

May 3, 2018

Office of Civil Rights
Centralized Case Management Operations
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201

Steven Mitchell, Acting Regional Manager
Office for Civil Rights
Customer Response Center
U.S. Department of Health and Human Services
233 N. Michigan Ave., Suite 240
Chicago, IL 60601

Re: Complaint filed under Title VI of the Civil Rights Act and
Section 1557 of the Affordable Care Act

Dear Sir/Madam:

I. INTRODUCTION

This is an Administrative Complaint by the Clergy Community Coalition against Premier Health Partners¹, for the announced closing of Good Samaritan Hospital in Dayton, Ohio and for beginning that closure. ² This hospital, located in the heavily African American Northwest side of the City of Dayton³, has long been a major provider of health care in an area. The closing will have a discriminatory and disparate adverse impact on African Americans, and women in violation of Section 1557 of the Affordable Care Act, and the various civil rights protections incorporated therein. It will also violate Title VI of the Civil Rights Act.

Premier Health Partners has expanded and continues to expand its services in affluent largely white suburban areas at the same time it has announced this plan to close its only hospital in an African American neighborhood.

¹ Premier Health Partners' headquarters is located at 110 N Main St, Dayton, OH 45402. It's phone number is (937) 499-7441.

² Bush, *Good Samaritan Hospital to close*, Dayton Business Journal (Jan. 17, 2018); Bush, *Good Samaritan Hospital announces initial timeline for transition of services*, Dayton Business Journal (Mar. 14, 2018) – Exhibit 1

³ Good Samaritan Hospital is located at 2222 Philadelphia Drive, Dayton, Ohio 45406.

The Clergy Community Coalition, an association of pastors, churches, and community organizations in Dayton's African American community has come together to keep the hospital open, to preserve and improve health services to the minority community surrounding the hospital, to prevent any demolition of facilities while this complaint is being considered. The Coalition's members use Good Samaritan Hospital.

We request that the Department of Health and Human Services Office of Civil Rights conduct a formal investigation of Premier Health Partners and take all necessary steps to that ensure it complies with Section 1557 and Title VI. If necessary, such steps should include discontinuing all present and future federal payments to Premier Health Partners until it comes into compliance and referring this matter to the US Department of Justice for additional investigation.

II. HISTORY AND SIGNIFICANCE OF GOOD SAMARITAN HOSPITAL

Good Samaritan Hospital was opened by the Sisters of Charity in 1932 with support from the City of Dayton, Ohio. Over the years it provided high quality and innovative care in areas such as cardiac care, pulmonary care, intensive care, obstetrics, robotic surgery, nursing training and a clinic for the homeless. It has an emergency room, 491 inpatient beds and provides inpatient and outpatient surgery.

In 1995 Good Samaritan Hospital entered into a Joint Operating Agreement with the owners of Miami Valley Hospital, the area's largest hospital, to form Premier Health Partners. Premier Health Partners and its competitor Kettering Health Network dominate the Dayton area health care market. Premier Health Partners is now the second largest employer in the region. Good Samaritan Hospital employs approximately 1600 people, a number of whom live nearby.

Since the hospital's founding, the community around Good Samaritan Hospital, like much of West and Northwest Dayton, Ohio, has changed from being largely white to majority African American. This has been followed by disinvestment and the closing of retail centers, supermarkets⁴, schools, factories paying living wages, as well as widespread foreclosures.⁵

⁴ The Dayton metropolitan statistical area (MSA) ranked second in the country for food hardship for households with Children. The Food Research & Action Center, Food Hardship in America: Households with Children Especially Hard Hit, Chart E (September 2016) (<http://www.frac.org/wp-content/uploads/food-hardship-report-households-with-children-sep-2016.pdf>).

⁵ The Santa Clara neighborhood, one of the nation's most affected by foreclosure vacancies a short drive from Good Samaritan. "One in six structures sit empty in city ", Dayton Daily News,

However, before the closing announcement, Good Samaritan Hospital was known as a caring citizen of the community, extolling the compassion and values of its founders. It was seen as an “anchor” for the community. Good Samaritan Hospital invested in the “Phoenix Project” drawing resources and services to improve housing and amenities in the surrounding community. Good Samaritan Hospital was considered a good place to work. It served low income and minority health problems, establishing a homeless clinic to meet the unique needs of that population. The people living near Good Samaritan Hospital are most likely to go there for care,⁶ and felt good about the quality of care they were getting.

In recent years Good Samaritan Hospital invested in expanding and upgrading its facility, adding the “pavilion” in 2003, with a modern emergency department, an intensive care unit and two additional surgical suites. However, Premier Health Partners also began expanding to the suburbs, opening its North Health Center in Englewood in 1995, and significantly expanding the Center in 2015. It opened an ambulatory care center in suburban Huber Heights in 2009. Premier Health Partners also opened and expanded Miami Valley South hospital in the affluent and mostly white South suburbs in 2007-2013. Further, Premier Health Partners acquired two additional hospital facilities in surrounding suburban counties, Upper Valley Medical Center in 2008 and Atrium Medical Center in 2005 with a new facility opened in 2007.

