

1 EXPEDITE
2 X No hearing set
3 Hearing is set
4 Date:
Time:
Judge/Calendar:

7
8 STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

9 In re:

10
11 FRANCISCAN HEALTH SYSTEM,
12 d/b/a CHI FRANCISCAN HEALTH

13 Respondent.
14

NO. _____

ASSURANCE OF
DISCONTINUANCE

[CLERK'S ACTION REQUIRED]

15
16 The State of Washington (the "State"), by and through its attorneys, Robert W. Ferguson,
17 Attorney General, and Daniel Davies, Assistant Attorney General, files this Assurance of
18 Discontinuance and Settlement Agreement ("Assurance") pursuant to RCW 19.86.100. The
19 Attorney General's Office conducted an investigation into the business practices of Franciscan
20 Health System's ("Respondent") provider-based urgent care facilities located in Port Orchard
21 (450 S. Kitsap Blvd., Suite 100), Belfair (21 N.E. Romance Hill Rd.), and Bainbridge Island
22 (8804 Madison Avenue N.), Washington¹ (collectively the "Harrison Clinics"). Respondent and
23 the State now desire to enter into this Assurance.

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25 ¹ Respondent discontinued the provider-based status of its urgent care facility on Bainbridge Island in
26 July 2016.

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I. ASSURANCES

1.1 Respondent agrees that on and after the date this Assurance is approved by the court as set forth below (the "Effective Date"), it will not engage in the acts or practices set forth in Section 1.1(a) and (b) below (collectively the "Covered Conduct"), which the State contends are unfair or deceptive acts or practices that violate the Consumer Protection Act, RCW 19.86.020:

a. Knowingly applying improper revenue codes when submitting claims for facility fees based on care rendered at the Harrison Clinics that results in insurers or payers applying the level of benefits, co-payment amount, or patient responsibility amount that corresponds with care rendered in an emergency department of a hospital rather than a provider-based urgent care facility not located within a hospital.

b. Failing to provide patients with information or notice related to facility fees charged by the Harrison Clinics as required by RCW 70.01.040.

1.2 Respondent and its successors agree that on and after the Effective Date, they will not engage in the above-identified unfair or deceptive acts or practices and unfair methods of competition and will not associate with, contract with, hire, or engage others to do so on their behalf.

II. PAYMENT PROVISIONS AND RELEASE

2.1 Respondent represents that it has re-billed using Revenue Code 516, all accounts for beneficiaries of the Blue Cross Blue Shield, Regence and Premera health plans that received treatment at the Harrison Clinics between February and June, 2015, whose encounters were originally billed using Revenue Code 456 (the "Rebilling"). Respondent represents that the Rebilling resulted in a refund or reduction of patients' out-of-pocket costs totaling \$107,294.

2.2 Respondent agrees to forgive and cease any collection efforts for all outstanding

1 patient balances after insurance, attributable to claims for facility fees billed by the Harrison
2 Clinics for encounters that occurred between July 1, 2014 through and including August 19,
3 2016, which amounts to approximately \$995,515 in total debt relief to Respondent's patients.
4 Respondent agrees to provide notice to patients whose outstanding account balances have been
5 forgiven within sixty days of the Effective Date.

6 2.3 Respondent agrees to pay the sum of \$55,000 to the Attorney General within 30
7 days of the Effective Date. The Attorney General shall use these funds for recovery of its costs
8 and attorneys' fees in investigating this matter, future monitoring and enforcement of this
9 Assurance of Discontinuance, future enforcement of RCW 19.86, or for any lawful purpose in
10 the discharge of the Attorney General's duties at the sole discretion of the Attorney General.
11 Respondent shall make this payment in the manner directed by the Attorney General.

12 2.4 In return for good and valuable consideration the sufficiency of which the State
13 expressly acknowledges, including Respondent making the payments, forgiveness of debt and
14 reduction of co-payments set forth in Sections 2.1, 2.2 and 2.3 above, and for entering into this
15 Assurance, the State and the Attorney General hereby release Respondent, its current and
16 former parents, subsidiaries, affiliates, and successors-in-interest, and the officers, directors,
17 and employees thereof, from any claims, demands, causes of action, enforcement proceedings,
18 damages, assessments, administrative recoupment, or penalties, including without limitation
19 those pursuant to the Consumer Protection Act, RCW 19.86.020 *et seq.*, at law, in equity or
20 otherwise, whether direct or indirect, known or unknown, which the State or the Attorney
21 General now holds or has standing to bring, or has at any time heretofore held or had standing
22 to bring, pertaining or related in any way to the Covered Conduct, which occurred, accrued,
23 came into existence or otherwise took place between January 1, 2011 and the Effective Date.
24 This release shall not extend to any claims or causes of action that arise out of violations of this
25 Assurance.
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III. OTHER PROVISIONS

3.1 Respondent specifically denies any wrongdoing, and that it has engaged in business practices or conduct which violates the Consumer Protection Act, 19.86.020.

Nonetheless, to avoid the time, expense, delay, inconvenience and uncertainty of further investigation or litigation, it is entering into this Assurance with the Attorney General's Office.

3.2 No part of the payment or relief required by this Assurance shall be designated as a civil penalty, fine and/or forfeiture.

3.3 This Assurance shall not be construed in any way as an admission of violation of the Consumer Protection Act for any purpose. However, proof of failure to comply with this Assurance of Discontinuance shall be *prima facie* evidence of violations of RCW 19.86.020, thereby placing upon the violator the burden of defending against imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and civil penalties of up to \$2,000 per violation.

3.4 Under no circumstances may this Assurance or the name of the State of Washington, the Office of the Attorney General, or any of its employees or representatives be used by the Respondent or by its officers, employees, representatives, or agents in conjunction with any business activity of Respondent.

3.5 This Assurance is binding on the Respondent and its respective assigns, officers, directors, principals, and all other persons acting in concert or participating with Respondent in conducting Respondent's business.

3.6 Nothing in this Assurance may be construed so as to limit or bar any other person or entity from pursuing any legal remedies against Respondent.

1 Approved on this _____ day of November, 2016.
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4 JUDGE/COURT COMMISSIONER

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6 Presented By:
7 ROBERT W. FERGUSON
8 Attorney General

9 

10 DANIEL DAVIES, WSBA # 41793
11 Assistant Attorney General
12 Attorneys for State of Washington

13 Agreed to, Approved for Entry, Notice of
14 Presentation Waived:

15 

16 VICKIE WILLIAMS, WSBA#20103
17 Corporate Counsel
18 Attorneys for Franciscan Health System

19 11/10/16
20 DATE