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September 22, 2016

VIA U.S. CERTIFIED MAIL & FACSIMILE

The Honorable Christopher S. Porrino  
Acting Attorney General  
New Jersey Office of the Attorney General  
Richard J. Hughes Justice Complex  
25 Market Street  
P.O. Box 080  
Trenton, NJ 08625-0080

**RE: St. Mary's Hospital - Passaic, St. Michael's Medical Center, and St. Clare's Hospitals (Dover, Denville, and Boonton Township)**

Dear Attorney General Christopher S. Porrino,

We are writing you out of concern of a number of recent developments that call into question the ability of Prime Healthcare Services, Inc. (Prime) to protect the charitable assets of Saint Mary's Hospital – Passaic, Saint Michael's Medical Center, and the Saint Clare's Hospitals in Dover, Denville, and Boonton Township (New Jersey Hospitals).\*

In June 2016, the U.S. Department of Justice announced its decision to intervene in a False Claims Act lawsuit alleging that the company had engaged in systemic practices which have burdened the limited resources of the Medicare program. The decision to intervene came as the result of investigations by Federal agency's including the U.S. DOJ Civil Division Commercial Litigation Branch, the U.S. Attorney's Office for the Central District of California, Health and Human Services – Office of the Inspector General, and the FBI.<sup>i</sup> According to court documents filed by the U.S. Attorney, attempts to settle the Prime whistleblower employee's lawsuit have now been exhausted and we believe a jury trial is now likely. Notably, the U.S. Attorney's "Complaint in Intervention" names Prime CEO Dr. Prem Reddy as a defendant, in addition to Prime and 14 hospitals operated by Prime Healthcare Services and the Prime Healthcare Foundation in California.

The decision of the DOJ to name Dr. Prem Reddy as an individual is consistent with the DOJ's stated focus of ensuring "Individual Accountability for Corporate Wrongdoing," as a top Agency priority.<sup>ii</sup> Principal Deputy Assistant Attorney General Benjamin C. Mizer stated " [t]he Department of Justice is committed to ensuring healthcare providers do not inappropriately seek to profit at the expense of federal healthcare programs," and further emphasized, "[s]chemes such as this one can contribute significantly to the rising cost of health care delivery and create needless patient risk."<sup>iii</sup>

If the case is brought to trial and a guilty verdict is reached, it could have far reaching implications and materially impair the ability of Dr. Prem Reddy and Prime to protect the

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\* We are the Service Employees International Union – United Healthcare Workers West (SEIU-UHW). SEIU-UHW represents more than 85,000 hospital workers in California and is dedicated to working with the community, elected officials, and other healthcare leaders to improve patient care, ensure good healthcare jobs, and help get California healthy again. SEIU-UHW is in a labor dispute with Prime.

charitable assets of Prime's New Jersey hospitals. The decision of the DOJ to intervene in a *qui tam* action is not taken lightly and typically comes at the conclusion of a thorough investigation. In fact the DOJ reports that fewer than 25% of filed *qui tam* actions result in a decision by the agency to intervene on any count alleged by the Relator.<sup>iv</sup>

We believe that it is prudent for your Office to review the Conditions which it placed on the sales of the New Jersey Hospitals to Prime to safeguard their charitable assets and protect the quality, availability, and accessibility of health care services in their affected communities.

### ***New Jersey Attorney General's Authority to Force a Resale***

In reviewing the transactions of the sale of the New Jersey Hospitals to Prime, your office expressed concern that the United States Department of Justice's ongoing investigation of Prime's aggressive practices presented a material risk to the charitable assets of these hospitals and the patients in their communities. For example, a letter from your Office to the Honorable Judge Margaret Mary McVeigh regarding the sale of St. Mary's Hospital - Passaic states:

*"This poses a difficult dilemma for the Acting Attorney General in determining whether approval of the Proposed Transaction is in the public interest. At issue is whether Prime will be able to protect the charitable assets of St. Mary's Hospital if Prime or its owners are found to have engaged in activities in violation of Medicare billing practices resulting in potentially heavy fines for the company or exclusion of Prem Reddy, M.D., its President, Chief Executive Officer and Board Chairman from participation in federal health care programs, possibly necessitating the divestiture of his interests in Prime."*

In fact, in light of these concerns, your Office requested that the Court's approval of the Proposed Transactions of the New Jersey Hospitals include groundbreaking protections granting the New Jersey Attorney General discretion to reopen this transaction before the Court in the public interest. The Condition granting your Office this authority appears to be identical for each of the New Jersey hospitals. Specifically, it states:

*"Attorney General shall be granted the discretion for a period of five (5) years from the closing of the Proposed Transaction to bring an action before this Court or reopen this action before this Court in the public interest, after consultation with the Commissioner of the Department of Health, **to force the resale of [the hospital] to a willing buyer at fair market value**, as determined by an independent third party appraiser and pursuant to a competitive bidding process, in the event of the discovery of a material misrepresentation made to the State of New Jersey by Prime Healthcare Services, Inc., or any of its affiliates, or its owners, officers, directors, or senior management, in regards to the acquisition of [the hospital] by Prime and the transfer of the licenses of [the hospital] and its affiliates to Prime or **any other event that materially impairs the ability of [Prime] or its affiliates, to operate [the hospital]**. All net proceeds of any resale of [the hospital] will be paid to [Prime Healthcare Services]" (emphasis added).*

We request that your Office review the authority granted in these Conditions in order to protect the hospitals' charitable assets and the accessibility to healthcare services in New Jersey. We further request that your Office exercise its authority to force the resale of these hospitals to a suitable buyer.

### ***Whistleblower Lawsuit Alleges Systemic Fraud***

In October 2011, a Director at Prime's Alvarado Hospital in California filed a whistleblower lawsuit (*United States of America, ex rel Karin Berntsen v. Prime Healthcare Services, Inc. et al, Case: 2:11-cv-08214-PJW*) under seal in the United States District Court for the Central District of California. The complaint included allegations of "False Claims Act violations resulting from improper inpatient hospital admissions and fraudulent claims for DRG payments based on upcoding," at Prime hospitals in California.

In June 2012, the United States Department of Justice issued a "Federal Health Care Offense Subpoena" to Prime requesting numerous documents relating primarily to documentation and coding of patients' medical conditions in patients' medical records in addition to other records. On December 23, 2013, the Department of Health and Human Services-Office of the Inspector General (HHS-OIG) issued a separate subpoena addressed to Dr. Prem Reddy requesting documents related to bonus compensation paid to Prime executives, as well as, medical records, lab results, coding documents, billing records and other records for a number of specified patient visits.

Three days after HHS-OIG issued its subpoena upon Dr. Prem Reddy, on December 26, 2013, United States District Judge Fernando M. Olguin issued an Order to unseal Ms. Berntsen's Second Amended Complaint and serve copies upon defendants named in the complaint. The Fourth Amended Complaint filed by Ms. Berntsen alleges,

*"Prime and the hospitals which it owns and operates through its subsidiaries...have defrauded the federal government of millions of dollars by billing for medically unnecessary inpatient short stay admissions which should have been classified as outpatient/observation cases... P[ri]me also wrongfully increases the MS-DRG payments it receives from Medicare through upcoding by falsifying information concerning the complications and comorbidities associated with patients' diagnosis."*

In October 2014, the Prime Defendants Motion to Dismiss the Relator's Fourth Amended Complaint. That same month the United States filed a Notice of its Opposition to Prime's Motion to Dismiss with the Court.

On November 20, 2014, Judge Holguin issued an Order denying Prime's Motion to dismiss the lawsuit. In denying Prime's Motion to Dismiss, Judge Holguin found,

*"[The] Government's indicat[ion] that it supports the Relator's action," as well as, "the Court's satisf[action] that Berntsen has stated an FCA claim with sufficient particularity against all Defendants...find[ing] that [the] [complaint] describes a standardized system of meetings, procedures, hospital forms, and training sessions by all Prime hospitals to perpetuate Medicare fraud and provides sufficient detail regarding why relator Berntsen believes these practices are common to all Defendants."*

### ***United States Department of Justice Intervention in False Claims Act Lawsuit***

On May 23, 2016, The United States Attorney's Office filed its Motion to Partially Intervene in the whistleblower lawsuit filed by Bernsten. In the filing the government states, "*the United States' investigation has continued and has yielded sufficient evidence to support partial intervention in Relator's qui tam action with respect to claims and allegations that the Defendants submitted or caused the submission of claims to Medicare for unnecessary inpatient stays...*"

On June 23, 2016, the United States filed its Complaint in Intervention alleging “from 2006 through September 30, 2013, Defendants engaged in a systematic practice of maximizing revenues by, among other things, inducing physicians who work at Prime hospitals to increase the number of inpatient care admissions of Medicare beneficiaries who visit the Emergency Department (ED) at a Prime hospital, without regard to whether inpatient admission is medically necessary.”