III. THE CLOSING OF GOOD SAMARITAN HOSPITAL

Premier Health Partners announced it was closing Good Samaritan Hospital on January 17, 2018 without any previous indication to the Dayton community that it was even considering doing so. This took the community by surprise and generated a great deal of outrage.⁷ The stated reasons included excess capacity in beds and other services within Premier’s system, changes in health care delivery and the cost of repairing the facility. However, as a result of the closing, many other services besides excess beds are being eliminated.

Premier Health Partners’ actions join in today’s trend of relocating hospitals from the city to the suburbs due to the desire to attract better-paying privately insured patients and reduce the numbers of those on Medicare and

January 1, 2016 <https://www.mydaytondailynews.com/news/local-govt-politics/one-six-structures-sit-empty-city/z1KjsBNlkaDorQlcemD9tO/>

⁶ Affidavit of Dr. Matthew Noordsij-Jones (“Affidavit”), ¶3 – Exhibit 2.

⁷Breaking News Staff, *Good Samaritan Hospital closing: Community angry, devastated, concerned*, Dayton Daily News (Jan. 18, 2018); Bowen, *Community urges Premier Health not to close Good Samaritan Hospital*, WDTN (Feb. 11, 2018); *Community members gather to protest Good Sam closing*, WDTN (Apr. 13, 2018) – Exhibit 3

particularly Medicaid, who bring in less money. As a result, hospital systems have been building and ramping up new facilities in the suburbs and then closing ones in the city, often in areas where minorities and others who are disproportionately poor live.⁸

While Premier Health Partners decision-makers claimed that this was an emotionally difficult decision for them, their decision promises to create an even more difficult situation for those, particularly African Americans and women, who live in the area and who have long relied on Good Samaritan Hospital for care.

IV. HEALTHCARE DISPARITIES AND INEQUALITIES IMPACT MINORITIES

Healthcare disparities, including hospital closings, are a major civil rights' issue today. Hospital closings disproportionately affect the black community and threaten the quality and longevity of life for many people of color. For example, the life expectancy at birth for Blacks in Dayton, Ohio is worse than in many developing countries.⁹ Black Daytonians' top five causes of death are diseases that chronic discrimination can cause or worsen.¹⁰ Inequalities in all other systems contribute to the ill health and make it difficult to be healthy.¹¹

Because of a myriad of discriminatory decisions, many African American communities are simply unserved or underserved. The closing of hospitals in predominantly minority neighborhoods is just another example of how past racial discriminatory policies and practices negatively impact already

⁸ Galewitz, *Hospitals pack up in poor areas, move to wealthier ones*, Kaiser Health News (May 1, 2015), <http://money.cnn.com/2015/04/20/news/economy/hospitals-relocating/index.html>

⁹ Urban League of Greater Southwestern Ohio, "The State of Black Dayton: Opportunities Lost", p 42 (2017) available at http://www.gcul.org/wp-content/uploads/2017/09/Dayton-book_082217_web.pdf.

¹⁰ Id.

¹¹ Despite the passage of the Civil Rights Act over fifty years ago, minority healthcare remains separate and unequal. Segregation still survives and thrives in the Dayton region. The disparate medical treatment of minority patients is, to a large extent, the product of geography. Chandra, Frakes, Malani, "Challenges to Reducing Discrimination and Health Inequity Through Existing Civil Rights Laws," National Library of Medicine National Institutes of Health, June 1, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5654529/>.

segregated neighborhoods.¹² Dayton, Ohio is the fifteenth most segregated city in America.¹³

A recent study by Professor Alan Sagar found that since the 1930s, hospitals located in African American neighborhoods of 52 U.S. cities have been substantially more likely to close than those located in white neighborhoods.¹⁴ This relationship holds true even after controlling for many characteristics of hospitals themselves, their competitive environments, and other factors.¹⁵

Looking at the probability that a hospital would close at any time during the period 1980 to 2003, Professor Sagar found that hospitals in mostly Black neighborhoods closed at nearly twice the rate as those in neighborhoods with few Blacks.¹⁶ He also found that almost 75 percent of small hospitals that were located in mostly Black neighborhoods were predicted to close.¹⁷ Sagar ultimately concluded from this study that “race is the main demographic predictor of [hospital] closings across the 52 cities.”¹⁸

V. DISPARATE IMPACT IS UNLAWFUL DISCRIMINATION UNDER THE HEALTHCARE LAWS THAT HHS ADMINISTERS

Federal agencies such as Health and Human Services are charged with enforcing regulations against discrimination by recipients of federal funds such as Medicare and Medicaid. Premier Health Network receives these funds. This discrimination can be intentional but it can also be in the form of facially neutral policies that disparately exclude minorities from benefits or services, or inflict a disproportionate share of harm on them.¹⁹

¹² See for example the Miami Valley Regional Planning Commission Miami Valley “Equity Regional Profile”, available at <https://www.mvrpc.org/sites/default/files/equityregionalprofile.pdf>. The Profile discusses how past racially motivated policies have led to regional inequality in racial and economic segregation.

