Healthcare Impact Statement

Regarding the Proposed Nursing Facility Transfer Agreement Regarding Operations of Seven Skilled Nursing Facilities from ProMedica Senior Care-HCR ManorCare to Providence Group, Inc.

Prepared for the Office of the Attorney General
California Department of Justice
Healthcare Rights and Access Section

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A. Legal Background

The California Office of the Attorney General is reviewing the proposed transfer of seven skilled nursing facilities operated by ProMedica Senior Care, an Ohio nonprofit corporation, to Providence Group, Inc., a for-profit Utah-based corporation that operates skilled nursing facilities in seven states, including California.

Per California Corporations Code §§ 5917 & 5917.5, the Attorney General shall consider any factors deemed relevant to the proposed transfer, including whether the agreement or transaction may create a significant effect on the availability or accessibility of healthcare services to, or cultural interests of, the affected community.

Per California Code of Regulations, Title 11, § 999.5(e)(5)-(7), the Attorney General shall prepare an independent healthcare impact statement that includes (but is not limited to):

- An assessment of the impact on Medi-Cal patients, county indigent patients, and any other class of patients.
- An assessment of the effect of the agreement on staffing for patient care areas as it may impact the availability of care, on the likely retention of employees as it may affect continuity of care, and on the rights of employees to provide input on health quality and staffing issues.

This Healthcare Impact Statement evaluates relevant factors related to the proposed transfer, including the performance history of the seven skilled nursing facilities operated by ProMedica Senior Care and the much larger group of skilled nursing facilities operated by Providence Group, Inc. It concludes with recommendations.

B. Background on the Organizations and the Proposed Transaction

The seven California facilities subject to this review are the following:

Facility Name	Address	Beds
ManorCare of Palm Desert	74350 Country Club Drive, Palm Dese11, California 92260	178
ManorCare Health Services – Fountain Valley	11680 Warner Avenue, Fountain Valley, California 92708	151
ManorCare Health Services – Citrus Heights	7807 Upland Way, Citrus Heights, California 956107	162
ManorCare Health Services – Hemet	1717 West Stetson Avenue, Hemet, California 92545	178
ManorCare Health Se1vices – Sunnyvale	1150 Tilton Drive, Sunnyvale, California 94087	140
ProMedica Skilled Nursing and Rehabilitation (Rossmoor)	1226 Rossmoor Parkway, Walnut Creek, California 94595	155
ProMedica Skilled Nursing and Rehabilitation (Tice Valley)	1975 Tice Valley Boulevard, Walnut Creek, California 94595	120

1. ProMedica Senior Care and Subsidiary HCR ManorCare, Inc.

   Nursing home operators are most often different corporations from nursing home property owners, however intertwined they may be by complex hierarchical and related organizational structures. The recent history of both operations and property ownership for facilities operated by HCR ManorCare is quite complex.

   The nonprofit ProMedica Health System acquired the operations of for-profit HCR ManorCare in 2018. In 2020 it began to rebrand the facilities under its ProMedica Senior Care division, but in 2022 it decided to jettison operations and its property share of 147 nursing homes, including the seven under consideration here.[1] The real estate assets rented by HCR ManorCare operators have undergone multiple transitions before and after 2018. These property transitions have involved a series of real estate investment trusts and multiple joint ventures that are not under review here. This impact statement will speak only to the implications of transferring the operations of the seven California facilities from ProMedica to Providence Group, Inc.

   Consistent with the current practice of the Centers for Medicare and Medicaid Services (CMS), I will refer to the nursing homes under review as "ManorCare" facilities. Providence Group, Inc., also operates its nursing homes under subsidiary structures; I will refer to them as "Providence" facilities.

2. Providence Group, Inc.

   In March 2023 Providence was reported to have 177 nursing homes.[2] Its largest recent expansion was in 2021, when it acquired Plum Healthcare Group, which operated 54 facilities in California, as discussed below. It has continued to acquire facilities that are struggling financially or clinically. According to Providence, it eschews a universal branding strategy, and it touts its decentralized reliance on local leadership teams that can adapt to local markets.[3]

Literature on the clinical impacts of healthcare mergers and acquisitions is limited but suggests that they can be positive or negative, at least in the case of hospitals.[4] Acquisitions of a nursing

[1] Marselas, Kimberly, Bowers, Lois, ProMedica makes near total exit from skilled nursing sector. McKnights Long-Term Care News, November 8, 2022, www.mcknights.com/news/promedica-makes-near-total-exit-from-skilled-nursing-sector (accessed September 6, 2023).
[2] Marselas, Kimberly, Fueling growth through local leadership approach: Providence Group's Jason Murray. McKnights Long-Term Care News, March 27, 2023, www.mcknights.com/news/fueling-growth-through-local-leadership-approach-providence-groups-jason-murray (accessed September 6, 2023).
[3] Reiland, Jordyn, Providence Group CEO: Nursing Homes Must Become a 'Destination Location' For Leaders, Skilled Nursing News, November 28, 2022, https://skillednursingnews.com/2022/11/providence-group-ceo-nursing-homes-must-become-a-destination-location-for-leaders (accessed September 14, 2023).
[4] RAND Health Care, Environmental Scan on Consolidation Trends and Impacts in Health Care Markets, August 2022,

home or group of nursing homes may result in a change in services and/or performance over the ensuing months or years. The integration is likely to be smoother if the new management is similar to the old, and more challenging if there are significant differences. If there are significant differences in pre-acquisition clinical performance, one might assume that the acquired facility will improve or deteriorate over time, depending upon whether its performance has been worse or better than those of facilities in the acquiring organization.

The evidentiary core of this impact statement, therefore, focuses on whether the track record of Providence facilities differs from that of the ManorCare facilities being acquired, as evidenced in publicly available information.

