

April 29, 2021

Peter F. Neronha, Esq.
Attorney General
Rhode Island Attorney General
150 South Main Street
Providence, RI 02903

Nicole E. Alexander-Scott, M.D.
Director
Rhode Island Department of Health
3 Capitol Hill, Room 401
Providence, RI 02908

Re: *Hospital Conversion Initial Application of Chamber Inc.; Ivy Holdings Inc.; Ivy Intermediate Holdings, Inc.; Prospect Medical Holdings, Inc. (“Prospect”); Prospect East Holdings, Inc.; Prospect East Hospital Advisory Services, LLC; Prospect CharterCARE, LLC; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC (together, the “Transacting Parties”)*

Dear General Neronha and Dr. Alexander-Scott:

I am writing as a follow-up to the proposed conditions of approval that the Transacting Parties provided to you on April 27, 2021, a copy of which is attached¹ in connection with the above-referenced Hospital Conversions Act (“HCA”) Application. The Transacting Parties believe that the proposed conditions provide adequate and reasonable protections to ensure that Roger William Medical Center (“RWMC”) and Our Lady of Fatima (“OLF”) continue to provide needed, quality, affordable healthcare services to their patient populations including the underserved.

¹ Consistent with George Pillari’s comments regarding the amendment to the TRS note at the April 28, 2021 Zoom meeting with representatives of your offices, the draft amendment to the TRS note is attached to the conditions of approval. Assuming conditions of approval that are acceptable, the executed amendment to the TRS note can be provided on Friday, April 30, 2021.

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It is our understanding that the Attorney General will be imposing a condition of approval that the Transacting Parties place \$120M - \$150M in escrow to purportedly ensure the financial viability of the hospitals. The imposition of such an escrow is unreasonable and unacceptable, will adversely affect Prospect operations throughout the United States, and would leave Prospect with very little choice but to start the process to sell the hospitals in Rhode Island to an acceptable third party (and if the sale process is unsuccessful, to ultimately close them).² As set forth below, this condition on its face is unlawful and would exceed the scope of the Attorney General's powers under the HCA. More importantly, however, the effect of the escrow condition would be catastrophic for the two hospitals, two vital elements of the State's healthcare safety net, resulting in curtailing operations (including services to the underserved population) as well as potential closures.³ The Transacting Parties are committed to the hospitals and their mission to provide needed, quality, affordable healthcare services to their patient populations including the underserved. However, imposition of a \$120M - \$150M escrow is fatal to such a mission and it is based upon a lack of understanding of Prospect's financial condition and the ability to meet its obligations. Compelling any hospital (or business) owner to escrow funds of this magnitude is arbitrary, capricious and totally unsupported by the facts. Accordingly, the Transacting Parties respectfully request that the Attorney General reconsider this condition.

By way of background, prior to Prospect's acquisition of CharterCARE, the two Rhode Island hospitals were struggling financially and would have likely been forced to close had they not been acquired by Prospect. While RWMC and OLF achieved some operating efficiencies by forming CharterCARE, during the six month period ending in March 2014 (prior to acquisition by Prospect), CharterCARE suffered a loss of \$9 Million. After a robust RFP process CharterCARE chose Prospect because of (1) its capital support and (2) the cultural synergies to provide quality community care to its patient population. Prospect promised to invest \$100M in long term and routine capital expenditures. Prospect kept its promises. This was confirmed by the consultant engaged by the Attorney General, Affiliated Monitors, Inc. ("AMI") finding that Prospect exceeded the \$100M requirement. In addition, AMI confirmed that Prospect complied with all conditions of the 2014 approval including capital expenditures, staffing requirements, charity care, protecting hospital employees' salary/wage basis, seniority and benefits in maintaining the Catholic identity at OLF. The conclusion of AMI's Report is instructive:

² Prospect has already engaged an investment banker and to date has not seen interest by a third party to buy the hospitals.

³ RWMC and OLF will comply with all requirements for closure and for those services not requiring Department of Health approval, will provide courtesy notifications. Such service closure may occur as early as May.