¹³ Suater, Comen, and Stebbins, *16 Most Segregated Cities in America* (Jul. 21, 2017), <https://247wallst.com/special-report/2017/07/21/16-most-segregated-cities-in-america/2/>. c

¹⁴ Alan Sagar, Deborah Socolar, *Closing Hospitals in New York State Won’t Save Money but Will Harm Access to Health Care*, Boston University (2006).

¹⁵ *Id.* at p. 27.

¹⁶ *Id.* at p. 28.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Department of Justice Title VI Legal Manual, Sec VII, p. 4

The Supreme Court has repeatedly held that Title VI regulations validly prohibit practices having a discriminatory effect on protected groups, even if the actions or practices are not intentionally discriminatory.²⁰

In the field of health care, section 1557 of the Affordable Care Act, 42 U.S. Code § 18116, states “an individual shall not, on the ground prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.)²¹, the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), or section 794 of Title 29, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance. The enforcement mechanisms provided for and available under such Title VI, Title IX, Section 794, or such Age Discrimination Act shall apply for purposes of violations of this subsection.”

Title VI, 42 U.S. Code § 2000d states “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”²²

Premier Health Partners is a recipient of Federal financial assistance under both 1557 and Title VI, since it receives Medicaid and Medicare funding.

Regulations enacted under these sections make it clear that it is prohibited discrimination for recipients of federal aid to take actions that produce adverse disparate impact on protected classes. These include 45 CFR § 92.101 (a), which applies specifically to health programs and activities, and 45 CFR § 80.3, which applies Title VI to all federal activities. Both regulations

²⁰ *Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 643 (1983) (Stevens, J., dissenting) (citing *Lau*, 414 U.S. at 568, 571 (Stewart, J., concurring) and *Fullilove v. Klutznick*, 448 U.S. 448, 479 (1980) (opinion of Burger, C.J.)); *Alexander v. Choate*, 469 U.S. 287, 293 (1985)

²¹ Section 1557 of the Affordable Care Act, prohibiting discrimination, incorporates Title IX, which provides “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,” with some exceptions. Since the “ground prohibited” is sex, Section 1557 prohibits sex discrimination in health care.

²² In addition, the Americans with Disabilities Act states, at 42 U.S. Code § 12132, “[s]ubject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” Disability is defined at 42 U.S. Code § 12102 (1) (A) as “a physical or mental impairment that substantially limits one or more major life activities of such individual” which can include many chronic conditions of the elderly and others living near Good Samaritan.

state that no one shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of race, color or national origin.

45 CFR § 80.3 (b) (1) also says that no recipient of a covered program can, on these bases, deny an individual any service, or other benefit provided under the program; or provide any service, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program; or subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program, or restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving the service.

In addition, under 45 CFR § 80.3 (b) (2) recipients may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect to individuals of a particular race, color, or national origin.

Furthermore under 45 CFR § 80.3 (b) (3), in determining the site or location of a facility, a recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the ground of race, color, or national origin.²³

Accordingly, the Department of Health and Human Services is charged with protecting racial minorities and women against actions by recipients of federal assistance, like Premier Health Partners and Good Samaritan Hospital, which have a disparate harmful impact on them.

VI. THE CLOSING OF GOOD SAMARITAN HOSPITAL WILL HAVE A DISPROPORTIATE ADVERSE IMPACT BASE ON RACE

a. PATIENTS USING GOOD SAMARITAN HOSPITAL ARE DISPROPORTIONATELY AFRICAN AMERICAN

²³ See also 28 C.F.R. § 42.104(b)(2), 45 CFR § §84.52 on disability discrimination and 45 CFR § 92.206 on sex discrimination.

Good Samaritan Hospital has served the neighborhood which surrounds it for 86 years. It has a strong reputation in that neighborhood and it draws the lion's share of its patients from that area.²⁴

The Kirwan Institute at Ohio State University mapped the travel time from each address in that portion of the county to each of the hospitals. Exhibit 4 shows the area for which Good Samaritan Hospital is the closet hospital. There are 38,600 people living in that area.²⁵ Seventy-five percent of them are African American.²⁶ The two census tracks most closely aligned with the hospital are 85% African American.²⁷ This is the population most impacted by the closing of the hospital.

