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October 19, 2015

Kathryn R. Enright
Health Care Advocate
Special Assistant Attorney General
Rhode Island Department of Attorney General
150 South Main Street
Providence, RI 02903

Dear Ms. Enright:

As set forth in the Hospital Conversions Act Decision of the Department of Attorney General dated October 28, 2013 (the "Decision"), the Rhode Island Attorney General approved the acquisition of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island by Prime Healthcare Services, Inc., subject to certain conditions. One condition requires Prime to "cooperat[e] with the Attorney General and any expert retained to assist the Attorney General with enforcing compliance with the[se] Conditions." Affiliated Monitors, Inc. was engaged to assist the Rhode Island Department of Attorney General in this matter; this report contains our findings relative to Prime's compliance activities in the first year since the acquisition. We note that Prime has cooperated fully with our requests for meetings and data.

Respectfully submitted,


Catherine Keyes
Vice President of Operations

**First Report on Compliance by Prime Healthcare with Conditions of Certification
Pertaining to the Acquisition of Landmark Medical Center
and the Rehabilitation Hospital of Rhode Island**

In the Hospital Conversions Act Decision of the Rhode Island Department of Attorney General (“Attorney General”) dated October 28, 2013 (the “Decision”), Prime Healthcare Services, Inc. (“Prime”) was required to meet certain conditions relative to its acquisition of Landmark Medical Center and the Rehabilitation Hospital of Rhode Island. One condition requires Prime to “cooperat[e] with the Attorney General and any expert retained to assist the Attorney General with enforcing compliance with the Conditions.” Affiliated Monitors, Inc. (“AMI”) was engaged to assist the Attorney General in this matter; this report contains Affiliated Monitors’ findings relative to Prime’s compliance activities in the first year since the acquisition.

This is the first such report generated for the Attorney General in compliance with the provision of the Hospital Conversions Act requiring an annual review monitoring, assessing and evaluating a hospital’s compliance with all of the conditions of approval. *See* R.I. Gen. Laws §23-17.14-28(d)(2). The cooperation and input of Prime-Landmark representatives who participated in discussions and meetings concerning the contents of this report is recognized and appreciated.

METHODOLOGY

In the Proposal submitted by AMI to the Attorney General on December 20, 2013 relative to this monitoring engagement, AMI described the review process in this manner:

- A. Affiliated Monitors will conduct the required monitoring activities as frequently as necessary, and at a minimum on an annual basis. It is anticipated that the initial oversight, following the closing of the purchase transaction and the completion of the various open items to be completed, will be particularly labor intensive.**
- B. Annual reports to the Attorney General will address each of the tasks and items listed in Schedule A which are required of Prime Healthcare Services/Landmark under the Conditions of Certification and the Hospital Conversions Act. Additional reports will be submitted, as warranted by the circumstances or at the request of the Attorney General.**
- C. To allow the corporate monitoring to be conducted effectively and efficiently, Prime Healthcare Services/Landmark will fully cooperate with Affiliated Monitors. Cooperation includes making available all requested information and providing reasonable access to information and staff, as may be necessary.**

In addition, the Attorney General and Affiliated Monitors, Inc. agreed upon a Scope of Work to guide the monitoring process. The Scope of Work is attached as Schedule A of the Retainer

Agreement by and between the Attorney General, the Affiliated Monitors, Inc. and Prime Health Services, Inc. Below is that Scope of Work.