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We are confident in our conclusion that Prospect has met and exceeded the requirements of the HCA Decision.

In complying with the terms of the HCA Decision, as well as the related Asset Purchase Agreement, Prospect met its commitment to be an important healthcare resource serving the Rhode Island community. They not only shored up aging buildings, they helped the hospitals sustain and grow their outreach services, attracted new physicians and established a business entity for the physicians to negotiate with health insurance payors (including Medicare) thereby making their practices more accessible to local residents.

...

We note that not only in the key measures (such as capital commitments), but also in less obvious areas (such as continuing education for staff, participation in community health initiatives and provision of employee benefits), Prospect has demonstrated its compliance with the terms and conditions of the conversion.

See AMI Final Report at 35 – 36.

Finally, since the end of the measurement period for the 2014 Transaction (December 2019), Prospect has invested an additional \$10M of capital even though there was no requirement to do so.

As you are also aware, the Health Services Council by a vote of 4 in favor, 1 against and 2 abstentions, voted to recommend approval of the Transacting Parties' CEC Applications. That approval included the following findings:

Prospect has the requisite character, competence and standing in the community to own and operate RWMC and OLF.

Prospect has the financial viability to ensure safe and adequate treatment to RWMC and OLF patients.

Prospect will serve the traditionally underserved population.

At the hearing before the Health Services Council, PYA, the financial consultant firm retained by the Department of Health for the HCA review, gave its observations:

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- No observed financial direct impacts to CharterCARE based on the information provided for analysis. Simply put, PYA concluded there would be no direct adverse impact to the Rhode Island hospitals if the transaction that is the subject matter of the HCA Application is consummated.
- CharterCARE may be impacted indirectly as a result of any potential material affects to Prospect caused by the proposed transaction. As the evidence in the HCA record shows, there will be no material affect to Prospect caused by consummation of the proposed transaction.

As the evidence in the HCA record shows, Prospect is financially viable. Prospect is well capitalized with liquidity and resources enabling it to continue to support and invest in improving the 17 hospitals it manages (including RWMC and OLF) to ensure access to quality care. Prospect has approximately \$325M in cash and an unused JP Morgan line of credit of \$200M. Prospect has yearly revenues in the amount of \$2.7B. Moreover, Prospect's recent financial audit completed in December 2020 by BDO (and earlier audits) confirms that Prospect has substantial cash and liquidity with no going concern issues raised. In August 2019, MPT invested \$1.55B on the strength of Prospect's financial condition in sale-leaseback transactions related to the non Rhode Island real estate of Prospect. The Rhode Island hospitals were not part of the sale-leaseback. In addition, unlike many hospitals, Prospect did not miss any rent payments to MPT during the first or second wave of COVID-19. Finally, as you aware, Prospect further demonstrated its commitment to Rhode Island by providing an additional \$27M for settlement of the pension litigation. Simply put, the evidence in the HCA record including audited financial statements by an independent third party confirms Prospect's solvency status with sufficient liquidity and resources to continue to support the Rhode Island hospitals.⁴

It is our understanding that the Attorney General's \$120M - \$150M escrow condition is founded upon an understanding that Prospect is insolvent and on the brink of bankruptcy purportedly based on the PYA Report. Despite repeated requests, the Transacting Parties have not been provided the PYA Report or any other data to support the Attorney General's statement. However, at the April 28th Zoom meeting with representatives of your offices, the Attorney General's expert, James Carris stated that it is not his opinion that Prospect is insolvent or on the brink of bankruptcy. Likewise, Sandra Powell stated that it is not the opinion of PYA that Prospect is insolvent or on the brink of insolvency.

⁴ Leonard Green & Partners ("LGP") has not funded Prospect in ten years other than participating in a capital contribution with the other Prospect owners that was repaid shortly thereafter. LGP will not provide any additional funds into Prospect.