C. Quality Comparison of ManorCare and Providence as National Organizations

1. The CMS Five-Star Quality Rating System

   Quality of care is a multidimensional concept that cannot be fully captured by a single measure or even several measures. Gauging the quality of care in nursing facilities is particularly challenging, in part because of their diverse resident populations. The standard, greatly simplified but useful tripartite division of these populations includes short-stay, post-acute rehabilitation residents, often insured by Medicare or managed care; long-stay, custodial residents, often insured by Medicaid (Medi-Cal in California); and end-of-life, hospice residents. While nursing facilities have always cared for residents with dementia and other cognitive impairments that may entail difficult behaviors, they have increasingly been asked to care for residents with serious mental illness, substance use, and behavioral issues. Federal and state regulators have developed an enormous survey and measurement apparatus to address this complexity.

   The core of the CMS Five-Star Quality Rating System relies on trained state and federal surveyors who perform onsite inspections.[5] These inspections are expected to occur annually, on average, although the onset of the COVID-19 pandemic caused disruptions that are only now diminishing. The most recent of the last three inspections is weighted most heavily in the health inspection star rating. The methodology to calculate a facility's overall star rating begins with the health inspection star rating, e.g., three stars for an average facility. It can be upgraded or downgraded as much a one star level based on the staffing rating, and it can be upgraded or downgraded as much a one star level based on the quality measure rating. A variation of one star, e.g., three stars versus four, in the overall rating or in the component health inspection, staffing, or quality measure ratings may not be clinically meaningful to a given resident, but a variation of two or more stars may be very meaningful. A one-star facility is likely to be dramatically different from a five-star facility.

https://aspe.hhs.gov/sites/default/files/documents/db9c716b184c36a6c1d4d68c066b3bc3/enviromental-scan-consolidation-hcm.pdf (accessed September 14, 2023).

[5] CMS, Design for Care Compare Nursing Home Five-Star Quality Rating System: Technical Users' Guide, January 2023, https://www.cms.gov/medicare/health-safety-standards/certification-compliance/five-star-quality-rating-system (accessed September 6, 2023).

2. Affiliated Entity Performance of ManorCare and Providence

In July 2023, CMS released its first dataset entitled Affiliated Entity Performance.[6] Affiliated entities, commonly known as corporate chains, are identified by network analysis of nursing home ownership data in the Provider Enrollment, Chain, and Ownership System (PECOS). The multi-layered nature of nursing home corporate ownership posed multiple challenges to this CMS analysis, so CMS does not claim to have brought together all possible facilities into each of its chain identifications. The performance measures included in the analysis are drawn from the familiar Five-Star Quality Rating System of CMS' Nursing Home Compare website.[7]

In the July 2023 Affiliated Entity Performance data, HCR ManorCare was found to have 142 facilities in 15 states, and Providence Group was found to have 139 facilities in 7 states. The variation in performance measures between ManorCare and Providence was not dramatic, and neither organization was far from average.

Table 1 shows the key CMS measures. On average, Providence facilities have better 5-star ratings than ManorCare, due to better health inspection and quality measure ratings. The average Providence staffing rating, however, is below ManorCare and the national average. Its total nurse staffing and weekend nurse staffing measures, which include licensed vocational nurses (LVNs) and certified nursing assistants (CNAs), are higher than ManorCare and the national average, but CMS weighs registered nurse (RN) measures most heavily in its staffing calculation because of extensive research showing that RN hours and RN turnover correlate with meaningful resident outcomes.[8] The Providence scores on both these measures (staffing rating and nursing staff turnover) are lower than ManorCare and lower than the national average.

Table 1. Clinical Performance of ManorCare and Providence as National Chains

CMS Measures	National Average	ManorCare	Providence
Overall 5-star rating	2.9	2.7	3
Health inspection rating	2.8	2.4	2.6
Staffing rating	2.6	3.0	2.1
Quality rating	3.6	3.6	4.3
Total nurse hours per resident day (HPRD)	3.7	3.5	3.8
Total weekend nurse HPRD	3.3	3.2	3.4
Total registered nurse HPRD	0.6	0.7	0.4
Total nursing staff turnover percentage	53.5	52.3	57.8
Registered nurse turnover percentage	51.3	50.6	62.4

[6] CMS, Nursing Home Affiliated Entity Performance Measures webpage, https://data.cms.gov/quality-of-care/nursing-home-affiliated-entity-performance-measures, (accessed September 6, 2023).
[7] CMS, Find nursing homes including rehab services near me, https://www.medicare.gov/care-compare/?guidedSearch=NursingHome&providerType=NursingHome (accessed September 6, 2023).
[8] CMS, Fact sheet: Updates to the Care Compare Website July 2022, July 27, 2022, https://www.cms.gov/newsroom/fact-sheets/updates-care-compare-website-july-2022 (accessed September 14, 2023).

Table 2 shows the short-stay and long-stay quality measure scores from the CMS analysis. Most of the differences between ManorCare and Providence were modest. ManorCare scored better than Providence on five measures: short-stay and long-stay emergency department visits, bladder catheters, restraints, and depression. Providence scored better than ManorCare on 16 measures. Of note, Providence scored better on the six measures concerning pressure ulcers, functional status, and weight loss, all of which are sensitive to staffing adequacy.[9]

