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February 20, 2017

VIA EMAIL

Charles Bandoian, CEO
Heartland Health Services
1701 West Garden
Peoria, Illinois 61605
charlesbandoian@heartlandchc.org

Dear Mr. Bandoian,

As you know, our office has been conducting some research into the relationship between Heartland Health Services and OSF Saint Francis Medical Center, and the potential impact this relationship has on access to care in your community. For your reference, I am enclosing a summary of our preliminary findings, our concerns and our recommendations.

We appreciate Heartland's expressed commitment to ensuring that all of its patients have access to comprehensive preventative care services, but we ask you to consider the issues and concerns raised below and to make the necessary changes to protect patients and improve health access in Peoria. Please do not hesitate to contact us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lorie Chaiten'.

Lorie Chaiten
Director, Women's and Reproductive Rights Project
Roger Baldwin Foundation of the ACLU

A handwritten signature in black ink, appearing to read 'Jenna Prochaska'.

Jenna Prochaska
Staff Attorney, Women's and Reproductive Rights Project
Roger Baldwin Foundation of ACLU, Inc.

Enclosure

Enclosure: Summary of Preliminary Findings, Concerns, and Recommendations from Investigation of Heartland Health Services

Heartland Health Services (“Heartland”) is a Federally Qualified Health Center (“FQHC”), which operates four clinics and a behavioral health center in Peoria, Illinois. Heartland receives federal taxpayer funding to provide the full range of basic, preventative health care to Peoria’s medically underserved communities. However, because some of Heartland’s clinic locations lease space from a Catholic health care provider in the community, they operate under religious directives, which restrict patient access to birth control and other services.

The ACLU of Illinois began investigating the relationship between Heartland and OSF in late 2015 after concerns were raised by members of the Peoria community regarding access to certain reproductive health care services, including birth control, at the clinics. We submitted a Freedom of Information Act (“FOIA”) request to the U.S. Department of Health and Human Services Health Resources and Services Administration (“HRSA”), seeking information about the scope of services provided at the Heartland clinics. We also gathered information through meetings with Heartland representatives and community members. Our preliminary findings from this investigation raise a range of significant concerns, which are discussed below.

1. Heartland is bound by religious restriction in lease agreements with OSF, which severely limit its ability to provide birth control to its patients.

The documents we received in response to our FOIA request revealed that Heartland previously entered into a clinic affiliation agreement, as well as a Lease of Staff agreement, with OSF Saint Francis Medical Center (“OSF”).¹ The Lease of Staff agreement required Heartland to provide a staff orientation covering its policies and procedures, standards, and practices, “recognizing that Staff will comply with the ‘Ethical and Religious Directives for Catholic Health Care Services’ [ERDs] as interpreted and applied to OSF.”² The ERDs are broad religious directives that forbid or severely restrict critical health care services.³ Directive 52 states that “Catholic health institutions may not promote or condone contraceptive practices. . .”⁴ Some religious health systems also restrict the information and referrals that health care providers are allowed to give to patients.

Given the broad scope of the ERDs, this agreement raised concerns and questions about the extent of Heartland’s ongoing relationship with OSF and the impact that relationship had on patient care. For that reason, we sent a letter to Heartland in October 2016 raising our concerns and posing questions about its scope of services and affiliation with OSF. In response, Heartland confirmed that it operates two out of its clinic locations on property owned by OSF – one on Garden Street

¹ Heartland Application Submitted to HRSA on April 3, 2013, Attachment 7: Summary of Contracts and Lease of OSF Staff Agreement Summary (“Lease of Staff Agreement Summary”); Heartland Application for Federal Assistance Submitted to HRSA on August 8, 2005, Form 8: Health Center Affiliation Certification.

² Lease of Staff Agreement Summary.

³ See United States Conference of Catholic Bishops, Ethical and Religious Directives for Catholic Health Care Services, 5th Ed. (Nov. 17, 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> (last visited February 14, 2017).

⁴ *Id.* at Directive 52.

White teens.⁸ It has further explained that the high rates of teen pregnancy in Peoria have been shown to contribute to a range of other adverse outcomes “such as prematurity, low birthweight, and infant mortality.”⁹ These teen pregnancy rates are also associated with decreased quality of life for both parents and children, especially in the areas of health, education, employment and psychosocial well-being.¹⁰

Peoria’s teen birth rates are significantly higher than the statewide average.¹¹ For this reason, the 2016-2019 Community Health Improvement Plan for the region identified the public health goal of “[r]educ[ing] pregnancies among adolescent females aged 15-19 years by 10% by 2019.”¹² The first strategy towards achieving this goal is listed in the report as increasing preconception care and contraception access, and both OSF and Heartland are identified as community partners in the ongoing implementation process.¹³ Obviously, by restricting access to birth control in a neighborhood with the greatest need, OSF and Heartland cannot serve as effective partners in advancing the public health goals identified in the Community Health Improvement Plan.