The Premier Health Partners operates four other hospitals in in the area. It acquired Atrium Medical Center in Middletown, Ohio which serves Butler and Warren counties. Butler County is 8.5% African American, while Warren County is 3.6 % African American.

Miami Valley Hospital is located on the south side of downtown Dayton, Ohio in Montgomery County. Montgomery County is 21.3% African American. Miami Valley Hospital South is on the Southern edge of Montgomery County, bordering Warren County. The Upper Valley Medical Center is located in Troy, Ohio in Miami County, which is 2.3% African American.

Taken together, the Counties Premier serves are 12.5% African American.²⁸

In a total service area that is 12.5% African American, Premier has chosen to close the hospital which primarily serves an area which is 75% African American. The disproportioned impact on African Americans is clear, it is stark, and the harm to this community will be severe. The closing will result in diminished quality of service, significant hardship, and will decrease access to health care for African-Americans.

b. THE HARM WILL BE SIGNIFICANT

There are three major areas where health will be significantly and adversely impacted: infant and maternal health and mortality, emergency care, and chronic care.

²⁴ Affidavit ¶6 – Exhibit 2.

²⁵ Exhibit 4.

²⁶ Exhibit 4

²⁷ <https://www.census.gov/quickfacts/fact/table/US/PST045217>

²⁸ <https://www.census.gov/quickfacts/fact/table/US/PST045217>

i. INFANT AND MATERNAL HEALTH AND MORTALITY

Infant mortality is an important index of the overall health of a society and how well the society cares for its women and children.²⁹ It is defined as the death of an infant before his or her first birthday. The infant mortality rate is not only seen as a measure of the risk of infant death but is used more broadly as an indicator of community health status, poverty and socioeconomic status levels in a community and the availability and quality of health services and medical technology.³⁰

Ohio had the 9th worst infant mortality rate in the United States in 2017 with a rate of 7 infant deaths for every 1,000 live births.³¹ Montgomery County, Ohio has the fifth highest number of infant deaths in the state of Ohio.³² The infant mortality rate for Montgomery County has not improved over the last 25 years.³³

Public Health for Dayton and Montgomery County emphasizes that “a clear racial disparity continues to exist with Black infants dying at a rate much higher than White infants.”³⁴ In 2016, the Black infant mortality rate was 12.6 infant deaths for every 1,000 live births or two and a half times higher than the White infant mortality rate of 5 infant deaths for every 1,000 live births.³⁵

Good Samaritan Hospital is located in the northwest corridor of Montgomery County. According to the most recent demographics data available from the Census Bureau released in December of 2017, there are

²⁹ Ashley L. Seybold, MPH, CHES, *Perinatal Periods of Risk Analysis: A method for analyzing and investigating fetal and infant deaths to address local causes and existing disparities, Montgomery County, Ohio 2012-2015* (Jan. 2018), p. 5

³⁰ *Id.*

³¹ *Id.* at p.7.

³² Breaking News Staff, *Infant mortality rate too high in Montgomery County, health officials say*, Dayton Daily News (Feb. 3, 2018), <https://www.daytondailynews.com/news/local/infant-mortality-rate-too-high-montgomery-county-health-officials-say/M8OzWjKRGf8ZawiMaqVf6H/>

³³

Dawn L. Ebron, MS, MPH, CPH, *Perinatal Periods of Risk Analysis: A method for analyzing and investigating fetal and infant deaths to address local causes and existing disparities, Montgomery County, Ohio 2008-2011* (Nov. 17, 2015), p. 4

³⁴ Ashley L. Seybold, MPH, CHES, *Perinatal Periods of Risk Analysis: A method for analyzing and investigating fetal and infant deaths to address local causes and existing disparities, Montgomery County, Ohio 2012-2015* (Jan. 2018), p. 8

³⁵ *Id.*

20,214 people residing in its 45406 zip code.³⁶ This is the 2nd highest population of all zip codes in the area.³⁷ Over 81% of the population in zip code 45406 is African American.³⁸ Moreover, the population surrounding the hospital is predominantly African American.

The highest rates of infant mortality for all races in Montgomery County are located in the zip codes surrounding Good Samaritan Hospital.³⁹ The highest rate of infant mortality is among Black infants in the zip codes surrounding Good Samaritan Hospital.⁴⁰

The four areas of risk for infant mortality are maternal health/prematurity, maternal care, newborn care and infant health. Good Samaritan Hospital was one of only two hospitals in Premier's health network and the only hospital on the West side of Dayton, Ohio that provided labor and delivery services in Montgomery County. This care is critical to addressing infant mortality. In 2017, approximately 900⁴¹ babies were delivered at Good Samaritan Hospital. Additionally, Good Samaritan Hospital provides critical outpatient care to women through their Life Stages Centers for Women.⁴² Life Stages provides pregnant women with "necessary prenatal care in a location near their home."⁴³ Even though Good Samaritan Hospital is integral in reducing infant mortality by providing care to mothers and babies, their obstetrics and gynecology services were the first major service line to close in April of 2018, just three months after Premier announced the hospital's closing. "The hospital closing means that pregnant women will no longer get care at Good Samaritan Hospital either on an inpatient or outpatient basis."⁴⁴

Expectant mothers must now travel farther for care. Transportation challenges and inequities have a negative effect on health and is a leading

³⁶ Exhibit 5 - <http://www.towncharts.com/Ohio/Demographics/45406-Zipcode-OH-Demographics-data.html>

³⁷ Id.