Schedule A

- 1. Upon their appointment and for the next three (3) years, obtain the names, addresses and affiliations of all members appointed to any board of Prime Healthcare Services-Landmark LLC (“Prime-Landmark”).**
- 2. Confirm that the Board of Directors of Prime-Landmark consists of no less than eleven (11) members of which shall include at least twenty-five percent (25%) community directors¹ all of which shall: (i) be independent of and not employed by or affiliated with Prime or its affiliates; and (ii) not be an elected official or an individual that is subject to the Rhode Island Code of Ethics or employed by any federal, state or local government.**
- 3. Obtain any necessary corporate documents requested by the Department of Attorney General to evidence compliance regarding board composition as required by the Attorney General’s Decision.**
- 4. Obtain any proposed amendments to the corporate documents of Prime-Landmark thirty (30) days prior to amendment.**
- 5. For the next three (3) years, obtain any contracts between any of the Transacting Parties and any of the current officers, directors, board members or senior management other than employment agreements including the Special Master, his law firm or its affiliates.**
- 6. Obtain information that all assets transferred by the Asset Purchase Agreement shall be utilized for the benefit of Landmark only and shall not be utilized for projects or programs situated outside the State of Rhode Island without the consent of the Department of Attorney General.**
- 7. Obtain information to confirm that the Proposed Transaction was implemented as outlined in the Initial Application including, but not limited, to the following:**
 - a. Obtain information regarding Prime’s payment of real estate taxes to Woonsocket and confirm that Prime has not sought a tax treaty from the City.**

¹ A community director shall be defined as an individual that resides or works within the Landmark Medical Center Service Area and has the appropriate skill sets to serve on a hospital’s board of directors. The “Landmark Medical Center Service Area” is comprised of the following towns in Rhode Island: Woonsocket; North Smithfield; Cumberland; Lincoln; Burrillville; and Glocester and the following towns in Massachusetts: Blackstone, Bellingham and Millville. *See* Attorney General’s Hospital Conversions Act Decision dated October 28, 2013, page 54, Footnote 74.

materials were sent by Prime-Landmark to AMI in April 2015, and additional items were delivered by hand on May 7, 2015. This report will comment on the responses submitted.

In addition to the materials sent by Attorney Warren, Attorney Radha Savitala (Deputy General Counsel of Prime Healthcare Management, Inc.), prepared monthly reports regarding actions initiated against Prime, its hospitals or affiliates and sent these materials to both AMI and the Attorney General. These reports will be further discussed below in connection with Paragraph 11 of the Scope of Work.

All materials submitted by Prime-Landmark and Prime Healthcare Management, Inc. were closely reviewed by AMI. We set up a tracking system for all records related to financial expenditures (including contracts, purchase orders, and invoices) to reduce the chance that an expense would be erroneously counted twice (once through the contract, for example, and then later at the time the invoice is paid). The attached Exhibits track the financial expenditures set forth by Prime-Landmark to demonstrate compliance with the Attorney General's Decision. As of the date of this report, a small number of line items need additional clarification/ support (e.g., copies of checks); these matters are highlighted on the Exhibits.

AMI team members made three site visits to the Prime-Landmark facility in Woonsocket. The first was on March 18, 2014, the second on November 5, 2014, and the third on May 7, 2015. On all occasions the attendees included Richard Charest, RPh, MBA, the President and CEO of Landmark Medical Center (LMC) and the Rehabilitation Hospital of Rhode Island (RHRI); Cynthia Warren, counsel to the entity; a representative from the Rhode Island Department of Attorney General, namely Jodi Bourque at the first visit, and Kathryn Enright at the second and third; and representatives from Affiliated Monitors. We had the opportunity to tour some of the hospital and to discuss questions about Prime-Landmark's compliance steps and tracking process. It was agreed that the Attorney General would accept an attestation from Mr. Charest with regard to some of the compliance matters to be tracked, with the understanding that the Attorney General could ask for more information or direct AMI to look more closely into a matter, at its discretion.

FINDINGS

With regard to Paragraphs A – C in the Methodology section (above), AMI has collected information relative to the conditions imposed on Prime-Landmark through the Decision of the Attorney General on an ongoing basis since the time of our engagement and in the manner described above (Paragraph A). This is the first annual report by AMI on the status of Prime-Landmark's compliance (Paragraph B). Prime-Landmark has cooperated and complied with all requests by AMI for information, meetings and materials (Paragraph C). Richard Charest, the President and CEO of LMC and RHRI, has submitted attestations under the pains and penalties of perjury that the information provided in response to our questions is "true and complete."