3. Heartland’s referral arrangements with OSF, if still in effect, likely place people with complicated pregnancies and in need of tubal ligations at serious risk of harm.

Beyond the restrictions on birth control access, the FOIA responses revealed that Heartland previously entered into troubling referral arrangements with OSF. The responsive documents included a Healthcare Plan, which states that all patients with “high risk pregnancies” are to be referred to OSF, and that all patients needing a “tubal ligation” are to be referred to one of two facilities, including OSF.¹⁴ If this arrangement with OSF still exists, Heartland is putting its patients at risk for the denial of essential health care. As noted above, OSF is a Catholic health care facility, which follows the ERDs – directives which restrict a range of services, including sterilization and abortion, even when a woman’s health or life is jeopardized by continuing the pregnancy.¹⁵

⁸ Peoria City/County Health Department, Peoria County Community Health Needs Assessment & Plan (2011-2016), 49, *available at* http://www.peoriacounty.org/download/?path=%2Fpcchd%2Fiplan_mapp%2Fiplan_july2011_maindocument.pdf (last visited February 14, 2017).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Community Health Needs Assessment 2016: Tri-County Region (Peoria, Tazewell and Woodford County), 17, *available at* http://www.peoriacounty.org/download?path=/pcchd/IPLAN_MAPP/Tri+County+CHNA+2016+-+TCR.pdf (last visited February 14, 2017).

¹² Partnership for a Health Community, Community Health Improvement Plan for the Peoria, Tazewell, and Woodford Tri-County region. (2016-2019), 28, *available at* http://www.peoriacounty.org/download?path=/pcchd/IPLAN_MAPP/Partnership+for+a+Healthy+Community+C+HA-CHIP.pdf (last visited February 14, 2017).

¹³ *Id.* at 28-30.

¹⁴ Heartland Application for Federal Assistance Submitted to HRSA on August 8, 2005, Healthcare Plan Update.

¹⁵ Directive 53 states that “[d]irect sterilization of either men or women, whether permanent or temporary, is not permitted in a Catholic health care institution...” Directive 45 states that “[a]bortion (that is, the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus) is never permitted.” Note

While there is variation as to how Catholic hospitals implement the Directives, there are many instances in which Catholic hospitals comply by prohibiting their physicians from performing an abortion or sterilization even when this denial of care puts a patient at serious risk. Indeed, countless women – in Illinois and throughout the country – have had necessary health care delayed or denied because of their health care provider’s compliance with the Directives.¹⁶

4. The OSF restrictions may violate Heartland’s obligation to provide comprehensive and non-discriminatory primary care health services to the community.

Heartland is a community health center that relies on federal assistance to provide comprehensive primary health care services to a medically underserved population. FQHCs like Heartland are obligated to provide all required services directly or through contracts or formal written referral arrangements, and must make services available to all residents of the health center’s service area, regardless of the individual’s ability to pay.¹⁷ The specific amount of services may vary based on a number of factors, including the population served, demonstrated unmet need, provider staffing, and/or collaborative arrangements. However, regardless of the arrangement a FQHC uses to provide services through partnerships or referrals, it still has an obligation to ensure that all residents in its service areas receive prompt access to all required healthcare services.¹⁸

Among the primary and preventive health services health centers are required to provide are obstetrics, gynecology, and voluntary family planning services.¹⁹ As HRSA has emphasized, “[e]nsuring access to family planning services [at federally qualified health centers], including access to the full range of FDA-approved contraceptive methods, is an important strategy to help reduce unplanned pregnancy.”²⁰ This is important care to be made available at clinics that serve medically

that the ERDs do permit “indirect abortion” (meaning treatment with the “direct purpose the cure of a proportionately serious pathological condition of a pregnant woman . . . even if [it] will result in the death of the unborn child.”) However, the U.S. Conference of Catholic Bishops has clarified this does not encompass circumstances in which an abortion is necessary to save a woman’s life. Directive 47, at 26; U.S. Conference of Catholic Bishops, *The Distinction Between Direct Abortion and Legitimate Medical Procedures*, 1–2 (2010), available at <http://www.usccb.org/about/doctrine/publications/upload/direct-abortion-statement2010-06-23.pdf>.