³⁸ Id.

³⁹ Zipcodes 45406, 45405, 45416, 45417 and 45426 all have over 10.4 deaths per 1000 births, the highest category. Ashley L. Seybold, MPH, CHES, Birth Outcomes, Montgomery County, Ohio 2014-2016, Public Health of Dayton & Montgomery County, pp. 3-4, attached as Exhibit 6.

⁴⁰ Zipcodes 45406, 45405, 45416, 45417 and 45426 all have over 9.9 deaths per 1000 births, Ashley L. Seybold, MPH, CHES, Birth Outcomes, Montgomery County, Ohio 2014-2016, Public Health of Dayton & Montgomery County pp. 11-12 attached as Exhibit 6

⁴¹ Ohio Department of Health, Annual Hospital Registration and Planning Report Statistical Information, January 1, 2016 – December 31, 2016.

⁴² Affidavit ¶6

⁴³ Id.

⁴⁴ Id.

cause of infant mortality.⁴⁵ The closest hospital within the Premier Health Partners is the Miami Valley Hospital.⁴⁶ For those who live on the west side of Dayton, Ohio, it requires a bus transfer to get there. “Not having a car is a challenge in urban, suburban and rural communities. Although public transportation may be available in an urban or suburban area, bus trips can often involve transfers to two or more bus routes which can result in a two-hour bus ride to travel what would have taken 20 minutes by car. Needing to get to multiple destinations, such as child care, work or a doctor’s appointment adds logistical challenges with getting around by bus.”⁴⁷

Transportation challenges disproportionately affect Black persons as 22% of Black households in Ohio report having no vehicle.⁴⁸ Moreover, a 2017 analysis of Ohio Bureau of Motor Vehicles data found that low-income zip codes had much higher rates of driver’s license suspensions than higher-income zip codes.⁴⁹ As Premier Health indicates “minutes matter” and so the amount of time it takes a mother to get care for herself or her infant affects their health. This is particularly true for many of those living in the 45406, 45405, 45416, 45417 and 45426 zip codes which surround Good Samaritan Hospital and which have the highest minority infant mortality rates.⁵⁰

Before deciding to close Good Samaritan Hospital, Premier Health Partners listed birth outcomes in Good Samaritan’s Community Health Improvement Strategies for 2017-2019.⁵¹ Birth outcomes is listed as one of the top three priorities for Premier with the focus on the zip codes surrounding Good Samaritan Hospital as listed above. Premier Health Partners will be harming the surrounding community’s health rather than improving it by closing Good Samaritan Hospital.

The closing of Good Samaritan Hospital along with the early closure of the obstetrics and gynecological services has a disparate impact on Black women.

⁴⁵ A new approach to reduce infant mortality and achieve equity, prepared by the Health Policy Institute of Ohio for the Ohio Legislative Service Commission, Dec. 1, 2017, p.51 – Exhibit 7

⁴⁶ Grandview Hospital in the Kettering Health Network does not deliver babies.

⁴⁷ A new approach to reduce infant mortality and achieve equity, prepared by the Health Policy Institute of Ohio for the Ohio Legislative Service Commission, Dec. 1, 2017, p.52

⁴⁸ Id. at p.53 – Exhibit 8

⁴⁹ Dorn, Sara. “License suspensions disproportionately imposed on poor Ohioans, trapping them in debt.” Cleveland.com, March 31, 2017: http://www.cleveland.com/metro/index.ssf/2017/03/license_suspensions_disproport_1.html

⁵⁰ See the maps and tables on pp 4 and 12 of Birth Outcomes, Montgomery County, Ohio 2014-2016, Public Health of Dayton & Montgomery County, pp. 11-12 attached as Exhibit 6.

⁵¹ Good Samaritan Hospital Community Health Improvement Strategies for 2017-2019, pp 5-6 – Exhibit 9.

ii. EMERGENCY CARE

Good Samaritan Hospital operates a large and busy emergency room. In 2015 64,884 people were treated there. In 2016, 78,621 were treated and in 2017, 71,621 were treated and of those, 9,866 were admitted to the hospital after treatment.⁵² The emergency room has 50 beds. In 2017 Dayton fire and emergency medical services alone brought 4,400 patients to the Good Samaritan Emergency Room.⁵³ Other EMS services also serve that emergency room.