- 1. Upon their appointment and for the next three (3) years, obtain the names, addresses and affiliations of all members appointed to any board of Prime Healthcare Services-Landmark LLC ("Prime-Landmark").**

Prime-Landmark notified AMI in May 2014 that the following individuals comprise its Governing Board (addresses were also provided, although not included in this report):

Stanley Balon, MD
Primary Care Physician

Peter Bancroft, CPA
CEO, WellOne

Richard Charest, RPh, MBA (ex-officio)
Governing Board Chairman
President and CEO, LMC & RHRI

Shaun Cournoyer
Assistant Administrator
Friendly Nursing Home

Charlene Elie, RN (ex-officio)
Chief Nursing Officer, LMD

Glenn Fort, MD (ex-officio)
Chief Medical Officer, LMC

Joel Jillson
Fire Chief, No. Smithfield Fire Dept.

Ahmed Nadeem, MD
Hematology/ Oncology Physician

Gary Reis
CEO, Med Tech Ambulance

Normand St. Laurent, FIC
Vice President, Keough Kirby Insurance

Khin Yin MD (ex-officio)
Medical Director, RHRI

- 2. Confirm that the Board of Directors of Prime-Landmark consists of no less than eleven (11) members of which shall include at least twenty-five percent (25%) community directors all of which shall: (i) be independent of and not employed by or affiliated with Prime or its affiliates; and (ii) not be an elected official or an individual that is subject to the Rhode Island Code of Ethics or employed by any federal, state or local government.**

Of the 11 members listed above, Prime-Landmark identified three (> 25%) as "community directors" as that term is defined in the Decision (the definition is included in this report at Footnote 1). These individuals are: Stanley Balon, MD; Shaun Cournoyer; and Normand St. Laurent.

There was discussion among the parties about whether Gary Reis, CEO of Med Tech Ambulance - which provides ambulance service to Prime-Landmark - would qualify as a community director. However, because the requirement for at least three community directors was met, this question was tabled. In the future, if Prime-Landmark proposes to designate Mr. Reis as one of the required community members, the question of whether he would be considered independent from Prime-Landmark would be addressed.

- 3. Obtain any necessary corporate documents requested by the Department of Attorney General to evidence compliance regarding board composition as required by the Attorney General's Decision.**

No additional corporate documents were requested regarding board composition.

4. Obtain any proposed amendments to the corporate documents of Prime-Landmark thirty (30) days prior to amendment.

Prime-Landmark attested that there have been no amendments to its corporate documents since the acquisition was approved by the Rhode Island Attorney General on October 28, 2013.

5. For the next three (3) years, obtain any contracts between any of the Transacting Parties and any of the current officers, directors, board members or senior management other than employment agreements including the Special Master, his law firm or its affiliates.

AMI asked Prime-Landmark to “[p]rovide any contract entered into since October 28, 2013 (other than employment agreements) between any of the Transacting Parties and any of the current or former (from October 28, 2013 forward) officers, directors, board members or senior management . . . include[ing] any contracts between the Transacting Parties and the Special Master, his law firm or affiliates.” We received and reviewed copies of the contracts between (i) Glenn Fort and Prime-Landmark; and (ii) Peter Bancroft and Prime-Landmark. In addition contracts were provided from: (i) each of MedTech Ambulance Service and Access Ambulance and Landmark Medical Center; and (ii) each of MedTech Ambulance Service and Access Ambulance and Rehabilitation Hospital of Rhode Island. Because Mr. Gary Reis, CEO of MedTech Ambulance Service, is a director on the Prime-Landmark Governing Board, AMI sent two follow-up questions with regard to these contracts:

- a) *If either Landmark Medical Center or the Rehabilitation Hospital of Rhode Island currently maintains contracts with other ambulance services, please provide copies of those contracts as well as a brief summary of the terms.*
- b) *Please provide a summary of the negotiations of these agreements with MedTech and how it was determined that they reflect an agreement for services at fair market value.*

Prime-Landmark responded that “[n]either Landmark nor Rehabilitation Hospital of Rhode Island (“RHRI”) maintains contracts with other ambulance companies.” Further, they explained that “[t]he contracts between Med Tech Ambulance Service and Access Ambulance and each of Landmark and RHRI were negotiated in May, 2012 by Steward Health Care (“Steward”)² when both entities were operating under a Management Advisory Agreement with Steward while Landmark and RHRI were both subject to the Mastership. The rates from the 2012 contracts were carried over to the April, 2014 contracts submitted with the May Filing.” Because the rates were carried over from the 2012 contracts, which were entered into before Mr. Reis’s appointment to the Governing Board, it appears that the contracts reflect agreements for services at fair market value. AMI will ask Prime-Landmark to notify us of the process and result if/when these contracts are renegotiated.