Table 2. Quality Measures of ManorCare and Providence as National Chains

Short-Stay and Long-Stay Quality Measures	National Average	ManorCare	Providence
Average percentage of short-stay residents who were re-hospitalized after a nursing home admission	22.3	24.5	22.2
Average percentage of short-stay residents who have had an outpatient emergency department visit	12	11.9	12.7
Average percentage of short-stay residents who newly received an antipsychotic medication	1.7	1.5	1.5
Average percentage of short-stay residents with pressure ulcers or pressure injuries that are new or worsened	2.9	2.6	1.7
Average percentage of short-stay residents who made improvements in function (higher is better)	74.4	74.6	80.9
Average percentage of short-stay residents who were assessed and appropriately given the seasonal influenza vaccine (higher is better)	75.5	75	89.5
Average percentage of short-stay residents who were assessed and appropriately given the pneumococcal vaccine (higher is better)	79.1	76.5	92.3
Average number of hospitalizations per 1,000 long-stay resident days	1.64	1.7	1.66
Average number of outpatient emergency department visits per 1,000 long-stay resident days	1.06	0.88	1.01
Average percentage of long-stay residents who received an antipsychotic medication	14.5	12.9	11.1
Average percentage of long-stay residents experiencing one or more falls with major injury	3.4	2.9	2.3
Average percentage of long-stay high-risk residents with pressure ulcers	8.1	9.5	8.3
Average percentage of long-stay residents with a urinary tract infection	2.3	2.0	1.0
Average percentage of long-stay residents who have or had a catheter inserted and left in their bladder	1.7	1.2	1.4
Average percentage of long-stay residents whose ability to move independently worsened	15.1	18.2	12.4
Average percentage of long-stay residents whose need for help with activities of daily living has increased	14.8	13.1	9.1

[9] Jane Bostick et al., Systematic review of studies of staffing and quality in nursing homes, JAMDA, July 2006, https://pubmed.ncbi.nlm.nih.gov/16843237 (accessed September 14, 2006).

Short-Stay and Long-Stay Quality Measures	National Average	ManorCare	Providence
Average percentage of long-stay residents who were assessed and appropriately given the seasonal influenza vaccine (higher is better)	94.7	94.6	96.8
Average percentage of long-stay residents who were assessed and appropriately given the pneumococcal vaccine (higher is better)	91.8	91.4	97
Average percentage of long-stay residents who were physically restrained	0.1	0	0.2
Average percentage of long-stay low-risk residents who lose control of their bowels or bladder	47.7	50.8	36.6
Average percentage of long-stay residents who lose too much weight	6.1	6.6	6.1
Average percentage of long-stay residents who have symptoms of depression	8.4	2.4	14.2
Average percentage of long-stay residents who used antianxiety or hypnotic medication	19.4	16.9	14.9

D. California Comparisons, ManorCare and Providence

Given the wide variation in nursing home practices and oversight across states, the rest of this impact statement will focus on comparisons between the seven ManorCare facilities and the Providence facilities that are located in California.

The task of identifying appropriate Providence facilities for comparison has two steps. One must first determine which facilities are currently operated by Providence, and then determine whether they have been under Providence management for a meaningful length of time. It takes time for practices and culture to change, for better or worse, and time for those changes to show in the CMS performance measurement system. Staffing scores can change relatively quickly. The July staffing scores, for example, are based on data from the previous January through March. Quality measures have a longer lag time, and health inspection data reach back over three years, although the most recent inspection weighs most heavily.

I used both state and national data to identify Providence facilities. The California Department of Public Health (CDPH) maintains a publicly available Cal Health Find Database.[10] A search for Providence Group, Inc., yielded 114 nursing homes with some evidence of Providence ownership. Three had imperfect matches between CDPH and CMS, e.g., name or license discrepancies, as can often occur between these datasets. Another 12 had licensee changes in August 2022 or later and are not labeled as Providence Group in CMS files. I was left with 99 Providence facilities identified via CDPH data. All 99 were also identified as operated by Providence in the CMS data.[11] CMS data were not readily available or were noted by CMS to be problematic for some facilities, so I did three separate Providence analyses based on 95 or 89 facilities or – in the case of hours per resident day – on 81 facilities. Whenever data were

[10] CDPH, Cal Health Find Database, www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind (accessed September 6, 2023).
[11] CMS, https://data.cms.gov/search (accessed September 6, 2023).

available in all three analyses, the results were almost identical, as would be expected in a sample this large.

The Table 3 data for California-only facilities reveal much of the same patterns as seen in the national chain data. Providence again scores higher than ManorCare in its overall 5-star rating and its health inspection and quality ratings, including the long-stay and short-stay subcategories. And again, Providence scores lower than ManorCare in its nurse staffing and turnover measures. ManorCare's RN presence is greater than the state average, measured both as reported hours and as case-mix adjusted hours, while the Providence RN presence is significantly less.

It is important to note that the descriptive statistics presented here are averages and do not reflect variation within the groups. Each of the quality measures has significant variation. For example, the seven ManorCare facilities include one 1-star overall rating and three 4-star ratings. The 95 Providence facilities for which overall ratings are available include 11 1-star ratings and 20 5-star ratings. Also, the 114 facilities that were identifiable as Providence via CDPH and CMS datasets represent the acknowledged universe of California Providence facilities at that point in time. Nursing home names and owners change frequently, and the CDPH dataset is continually updated.

The new information in Table 3 concerns occupancy. The ManorCare occupancy is remarkably low at 74%, whereas these facilities' average occupancy prior to the pandemic exceeded 80%, according to data from the California Department of Department of Health Care Access and Information (HCAI).[12] The Providence average is a robust 93%.

Table 3. Average Clinical Performance of California ManorCare and Providence Facilities

CMS Measures	California Average	California ManorCare	California Providence
Average Occupancy	86%	74%	93%
Overall Rating	3.3	2.7	3.0
Health Inspection Rating	2.8	2.3	2.6
Quality Rating	4.4	4.1	4.5
Long-Stay Quality Rating	4.5	4.3	4.6
Short-Stay Quality Rating	4.1	4.0	4.2
Staffing Rating	3.0	3.7	1.9
Reported CNA HPRD*	2.5	2.4	2.3
Reported LVN HPRD	1.2	1.0	1.2
Reported RN HPRD	0.6	0.8	0.4
Reported Licensed HPRD	1.8	1.8	1.5
Reported Total Nurse HPRD	4.3	4.2	3.8
Total Nurse HPRD on the weekend	3.9	3.7	3.5
RN HPRD on the weekend	0.4	0.5	0.3
Case-Mix Adjusted CNA HPRD	2.5	2.3	2.3
Case-Mix Adjusted LVN HPRD	1.2	1.1	1.2

[12] California Department of Health and Human Services, Long-term Care Facilities Annual Utilization Data, https://data.chhs.ca.gov/dataset/long-term-care-facilities-annual-utilization-data (accessed September 6, 2023).