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While the Attorney General is authorized to approve an application “subject to any conditions,” contingencies imposed must be “related to the purpose of this chapter,” *id* at § 23-17.14-28(c). The HCA’s express purpose is to “[a]ssure the viability of a safe, accessible and affordable healthcare system that is available to all of the citizens of the state[.]” *Id.* at § 23-17.14-3. These terms are unambiguous. Consequently, whatever authority the Attorney General wields to set conditions of approval, it must be exercised within the statute’s limits. *See 5750 Post Road Medical Offices, LLC v. East Greenwich Fire Dist.*, 138 A.3d 163, 167 (R.I. 2016) (“[W]hen we examine an unambiguous statute, there is no room for statutory construction and we must apply the statute as written.”).

The Attorney General’s proposed escrow condition grossly exceeds the limits of his authority. Approval of the HCA Application could be contingent on a “minimum investment” from the Transaction Parties if the facts support such a conclusion. R.I. Gen. Laws § 23-17.14-28(c). Here, however, the proposed escrow amount lacks *any* rational relationship to the “financial health” of the Hospitals. Additionally, as the Attorney General knows, it will be impossible for the Transaction Parties to comply with the colossal sum proposed, endangering two vital pieces of state’s health care safety net. The proposed escrow condition therefore will not only be arbitrary, but also will harm the “viability of a safe, accessible and affordable healthcare system . . .” *Id.* at § 23-17.14-3. The HCA accordingly precludes imposing the proposed condition.⁵

⁵ The \$120M - \$150M escrow condition is anomalous, if not unprecedented. We are not aware of any other scenario where a regulator reviewing a hospital conversion transaction has enforced such an objectively onerous escrow condition. Where such a requirement has been a necessary component of a transaction, it differs by orders of magnitude. For example:

- **California (2011):** State attorney general approves acquisition of non-profit hospital conditional on a \$3 million escrow account for emergency operating or capital needs for five years, unless the hospital began operating at a regular profit.
- **New Hampshire (2020):** Director of charitable trusts reported it would take no action to oppose a proposed acquisition transaction involving sale of nonprofit hospital to a for-profit corporation that included \$8 million escrow of net sales proceeds for two years to satisfy indemnification obligations of the hospital. (available at: <https://bit.ly/2OtpcSO>)
- **Connecticut (2001):** State attorney general approved the sale of a nonprofit hospital to a for-profit entity where the transaction called for placing over \$4 million from the purchase price in an escrow fund (final decision available at: <https://bit.ly/3cYIJFp>)

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The Transacting Parties have worked in good faith to address all issues raised by the Attorney General and have offered unprecedented protections, including providing letters of credit in the total amount of \$29M to ensure financial viability and making all PACE payments through 2045 with yearly payments of approximately \$4,575,820 totaling approximately \$60,165,000. Prospect has been committed to the Rhode Island hospitals since their acquisition in 2014. Prospect has kept its promises and will do so in the future; however, if it is required to post \$120M-\$150M in escrow in order to consummate the contemplated transaction, the hospitals are at risk of closure. RWMC and OLF are critical to the State's behavioral health capacity, have the State's only certified inpatient substance abuse treatment unit, and have served a high number of COVID patients during the pandemic. They also employ 2,800 individuals and pay millions of dollars in taxes to the State, City of Providence (\$2.8M in 2020) and the Town of North Providence (\$875K in 2020), making the hospitals amongst the highest taxpayers in each community. More importantly, however, to RWMC and OLF's patient populations, including the underserved, they are their #1 hospital.

The Transacting Parties are confident an agreement can be reached between all the parties to approve the HCA Application with appropriate conditions and ensure that RWMC and OLF continue to provide needed, quality, affordable health care services to their patient populations.

Thank you for your consideration. If you have any questions, please contact me.

Sincerely,

/s/ Patricia K. Rocha

PATRICIA K. ROCHA

cc: Jacqueline Kelley, Esq.
Miriam Weizenbaum, Esq.
Sandra Powell
Jessica Rider, Esq.
Richard R. Beretta, Esq.
Leslie D. Parker, Esq.