¹⁶ See American Civil Liberties Union, *Health Care Denied: Patients and Physicians Speak Out About Catholic Hospitals and the Threat to Women’s Health and Lives* (May 2016), 7-21, available at https://www.aclu.org/sites/default/files/field_document/healthcaredenied.pdf; Catholics for Choice, *Is Your Health Compromised: How the Catholic Directives Make for Unhealthy Choices* (2017), 9-13, available at http://www.catholicsforchoice.org/wp-content/uploads/2017/01/2017_Catholic-Healthcare-Report.pdf.

¹⁷ See 42 U.S.C. § 254b(a)(1); 42 CFR §51c.102(c)(1); *About the Health Center Program*, U.S. Dep’t of Health and Human Services Bureau of Primary Health Care, available at <https://bphc.hrsa.gov/about/what-is-a-health-center/index.html> (last visited February 14, 2017).

¹⁸ See 42 U.S.C. § 254b(k)(3)(A); (j)(i); 42 CFR §51c.303; *Service Descriptors*, U.S. Dep’t of Health and Human Services Bureau of Primary Health Care, 1 available at <https://bphc.hrsa.gov/about/requirements/scope/form5aservicedescriptors.pdf> (All patients must have “reasonable access to the full complement of services offered by the center as a whole”).

¹⁹ See 42 U.S.C. § 254b(1)(A); 42 CFR §51c102(h).

²⁰ *Family Planning and Related Services in Health Centers*, Health Resources and Services Administration Technical Assistance Resource (June 14, 2016), 2 available at <http://bphc.hrsa.gov/qualityimprovement/pdf/familyplanningservices.pdf> (last visited February 14, 2017).

underserved populations, as HRSA noted, in part because “[u]nplanned pregnancy rates are disproportionately higher in certain vulnerable populations including women living below the poverty line; young women aged 18-24 years, and Black and Hispanic women.”²¹

The FQHC regulations also require that the services provided by FQHCs will not be provided in a manner that is discriminatory.²² Heartland is also obligated to comply with Section 1557 of the federal Affordable Care Act as well as the non-discrimination provisions of the Illinois Human Rights Act, both of which prohibit it from providing services in a manner that discriminates on the basis of race or sex.²³

As discussed above, the findings of our investigation reveal that Heartland is not providing comprehensive access to family planning services at its clinics. While the FQHC regulations permit it to provide services through arrangements and referrals, it is still obligated to do so in a manner that is effective at ensuring access for patients, meets the needs of the medically underserved community, and does not discriminate against any protected groups.

5. Conclusion and Recommendations

The ACLU of Illinois’ investigation into the restrictions OSF has placed on access to essential health care in the community it serves has revealed that these restrictions are likely having ongoing, harmful effects on Peoria residents – with a particular focus on low-income, African American women in Peoria’s 61605 neighborhood. To protect patients and further the identified public health goals of the community, the religious restrictions should be removed. This could be achieved either by renegotiating lease agreements with OSF that do not include the restrictions birth control or by ending the affiliation with OSF – and affiliating, instead, with a provider or entity that does not insist on including harmful restrictions on health care provision in its lease terms.

In the interim, there are several steps Heartland should take to protect and expand patient care. First, it should provide contraceptive care – including access to emergency contraception – at *all* locations not affiliated with OSF and should significantly expand the hours during which it provides birth control at those locations. It should also train its staff to ensure that patients who call the clinic seeking birth control will be provided with comprehensive information about their options for accessing birth control, including at clinics close to their homes, and assistance in the process of accessing this care. Finally, it should take steps to ensure that its referral arrangements do not place women with complicated pregnancies or in need of tubal ligations at risk of harm. It should ensure that these women are referred or transferred to health care providers that are not bound by religious restrictions, and are thus able to provide comprehensive information and care.

²¹ *Id.*

²² See 42 CFR § 51c.109. The FQHC regulations further incorporate the “requirements of title VI of the Civil Rights Act of 1964, along with a regulation implementing title VI.” Title VI prohibits discrimination on the basis of race, color, or national origin in programs or activities receiving federal financial assistance. 42 U.S.C. § 2000d.

²³ See Patient Protection and Affordable Care Act § 1557, 42 U.S.C.A. § 18116; 775 ILCS 5/5-102(A); 1-103(Q).