CMS Measures	California Average	California ManorCare	California Providence
Case-Mix Adjusted RN HPRD	0.6	1.0	0.3
Case-Mix Adjusted Total Nurse HPRD	4.3	4.3	3.8
Case-Mix Adjusted Weekend Total Nurse HPRD	3.8	3.8	3.4
Total Nursing Staff turnover	46.1	55.0	56.6
RN turnover	49.4	56.3	63.9

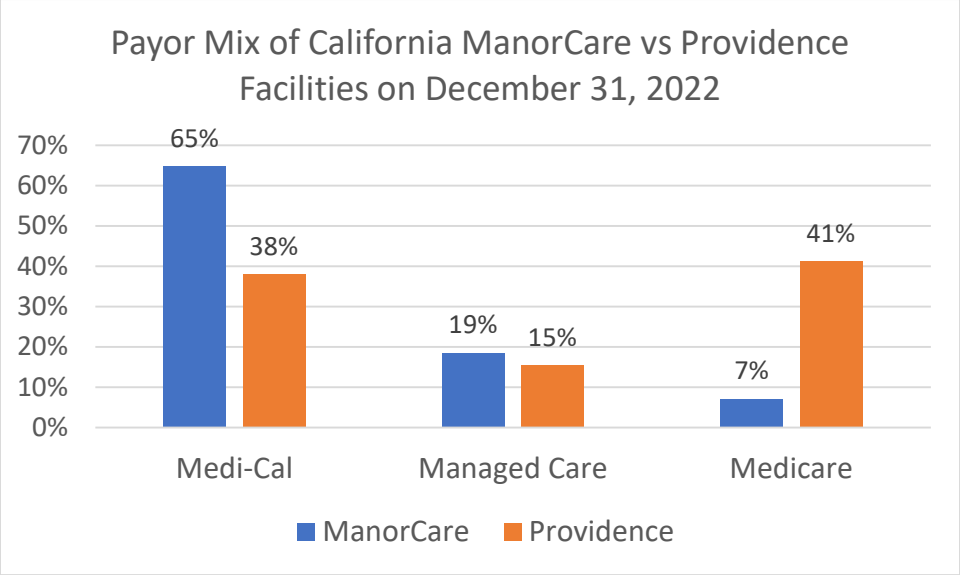
*HPRD = Hours Per Resident Day
CNA = Certified Nursing Assistant, LVN = Licensed Vocational Nurse, RN = Licensed Nurse

E. Payor mix insights, ManorCare and Providence

Every year, HCAI asks that California nursing homes report data on their resident populations for the date of December 31. The 2022 dataset is still considered preliminary, but the basic elements used here are not likely to undergo significant change after audit. For this December 2022 collection, all seven ManorCare facilities submitted data, whereas 68 Providence facilities submitted data and 29 were listed as non-responders. ManorCare posted a 69% occupancy average across its seven facilities, confirming its low occupancy. There were two outliers, one with 36% occupancy and the other at 100%, but the other five facilities were clustered more tightly around 71%. Providence posted a 91% average. The numbers for the two outliers may or may not be accurate, but the overall picture from HCAI occupancy data is consistent with the numbers in Table 3.

The significant new information in the end-of-year HCAI data concerns the payor mix of the resident populations. ManorCare facilities average 65% Medi-Cal as payor source for its residents, compared to 38% for Providence, as shown in Figure 1. The sums of the two higher-paying sources, Medicare and managed care, are 26% for ManorCare and 57% for Providence. Providence has three facilities with 95-96% Medicare. ManorCare's range of Medicare residents for all seven of its facilities was from 3% to 11%, while only seven of Providence's 68 facilities in the HCAI data had less than 20% Medicare occupancy. ManorCare's recent years of low occupancy and high Medi-Cal percentages have posed significant financial challenges that its new operators will need to address.

Figure 1. Payor Mix of California ManorCare vs Providence Facilities, December 31, 2022



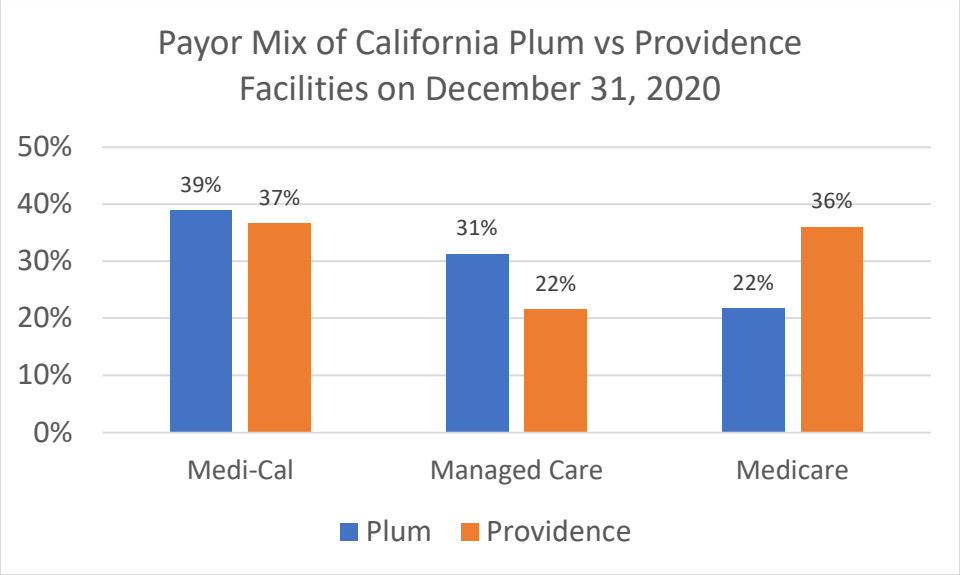
F. The Acquisition of Plum by Providence

In 2021, Providence Group acquired Plum Healthcare Group, which operated 54 nursing homes in California and four in Nevada. Providence also bought the real estate property of 10 nursing homes. The two years that have elapsed since have been time enough for some but not all the publicly available data to change, so there is a rationale for considering these facilities separately. Consideration of the Plum facilities as a separate group could also yield insights as to how the ManorCare facilities may change as Providence assumes management.