These 71,000 patients will, if Good Samaritan Hospital closes, need to be treated elsewhere and travel significantly further to be treated. The hospital emergency rooms they will have to travel to are already crowded.

The closest emergency room to Good Samaritan Hospital is at Grandview Hospital, 2.5 miles away. It is half the size of Good Samaritan's ER, according to Rebecca Lewis the CEO of Grandview. It has 25 beds, treated 37,600 people in 2017, and is "pretty much at capacity."⁵⁴ While Grandview has announced a plan to increase the size of its ER from 25 to 50 beds the result will still be 25 fewer beds than currently exist at the two hospitals. Grandview also has a limited number of inpatient beds. More ER patients will result in more patients who, in order to receive continuing inpatient treatment, will need to be transferred to a different hospital. Since Grandview does not have a maternity ward, all babies and new mothers will need to be transferred for that care. According to Dr. Matthew Noordsij-Jones, "Any transfer to another hospital, no matter how carefully done, adds risk to the patient."⁵⁵

The next closest hospital is Miami Valley Hospital. It is already one of the busiest ER's in the State. In 2014 it was, in fact, the busiest ER in Ohio seeing 95,878 patients.⁵⁶

The last time a hospital shut down in the Dayton Area was 18 years ago. St. Elizabeth Hospital, also located in Dayton's African American community, closed along with its emergency room. According to Rebecca Lewis, the Grandview CEO, the remaining emergency rooms were "swamped" and the

⁵²Ohio Department of Health, Annual Hospital Registration and Planning Report Statistical Information, January 1, 2016 – December 31, 2016.

⁵³ Breaking News Staff, *Good Samaritan Hospital Closing: Ambulance rides will cost more*, Dayton Daily News (Feb.,1 2018) – Exhibit 10

⁵⁴ Telephone interview with Rebecca Lewis, CEO of Grandview Medical Center, Apr. 30, 2018.

⁵⁵ Affidavit ¶11 – Exhibit 2.

⁵⁶ [MiamiValleyHospital.org/about-us/mission and history](http://MiamiValleyHospital.org/about-us/mission-and-history)

result was “gridlock”. “Everyone was rerouting patients and when that happens no one is rerouting and you have gridlock.”⁵⁷

Emergency rooms were flooded the last time an emergency room shut down in Dayton, Ohio. The closing of Good Samaritan Hospital is likely to cause the same result.

iii. EFFECTS OF DELAY ON THOSE NEEDING EMERGENCY TREATMENT

Among the patients going to the Good Samaritan Emergency Room are those with heart attacks, strokes, serious injuries and drug overdoses.

In each of those situations “every minute counts.”⁵⁸ With heart emergencies, “...time is tissue, the faster a patient gets to a hospital for treatment the more quickly a patient is treated in a hospital, the better the outcome.”⁵⁹

The Kirwan Institute maps illustrate the extra time it will take for someone with an emergency to get to different emergency’s rooms once Good Samaritan Hospital is closed.⁶⁰ A person coming from the western edge of Dayton, Ohio would travel 20 minutes to get to the Miami Valley Emergency Room. Someone coming from the Good Samaritan area would travel 15 minutes to get to Good Samaritan North. ⁶¹ And, because the emergency room capacity lost at Good Samaritan Hospital is not being replaced, there will not be enough remaining capacity resulting in increased waits and, at times, overflowing ERs that will need to redirect patients to another hospital before they can be seen.

The impact of these delays will be magnified by the existing racial disparity in health between white and Black residents of Montgomery County.

The heart disease death rate per 100,000 is 178.7 for whites and is 235.8 for Blacks. The stroke death rate for whites is 41.1 but 55.5 for Blacks, and the homicide death rate is 3.2 for whites but 27 for Blacks. ⁶²

⁵⁷ Telephone interview with Rebecca Lewis, CEO of Grandview Medical Center, Apr. 30, 2018.

⁵⁸ Premier website - <https://www.premierhealth.com/Neurosciences/Stroke/>

⁵⁹ Affidavit ¶10 – Exhibit 2.

⁶⁰ Exhibit 4

⁶¹ Affidavit ¶12 – Exhibit 2.

⁶² JSI Research & Training Institute, Inc., Community Needs Assessment and Recommendations to Address Social Determinants of Health in Selected Zip Codes in Dayton and Montgomery County (Feb. 27, 2018), p.36, Exhibit 11

According to Dayton and Montgomery County Public Health, there are, “...staggering health disparities within predominately Black communities in Montgomery County Ohio, with Black residents shouldering a higher disease and premature mortality burden than their white counterparts.”⁶³

As Doctor Noordsij-Jones said, “The additional time needed to get to already busy ERs will have negative health effects. People will die who would not have died if Good Sam’s emergency room was still open.”⁶⁴

iv. CHRONIC CARE:

The closing of the hospital will also have a significant impact on the ability of people to get care for chronic conditions.⁶⁵ As discussed above, many chronic conditions are more prevalent in the Black community, again amplifying the effect of the closing in that community.

