the use of birth control and recognize that careful spacing between pregnancies contributes to healthier mothers and babies and improved public health outcomes.
- Because the *Directives* prohibit the use of any contraceptives, Catholic hospitals are restricted from counseling individuals with HIV or other sexually transmitted diseases to use condoms or other barrier methods. Both national and international public health organizations agree that condoms are effective in reducing the rates of HIV and STDs. Restrictions on STD prevention counseling that includes information on condoms and other barrier methods, disproportionately harms certain racial and ethnic groups because they have higher rates of HIV infections and STDs.² The elimination of racial disparities, which includes the reduction of STDs, is a top public health priority for the state of Washington.
- The *Directives* state “there is an obligation to provide patients with food and water, including medically assisted nutrition and hydration for those who cannot take food orally.”³ In addition, under the *Directives*, the withdrawal of life-sustaining procedures is not permissible if “it is contrary to Catholic moral teaching.”⁴ This *Directive* runs contrary to the

¹ See Washington State Department of Health, *Strategic Plan, 2012-2016* (May 2012), available at <http://www.doh.wa.gov/Portals/1/Documents/1000/StrategicPlan2012-16.pdf>.

² Center for Disease Control and Prevention, *STDs in Racial and Ethnic Minorities*, <http://www.cdc.gov/std/stats10/minorities.htm> (last visited Feb 15, 2013).

³ United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services* 31 (June 2009), *Directive 58*, available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf>.

⁴ *Id.* at 31. *Directive 59* states, “The free and informed judgment made by a competent adult patient concerning the use or withdrawal of life-sustaining procedures should always be respected and normally complied with, *unless it is contrary to Catholic moral teaching.*” (emphasis added).

constitutionally recognized right of a patient to refuse unwanted medical treatment, including artificial hydration and nutrition.⁵

- Some Catholic hospitals in Washington forbid their employees from providing information about the DWDA to their patients who request information about the option of aid in dying and even forbid employees from providing patients with referrals to other providers or organizations that will provide the information requested by patients. Denying patients information or a referral is also a violation of the patient's right to informed consent. It is also contrary to a recent clarification by the Washington State Department of Health's Office of Health Professions and Facilities, which stated in a letter dated Nov. 5, 2011 that "[r]egardless of whether or not a given hospice agency chooses to participate and promote the DWDA, health care providers who are employees of hospice agencies have the protected right to offer basic information regarding the DWDA to their hospice patients." While all patients should be provided with information about aid in dying, it would be particularly problematic for a public hospital to deny such information.

⁵ *Cruzan v. Mo. Dep't of Health*, 497 U.S. 261 (1990).