1. Payor Mix and Occupancy of California Plum and Providence Facilities

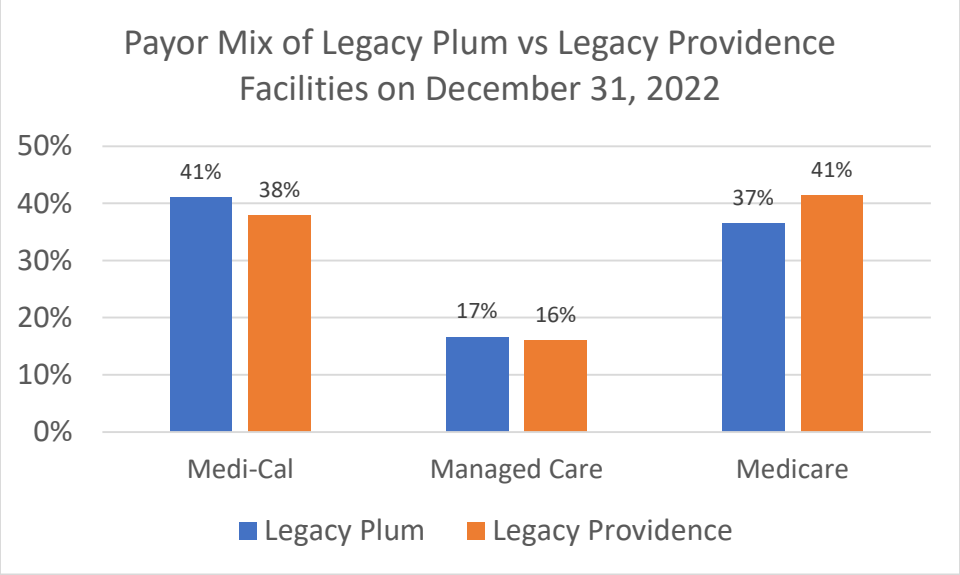
   Of the California Providence facilities currently under analysis for this impact statement, I have been able to identify 51 that were formerly operated by Plum, based on the December 31, 2020, HCAI data. In this dataset, 36 Providence facilities and 48 Plum facilities were among the responders. Figure 2 shows that the payor sources of the two groups were more closely aligned than those of ManorCare and Providence just discussed. The sums of the two higher-paying sources, Medicare and managed care, were 53% for Plum and 58% for Providence. Both groups struggled with occupancy during this first pandemic year, with Plum posting a year-end 70% versus 80% for Providence.

Figure 2. Payor Mix of California Plum and Providence Facilities, December 31, 2020



Little over a year after the Plum acquisition, the payor mix of the former Plum facilities even more closely resembled their new companions. Of the 68 Providence facilities reporting data for HCAI at end-of-year 2022, I was able to identify 31 as formerly Plum, with results shown in Figure 3. Occupancy for the former Plum facilities had risen to 92% and to 90% for the Providence facilities.

Figure 3. Payor Mix of Legacy Plum and Providence Facilities, December 31, 2022



2. CMS Performance Data for the Legacy Plum and Providence Facilities

   A comparison of the former Plum facilities with legacy Providence facilities using the current CMS scores revealed remarkable similarities in performance. Table 4 shows that there are no large differences between the two groups.

Table 4. Current CMS Ratings of the Legacy Plum and Providence Facilities

CMS measures	Legacy Plum	Legacy Providence
Overall Rating	3.1	2.9
Health Inspection Rating	2.8	2.6
Quality Rating	4.4	4.5
Long-Stay Quality Rating	4.3	4.7
Short-Stay Quality Rating	4.2	3.9
Staffing Rating	2.0	1.9
Reported CNA HPRD*	2.3	2.3
Reported LVN HPRD	1.2	1.2
Reported RN HPRD	0.3	0.4
Reported Licensed HPRD	1.5	1.5
Reported Total Nurse HPRD	3.8	3.8
Total Nurse HPRD on the weekend	3.4	3.5
RN HPRD on the weekend	0.3	0.3
Case-Mix Adjusted CNA HPRD	2.3	2.3
Case-Mix Adjusted LVN HPRD	1.2	1.1
Case-Mix Adjusted RN HPRD	0.3	0.3
Case-Mix Adjusted Total Nurse HPRD	3.8	3.7
Case-Mix Adjusted Weekend Total Nurse HPRD	3.5	3.4
Total Nursing Staff turnover	58.1	55.1
RN turnover	64.0	63.7

*HPRD = Hours Per Resident Day
CNA = Certified Nursing Assistant, LVN = Licensed Vocational Nurse, RN = Licensed Nurse

3. Integration of Plum facilities and Considerations for ManorCare Integration

   The HCAI payor mix data show that both Plum Healthcare Group and Providence were pursuing a similar high-paying post-acute population in 2021. Plum was not a struggling chain. In a rarity for this industry, in 2019 it began building a new facility in Walnut Creek. This facility opened in 2022, focusing on short-term, high acuity rehabilitation.[13] The most recent occupancy and performance data show very little difference between the two groups. There is no suggestion in any of these data that the integration of Plum into Providence was problematic.