The recent filings by the U.S Attorney allege disturbing details regarding Prime’s business practices as well as the revelation of new information regarding Prime’s CEO, Dr. Prem Reddy, having allegedly engaged in the following conduct:

- Told emergency department doctors to find ways to admit all patients over 65 because they have health insurance through Medicare;
- Demanded the termination of emergency department doctors if they passed up opportunities to admit patients with Medicare coverage;
- Told doctors to admit patients with Medicare coverage who would be in the emergency department for more than two hours awaiting test results; and
- Instructed doctors that uninsured patients could stay in the emergency department no more than eight hours awaiting test results and then be discharged

***“Material Weakness and Significant Deficiencies in Internal Controls over Financial Reporting”  
Expose Charitable Assets to Unreasonable Risk***

Pursuant to N.J.S.A. 26:2H-7.11 (d)(2), the Attorney General shall consider whether the financing of the Proposed Transaction by the nonprofit hospital will place the nonprofit hospital’s assets at an unreasonable risk.

In discussing the St. Mary’s selection of Prime to acquire the hospital, your office highlighted “ [i]n December 2012 prior to signing the APA, the Board issued reverse due diligence requests to Prime asking for organizational charts, bylaws, information on how Prime owns and operates its hospitals, Prime’s business model regarding managed care contracts and audited financial information. Prime responded with materials that met the intent of the Hospital’s reverse due diligence request and the results were reviewed with the Board. Drinker Biddle also produced a Due Diligence Report of Prime for the Board based upon the materials submitted by Prime. The report reviewed Prime’s 2011 Audit, 2012 Interim Financials and Significant Footnote Disclosures. The report noted that Prime’s 2011 Audit had been performed by Moss Adams and that Prime had received a ‘clean opinion.’”

Your Office’s March 2016 approval recommendation letter states, “[O]n April 7, 2015, it was reported that Standard and Poor’s raised Prime’s corporate credit rating from B to B+. According to S&P, Prime ‘has outperformed our operating expectations this year.’” S&P referenced Prime’s “continued success with its operating model of acquiring and turning around distressed hospitals, several quarters of better-than-expected operating results” and “faster than expected operating turnaround of recently acquired hospitals.... Thus, we conclude that there are no charitable funds being placed at unreasonable risk in regard to the financing of the Proposed Transaction.”

A Moody's July 2015 report, however, stated, "the company has disclosed that it has identified material weaknesses and significant deficiencies in internal controls over financial reporting. [Moody's] believes that it will take considerable time and investment to remediate these issues over the next year or two." We believe that Prime's disclosure of "material weaknesses and significant deficiencies" in their financial reporting raise serious concerns about the ability of Prime to continue the operation of the New Jersey Hospitals.

***Ongoing Developments May Materially Impair Prime's Ability to Operate New Jersey Hospitals***

These recent developments are cause for great concern to your Office and the people of New Jersey. Indeed, the United States Attorney's Office believes it has enough evidence to prove that Prime's admissions practices were fraudulent and is seeking treble damages. If the company is found guilty, Prime could face substantial financial penalties as well as exclusion from the Medicare program. In addition, that the company has disclosed to Moody's that it has "material weaknesses and significant deficiencies" in their financial reporting raises further concern over the company's ability to continue the operation of the hospitals' charitable assets in your State. Taken holistically, we believe that these developments may materially impair the ability of Prime to continue the operation of the New Jersey Hospitals and therefore warrant your immediate attention.

Fortunately, your Office had the foresight to install safeguards in its approval of Prime's acquisitions of the New Jersey Hospitals. We request that you evaluate the need to reopen these transactions in the public interest and force a resale of the hospitals at fair market value. We are hopeful that your office will investigate the implications to the future of the New Jersey Hospitals under Prime ownership, and that your office will consult with the Health Commissioner and exercise its authority to force a resale if it is determined that these ongoing developments are likely to materially impair Prime's ability to operate the New Jersey Hospitals.

A decision not to investigate these issues may place the hospitals' charitable assets and community healthcare services at great risk. Inaction will only allow the opportunity for crisis to grow and become more difficult to resolve.

Should you have any questions, please contact me at the information provided below.

Sincerely,



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cc: Rebecca Ricigliano, First Assistant Attorney General  
Cathleen D. Bennet, Commissioner – New Jersey Department of Health

## Notes

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<sup>i</sup> <https://www.justice.gov/opa/pr/united-states-intervenes-false-claims-act-lawsuit-against-prime-healthcare-services-inc-and>

<sup>ii</sup> <https://www.justice.gov/dag/file/769036/download>

<sup>iii</sup> <https://www.justice.gov/opa/pr/united-states-intervenes-false-claims-act-lawsuit-against-prime-healthcare-services-inc-and>

<sup>iv</sup> <https://www.justice.gov/sites/default/files/usao-edpa/legacy/2012/06/13/InternetWhistleblower%20update.pdf>

<sup>v</sup> Defendants Luis Leon and Prime Healthcare Foundation were not named in United States Complaint in Intervention. On July 25, 2016 the Court issued an Order granting a Stipulation of All Parties to Dismissal Without Prejudice of Defendant Luis Leon.