Currently, patients see pulmonary, cardiac and other specialists at Good Samaritan Hospital. They also go there for diagnostic, laboratory, imaging and rehabilitation.⁶⁶ The effect of the closing of the hospital and the attendant doctors’ offices, clinics, and laboratories will be compounded by the fact that the neighborhood already has a shortage of medical offices.⁶⁷ When the Five Rivers Health Centers conducted focus groups for residents of the Good Samaritan Neighborhood in March of 2018 residents identified “the shortage of doctors in our area” and “transportation” as the biggest challenges to getting health care services.⁶⁸

Those on limited income and without their own car will have to rely on public transit to get to appointments. As discussed, African Americans are less likely to own a car than whites. While the Regional Transit Authority operates a well-regarded bus system, to get from the area of Good Samaritan to Miami Valley Hospital by bus requires at least one transfer and takes upwards of 40 minutes, when traffic is good.⁶⁹

⁶³ Id. at p. 9 – Exhibit 11

⁶⁴ Affidavit ¶13 – Exhibit 2.

⁶⁵ This includes many with disabilities who are protected by the Americans with Disabilities Act.

⁶⁶ Affidavit ¶15 – Exhibit 2.

⁶⁷ An environmental scan of the Montgomery County Safety Net, prepared for the Montgomery County Affordable Care Act Task Force by the Health Policy Institute of Ohio (Oct. 2013), p. 30-31.

⁶⁸ Five Rivers Health Centers Focus Groups, March 2018, Summary of Results, Exhibit 12

⁶⁹ RTA website, www.iriderta.org

The impact on chronic care will be significant. “If the care and services they need is moved to a place where transportation from their home is inconvenient or unaffordable, people are likely to stop going to get care.”⁷⁰

Before deciding to close Good Samaritan, Hospital Premier Health Partners also listed chronic care in Good Samaritan’s Community Health Improvement Strategies for 2017-2019. It acknowledged the prevalence of chronic conditions in the area around the hospital and listed chronic care improvement as one of its three top priorities.⁷¹ If allowed to close the hospital, Premier will in fact be harming the surrounding community’s health rather than improving it.

VII. PREMIER’S JUSTIFICATION IS NOT LEGITIMATE, IMPORTANT, OR INTEGRAL TO ITS INSTITUTIONAL MISSION

Premier Health Partners has justified its decision to close and bulldoze the hospital in various ways. It has blamed empty beds at the hospital. However, in a period when hospital stays were becoming less common and shorter, Premier elected to build hundreds of beds in outlying areas that serve a largely white population. The empty beds at Good Samaritan were created by Premier Health Partners’ decisions.⁷² As the Mayor of Dayton, Ohio, Nan Whaley, said, “Hospitals have ‘cannibalized’ themselves by overbuilding in the suburbs, and this loss is hard on West Dayton...”⁷³

Premier Health Partners has claimed that the facility is old and in need of expensive upkeep. In fact, a number of the buildings are relatively new – it added the “pavilion” in 2003, with a modern ER unit, intensive care unit and surgical suites. The cardio vascular unit is a recent addition.

As for other older buildings, Premier Health Partners has provided no evidence of their condition. Indeed, if there are unusual problems with the buildings they would have been long in the making and the Board of Good Samaritan Hospital or Premier Health Partners should have identified them years ago. In fact, Premier Health Partners insists that the need for action was only identified in 2017.

⁷⁰ Affidavit ¶16 – Exhibit 2.

⁷¹ Community Health Improvement Strategies, 2017-2019, Good Samaritan Hospital, Premier Health, Exhibit 9.

⁷² In fact, empty beds are a feature of all hospitals in the area and Premier’s Hospitals are reported to be at 50% capacity overall. (DDN, Kaitlin Schroeder, Jan. 17, 2018). Computing the number of such beds is not always straightforward. The change from double to single occupancy effects the number of empty beds reported as does the decision of whether to include “observation patients.”

⁷³ Clarion Web Team, *Good Samaritan to shut down*, The Clarion (Jan. 23, 2018) – Exhibit 13.

Good Samaritan's 2017 tax returns show that the hospital is generating net revenue, though less than in the prior two years.⁷⁴ Interestingly, income has been steady while costs have increased. The biggest portion of that increase is attributed to increased staffing; surprising since the demand for service has been steady.

If the rationales given are not valid or are equally applicable to the other hospitals in Premier's system, other business decisions may be driving Premier's decision.

Premier started and then ended an insurance company, Premier Health Insurance Group, resulting in considerable losses. Premier was also unable to come to an agreement with a major insurer, United Health Care, for seven months in 2017, resulting in customer confusion, loss of revenue and loss of good will.⁷⁵ The settlement of that dispute was likely not favorable to Premier.