The ManorCare integration into Providence management, if approved, will be much smaller and thus perhaps less challenging than the Plum integration. Overall and for most of the CMS

[13] Reiland, Jordyn, Providence Group Acquires Plum Healthcare, Adds 58 New Facilities to Portfolio. Skilled Nursing News, March 8, 2021, https://skillednursingnews.com/2021/11/providence-group-acquires-plum-healthcare-adds-58-new-facilities-to-portfolio, (accessed September 6, 2023).

measures, the California Providence facilities perform as well or better than the seven ManorCare facilities. The most notable exception is in RN staffing. Table 3 shows that the Providence unadjusted RN staffing is half that of ManorCare, and the case-mix adjusted RN staffing is 0.3 hours per resident day compared with 1.0 for ManorCare and 0.6 for the California average. If the ManorCare facilities are to become more like the Providence facilities, one could imagine that these high RN staffing measures could decrease. On the other hand, ManorCare's higher RN staffing does not seem to have yielded higher health inspection or quality measure scores than those of Providence.

The other finding of interest is ManorCare's higher percentage of Medi-Cal residents. Because Medi-Cal reimbursement is low and operators like Providence and Plum cater to residents with higher reimbursement, there is at least a theoretical possibility that Providence managers could consider ManorCare's current Medi-Cal residents to be less economically desirable.

Additional information about these potential concerns can be gleaned from staff and federal health inspection data in the sections that follow.

G. CDPH Citation Data for ManorCare, Providence, and Plum

CDPH surveyors can issue citations at several levels for regulatory violations they discover in nursing homes. The most serious, a class AA citation, is for a violation that was a "direct proximate cause of death." An A citation involves "imminent danger of death or serious harm to patients, or a substantial probability of death or serious physical harm to patients." A class B citation "has a direct or immediate relationship to patient health, safety, or security." Fines can be tripled for repeat violations.

CDPH surveyors also issue administrative penalties for nurse staffing violations. The standards are 3.5 direct care hours per patient day (DHPPD) for total nursing and 2.4 DHPPD specifically for certified nursing assistants (CNAs). The surveyors perform audits of staffing documentation for 24 randomly selected days and total the number of days with violations.

Table 5 displays the number and rate of CDPH citations for the seven ManorCare facilities and for the legacy Providence and legacy Plum facilities. These numbers are too small for robust comparisons; across all facilities there was less than one A or B citation per facility over the entire four-plus-year period. ManorCare had no A citations, but on a per-facility basis, it had more B citations than Providence, and it violated the 3.5/2.4 staffing standards at about the same rate. A review of the lengthy citation narratives written for Providence's A citations revealed no unusual patterns. There were several citations for failure to prevent falls with injury, which are not an uncommon occurrence. These data do not point to dramatic differences in performance across the three groups.

Table 5. Number and Rate of CDPH citations, 2019-2023

	Number of Violations			Rate of Violations per Facility		
	ManorCare	Providence	Plum	ManorCare	Providence	Plum
Number of facilities	*7*	*47*	*51*	*7*	*47*	*51*
AA			3	0.00	0.00	0.06
A Trebled		1	1	0.00	0.02	0.02
A		13	10	0.00	0.28	0.20
B Trebled			1	0.00	0.00	0.02
B	5	28	33	0.71	0.60	0.65
Staffing DHPPD* violations for 12 - 24 days	1	13	4	0.14	0.28	0.08
Staffing DHPPD violations for 2 - 11 day	4	23	15	0.57	0.49	0.29

*DHPPD = Direct Care Hours Per Patient Day, i.e., minimum staffing requirements

H. CMS Deficiency Data for ManorCare, Providence, and Plum

CMS surveyors also deploy a graded system for issuing federal deficiencies, shown in Table 6. Points are assigned based on the level of harm and whether the scope of the deficiency is found to be isolated, occurring in a pattern, or widespread. The sum of these points for each of three inspections, weighted by recency, determine the facility's health inspection star rating.

Table 6. CMS Health Inspection Grading Framework

	Isolated	Pattern	Widespread
Immediate jeopardy to resident health or safety	J	K	L
Actual harm that is not immediate jeopardy	G	H	I
No actual harm with potential for more than minimal harm that is not immediate jeopardy	D	E	F
No actual harm with potential for minimal harm	A	B	C

Table 7 displays the number and rate of CDPH citations for the seven ManorCare facilities and for the legacy Providence and legacy Plum facilities. The numbers of actual harm deficiencies (G-L) are again too small for robust comparisons; across all facilities, there was only one G-L deficiency per facility over the entire four-plus-year period.

Table 7. Number and Rate of CMS Deficiencies, 2019-2023

	Number of Deficiencies			Rate of Deficiencies per Facility		
	ManorCare	Providence	Plum	ManorCare	Providence	Plum
Number of facilities	*7*	*47*	*51*	*7*	*47*	*51*
B	9	29	28	1.29	0.62	0.55
C	1	2	4	0.14	0.04	0.08
D	231	1076	1317	33.00	22.89	25.82
E	71	458	454	10.14	9.74	8.90
F	11	93	72	1.57	1.98	1.41
G	4	42	31	0.57	0.89	0.61
H	1	4	0	0.14	0.09	0.00
J	0	2	2	0.00	0.04	0.04
K	1	5	6	0.14	0.11	0.12
L	1	5	1	0.14	0.11	0.02

As with the California data, these federal survey results do not point to dramatic differences in performance across the three groups. Table 8 sums the deficiencies by potential harm versus actual harm and shows the rate per facility. Here ManorCare scores somewhat worse than Providence and Plum, consistently with the current average health inspection star ratings of 2.3 for ManorCare and 2.6 for Providence, as noted in Table 3.

Table 8. Number and Rate of CMS Deficiencies, 2019-2023, Grouped by Harm

	Number of Deficiencies			Rate of Deficiencies per Facility		
	ManorCare	Providence	Plum	ManorCare	Providence	Plum
Number of facilities	*7*	*47*	*51*	*7*	*47*	*51*
A-F (potential harm)	323	1658	1875	46.1	35.3	36.8
G-L (actual harm)	7	58	40	1.0	1.2	0.8

Additional analysis showed the same rate of G-L deficiencies for the Plum facilities in 2020-2021 as in 2022-2023, before and after the transition to Providence (data not shown in table).

I. Narrative Review of CMS Deficiencies and Problem Transfer Cases

CMS posts lengthy descriptions of the deficiencies it issues. A detailed review of the most serious deficiencies – a pattern of actual harm (K) or widespread actual harm (L) – failed to yield meaningful differences between the ManorCare and Providence facilities. The numbers involved are small, as seen in Table 7. One of the seven ManorCare facilities received a K deficiency in 2023. One of the 47 Providence facilities received three K deficiencies in 2021. Two Providence facilities received three L deficiencies in 2021. One Providence facility received an L in 2022. Four of these seven Providence K and L deficiencies occurred during COVID-19 outbreaks.

In these narrative reviews, I was particularly interested in the theoretical concern mentioned above, which is that corporations focused on high-paying residents may incentivize inappropriate transfers and discharges of Medi-Cal residents. In its descriptions, CMS does not include payor source, so I searched for any violations of transfer and discharge requirements (F-tag 0622). One

common tactic is to refuse to readmit a resident with challenging behaviors following a hospital stay. The only deficiency of this type that I found was earned by a former Plum facility in 2023 (level D, no actual harm). I cannot determine from the surveyor's narrative whether financial motivations played a role. Two egregious discharges – one to the street, another to a non-existent shelter – were from Plum facilities in 2021, prior to the transition into Providence. One of these Plum deficiencies was level D and the other level G (actual harm, isolated).

The seven ManorCare facilities earned no F-622 deficiencies of any level in the 2019-2023 period. The 47 Providence facilities earned six, five at a D level and one at a G level. Two of these six were for inappropriate transfers to sister facilities. One was a level G deficiency for a blatantly unsafe transfer back to family in 2021, and the other three involved various incidents of poor care or coordination.

These narrative reviews did not raise any concerns about a managerial practice on the part of Providence to encourage inappropriate transfers and discharges. Together with the quantitative review of federal deficiencies, they do not suggest a negative influence on the acquired Plum facilities. The quantitative federal deficiency data are marginally better for the Providence facilities than the ManorCare facilities.

ManorCare's low occupancy is relevant to the theoretical concern about Medi-Cal residents being less economically desirable. These seven facilities have an ample number of empty beds in which new management can put higher-paying, short-stay post-acute residents, thus decreasing those relatively high Medi-Cal percentages without inappropriately moving any residents.

J. Expected ManorCare Rent Increases and Concerns Regarding Staffing

As noted above, nursing home operators usually rent the nursing home properties, often from real estate investment trusts. Table 9 shows that ManorCare's most recent average rent was quite low, only 0.3% of total expenses.[14] These rents are likely to increase substantially under Providence management. Dramatic increases in rent can put pressure on staffing costs, and staffing cuts would likely lower clinical quality and safety.

Table 9. Rents and Rent as Percentage of Expenses, ManorCare and Plum, Various Years

	Facilities	Year	Leases and Rentals	Total Expenses	Rents/Total
ManorCare	7	FY 2022*	$ 53,983	$ 18,642,017	0.3%
Plum	11	CY 2020	$ 371,981	$ 15,376,942	2.4%
Plum	11	CY 2022	$ 1,859,252	$ 19,446,907	9.6%

*FY = fiscal year; CY = calendar year

In order to estimate potential rent increases, I sampled 11 of the former Plum facilities from the same counties as the ManorCare facilities. Table 9 also shows the rents reported for these facilities in calendar years 2020 and 2022. The acquisition by Providence occurred in 2021. The Plum rents increased by a factor of five following the acquisition, and the rent as a percentage of

[14] HCAI, Financial & Utilization Reports, https://reports.siera.hcai.ca.gov, (accessed September 6, 2023).

expenses increased from 2.4% to 9.6%. Two of the Plum facilities were already paying rent in excess of $1,000,000 in 2020; the other nine were paying an average of $185,695.

Although the extraction of inappropriately high rents from nursing home operations is a concern of considerable gravity, an increase that occurs after transition to new management may not lower clinical quality and safety. The Providence acquisition of Plum offers a relevant and reassuring example. Plum rents increased dramatically, but I found no evidence of negative impact on the health inspection and quality measures for the Plum facilities. Following acquisition of the ManorCare facilities, Providence will likely focus intense efforts on increasing revenue by filling the many ManorCare vacant beds with high-paying Medicare and managed care residents.

The one lingering anomaly in the overall positive picture of Providence in comparison to ManorCare is the lower nurse staffing star ratings and hours seen in Table 1 and Table 3. The possibility that Providence might lower the overall nurse staffing and RN staffing in the ManorCare facilities is also a concern of considerable gravity. Several factors run counter to this concern, however, even if not wholly reassuring. First, although the Providence staffing ratings are below ManorCare's and well below average, the health inspection and quality measure scores are approximately average and above ManorCare's. Second, CDPH surveyors found the rate of staffing standard violations to be approximately the same for Providence and ManorCare over the past four years. Third, as national chains, Providence outperforms ManorCare on several quality measures that are thought to be sensitive to staffing levels, including the rates of pressure ulcers, functional status, and weight loss, as discussed above (see Table 2). Finally, both state and federal regulators are currently increasing their efforts to ensure adequate staffing. State surveyor audits of staffing documentation will increase in the months to come; systematic staffing inadequacies are increasingly likely to be discovered.

K. Summary of Key Findings

Providence is a large and growing nursing home operator that prioritizes short-stay post-acute residents. Average occupancy across its California facilities has rebounded very well since the onset of the COVID-19 pandemic. The seven California ManorCare facilities have not rebounded well; their occupancy is low and their percentage of Medi-Cal residents is relatively high.