These reasons are not tied to Good Samaritan Hospital. They stem from the overall operation of Premier Health Partners and if they are what underlines the decision to close Good Samaritan Hospital they do not provide legal cover for the decision which has such a stark discriminatory impact.

VIII. THERE ARE MANY LESS DISCRIMINATORY ALTERNATIVES.

Premier Health Partners could resolve its challenges in ways that have less of a discriminatory disparate impact on minority communities, and that reduce rather than increase the serious health disparities that exist in minority communities.

To the extent Premier Health Partners needs to reduce some services, those reductions could be spread over all its facilities. Hospital beds could be trimmed at all Premier facilities.

If there are buildings or units at Good Samaritan Hospital that are demonstrably unsustainable then those building or units could be shut down leaving the rest of the hospital to provide service to the community.

Premier Health could create a smaller full-service hospital at the site with programs geared to the surrounding community, as other hospitals, like the Cleveland Clinic, have done.

⁷⁴ <http://www.guidestar.org/FinDocuments/2016/310/536/2016-310536981-0e9c2390-9.pdf>

⁷⁵ Schroeder, *Premier Health, United Healthcare have contract deal*, Dayton Daily News (Jan. 3, 2018) – Exhibit 14.

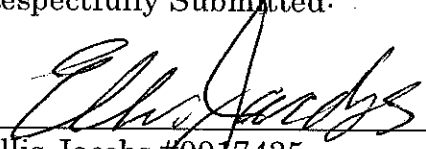
Finally, there is no reason to demolish all the buildings before providing an adequate time for other health care organizations to determine whether they could operate a hospital or other health care facility in that site.

IX. CONCLUSION

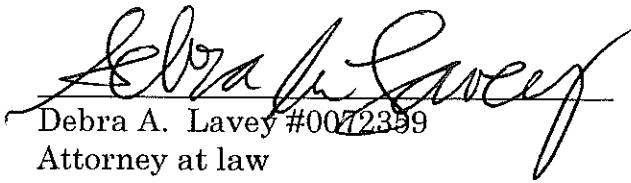
For the reasons set forth above, Premier Health Partners is not in compliance with Title VI and section 1557 of the Affordable Care Act. Accordingly, the Department of Health and Human Services should use its powers under 45 USC 80.7 and 80.8, to conduct an investigation of this proposed closing of Good Samaritan Hospital, its racial and gender impact and its financial and other justifications. If the closing is in fact discriminatory, the Department should require Premier Health Partners to change its decision, or to the extent that there are justifications for some aspects, to take action to preserve services and improve the health care disparities of the minority communities affected. Should Premier Health Partners refuse such a request, we ask the Department to halt all federal financial aid to Premier Health Partners until it complies, and/or refer the matter to the U.S. Department of Justice for further investigation.

We consent to you revealing our identities and complaints to Premier Health Partners, and welcome any opportunity to engage with them in ways that they can serve rather than harm the minority communities for whom we speak.

Respectfully Submitted:



Ellis Jacobs #0017435
Attorney at Law
Advocates for Basic Legal Equality, Inc.
130 West Second St., Ste. 700 East
Dayton, OH 45402
(937) 535-4419 telephone
(937) 535-4600 facsimile
ejacobs@ablelaw.org



Debra A. Lavey #0072359

Attorney at law

Advocates for Basic Legal Equality, Inc.

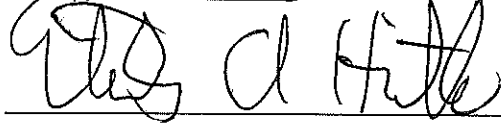
130 West Second St., Ste. 700 East

Dayton, Ohio 45402

(937) 535-4411 telephone

(937) 535-4600 facsimile

dlavey@ablelaw.org



Stanley A. Hirtle #0025205

Attorney at law

Advocates for Basic Legal Equality, Inc.

130 West Second St., Ste. 700 East

Dayton, OH 45402

(937) 535-4410 telephone

(937) 535-4600 facsimile

shirtle@ablelaw.org

/s/ Michael L. Wright

Michael L. Wright #0067698

Attorney at Law

Wright and Schulte LLC

130 W. Second St. #1600

Dayton, Ohio 45402

937-222-7477

mwright@yourohiollegalhelp.org

/s/ Aaron G. Durden

Aaron G. Durden #0039862

Attorney at Law.

Durden Law, L.P.A., LLC.

10 West Monument Avenue

Dayton, Ohio 45402

(937) 461-9400

agdlawyer@aol.com

/s/ Laurence A. Lasky

Laurence A. Lasky #0002959

Attorney at Law

Suite 830 One First National Plaza

130 West Second Street

Dayton, Ohio 45402

(937) 222-6699

(937) 226-0060 Facsimile

laskylaw@sbcglobal.net