At a national level, the Providence and ManorCare chains are average performers. Providence scores somewhat better than ManorCare in the CMS stars system for health inspection and quality measures and lower than ManorCare in staffing. Analysis of the California facilities yields similar results.

The central question for this analysis is whether access or quality will decrease when Providence acquires the seven ManorCare facilities. Providence's acquisition of 54 Plum facilities in 2021 offers useful indicators of what may happen when Providence acquires the seven ManorCare facilities. The Plum facilities were also average performers focused on short-stay post-acute residents. The California surveyor citations and federal surveyor deficiencies reflect similarities across the ManorCare, Providence, and Plum facilities.

The California ManorCare facilities have a higher percentage of Medi-Cal residents than the average Providence facility, raising a concern about whether Providence may look for opportunities to transfer or discharge these low-reimbursement residents. For the Providence facilities that I was able to identify, data from state and federal violations offer no evidence for this concern. The integration of Plum facilities under Providence management did not result in increased deficiencies for those facilities.

Providence does not score as well as ManorCare in its nurse staffing measures. In addition, it is reasonable to expect that rents paid by the ManorCare facilities will dramatically increase after the Providence acquisition, putting pressure on staffing costs. The dynamic of rent increases played out in the Plum acquisition without noticeable negative impact, however, and I found no evidence to suggest that Providence will make measurable staffing cuts in the ManorCare facilities.

L. Recommendation: Approval of the Proposed Transaction

Based on my experience and the findings summarized above, it is unlikely that the Providence acquisition of these seven ManorCare facilities will result in decreased quality of care or safety for residents in the ManorCare facilities. Although Providence prioritizes short-stay post-acute residents, its facilities do have significant numbers of Medi-Cal residents, and I found no evidence that it inappropriately transfers or discharges Medi-Cal residents. The Providence nurse staffing star ratings and hours are inferior to those of ManorCare, but I found no evidence that would predict that the staffing in the ManorCare facilities will significantly decrease under Providence management. Therefore, I recommend that the Office of the Attorney General consider approval of the proposed acquisition of the ManorCare facilities by Providence, with the standard set of specific conditions related to monitoring the healthcare impact of the sale for five years from the first day following the applicable closing date of the acquisition.

M. Standard Recommendations:

a.) Participation in Medi-Cal and Medicare. For five years from the applicable closing date of the agreement, the owner, operator and/or licensee of the seven ManorCare facilities shall be certified to participate in the Medi-Cal and Medicare program and have a Medi-Cal and Medicare Provider Number (or provider number for any successor program to Medi-Cal and Medicare) to provide the same types and levels of skilled nursing services to Medi-Cal and Medicare beneficiaries at the seven ManorCare facilities.

b.) Notification of Changes. For five years from the applicable closing date of the agreement, Providence, and all owners, managers, lessees, or operators of the seven ManorCare facilities or any portion thereof shall be required to provide written notice to the Attorney General 60 days prior to entering into any agreement or transaction to do any of the following:

1. Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of any of the seven ManorCare facilities or any portion thereof.

2. Transfer control, responsibility, management, or governance of the seven ManorCare facilities or any portion thereof. The substitution, merger, or addition of a new member of the governing body, general partner, or limited partner of Providence that transfers the control of responsibility for, or governance of, any of the seven ManorCare facilities or any portion thereof shall be deemed a transfer for purposes of this condition. The substitution or addition of one or more members of the governing body, general partner, or limited partners of Providence or any arrangement, written or oral, that would transfer voting control of the members of the governing body, general partner, or limited partners of Providence shall also be deemed a transfer for purposes of this condition.

c.) Continuous operation of the seven ManorCare facilities. For five years from the applicable closing date of the agreement, the seven ManorCare facilities shall be operated and maintained as SNFs with the same number of skilled nursing beds as of the date of closing of the agreement and shall maintain the same licensure, types, and/or levels of services being provided. The owner, operator or licensee of the seven ManorCare facilities shall not place all or any portion of the seven ManorCare facilities' skilled nursing licensed-bed capacity or services in voluntary suspension or surrender its license for any beds or services.

d.) Prohibition on discrimination.

Providence shall prohibit discrimination on the basis of any protected personal characteristic identified in state and federal civil rights laws, including California Civil Code section 51 and title 42, Code of Federal Regulations, section 18116. Categories of protected personal characteristics include:

1. Gender, including sex, gender, gender identity, and gender expression.
2. Intimate relationships, including sexual orientation and marital status.
3. Ethnicity, including race, color, ancestry, national origin, citizenship, primary language, and immigration status.
4. Religion.
5. Age.
6. Disability, including disability, protected medical condition, and protected genetic information.

Respectfully Submitted September 27, 2023

Terry E. Hill, MD

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Qualifications of Terry E. Hill

- Current engagement in large-scale data and performance measurement projects by California Department of Health Care Access and Information (former member of the Healthcare Payments Data Program Review Committee and current member of the Data Release Committee) and by Cal Healthcare Compare (member of Board of Directors)
- History of engagement with other performance measurement projects, e.g., Integrated Healthcare Association, California Association of Physician Groups, RAND Center of Excellence on Health System Performance, and California's Medicare Quality Improvement Organization
- Author of multiple quantitative and qualitative papers on quality measurement and improvement in long-term care and other settings
- Former medical director of multiple community and public sector skilled nursing facilities
- History of executive leadership, e.g., in Hill Physicians Medical Group, California Prison Healthcare Receivership, and Lumetra
- History of engagement with nursing workforce issues, e.g., member of the Healthy Aging and Care for Older Adults Subcommittee, California Future Health Workforce Commission and board president of HealthImpact (formerly California Institute for Nursing and Health Care)
- Member of court-appointed compliance monitor team in State of California vs. Mariner Health Care Inc.
- Associate Clinical Professor - Volunteer, University of California, San Francisco
- Board-certified in internal medicine and geriatrics