² Prior to the acquisition of Landmark and RHRI by Prime, the hospitals had entered into an Asset Purchase Agreement with Steward Health Care. While the acquisition was under consideration, Steward handled various business matters on behalf of the hospitals per the terms of a Management Advisory Agreement. Ultimately, Steward did not go through with the purchase.

In April, 2015, Prime-Landmark supplemented its response regarding contracts between any of the Transacting Parties and any of the current officers, directors, board members or senior management. Copies of three contracts, as well as the subsequent amendments to two of them were delivered to AMI, along with this summary:

Upon re-reading Condition #5 we realize that Landmark Medical Center ("Landmark"), as a Transacting Party, has additional contracts with certain of its Directors. Specifically, Landmark continues to operate under certain agreements with Glenn G. Fort, M.D., a non-voting Director of the Board of Directors. We enclose the following contracts:

- *Medical Director Agreement, dated February 1, 2013, by Dr. Fort and Jonathan N. Savage, Esq., as Special Master for Landmark;*
- *Medical Director Agreement for Infections Disease Program and Travel Clinic, dated October 1, 2003, between Landmark and Dr. Fort;*
- *Amendment to the agreement referenced immediately above, dated April 18, 2012, between the Special Master and Dr. Fort;*
- *Lease between Landmark and Dr. Fort regarding office space at 115 Cass Avenue; and*
- *Amendment, dated July 18, 2012, to the above-referenced lease.*

AMI notes that "Exhibit B," which is referenced in the contract as the section with the financial terms, was not included when a copy of the Lease for office space at 115 Cass Avenue and the copy of its Amendment were sent to us. Because this contract was entered into well in advance of Prime's acquisition of Landmark, it is likely that its terms were disclosed and reviewed by the Department of Attorney General during the hospital conversions review process. If, however, the Department of Attorney General would like AMI to review the terms to determine if they are at fair market value, AMI will ask Prime-Landmark to provide the Exhibit with its next submission.

- 6. Obtain information that all assets transferred by the Asset Purchase Agreement shall be utilized for the benefit of Landmark only and shall not be utilized for projects or programs situated outside the State of Rhode Island without the consent of the Department of Attorney General.**

AMI asked Prime-Landmark this question: "Have all assets transferred by the Asset Purchase Agreement been utilized to date for the benefit of Landmark only and not for projects or programs situated outside the State of Rhode Island?" Prime-Landmark's response to this question, attested to by Richard Charest, was "Yes." AMI is willing to conduct independent research to verify this assertion, if so directed by the Attorney General.

- 7. Obtain information to confirm that the Proposed Transaction was implemented as outlined in the Initial Application including, but not limited, to the following:**

- a. Obtain information regarding Prime's payment of real estate taxes to Woonsocket and confirm that Prime has not sought a tax treaty from the City.
- b. Obtain information confirming that Prime has complied with the Order granting the Cy Pres Petition dated November 22, 2013, mandating that "Prime shall honor the existing charitable naming rights with respect to any rooms, centers, and/or facilities at Landmark Medical Center in accordance with their respective donor's intent and pursuant to applicable law, including specifically, the Murray Family Cardiac Surgery Wing."

These are the questions AMI asked in order to determine whether the Proposed Transaction was implemented as outlined in the Initial Application, as well as the responses we received from Prime-Landmark:

Q: Was the Proposed Transaction implemented as outlined in the Initial Application? If there were any deviations, please explain them.

A: (5/8/14) . . . To the best of our knowledge, the Proposed Transaction was implemented as outlined in the Initial Application.

Q: Has Prime-Landmark paid to Woonsocket the full amount of taxes owed? Please include the amount of tax, date upon which it was paid and any further detail regarding the payment of taxes.

A: (5/8/14) No taxes were due the City of Woonsocket at closing because Landmark Medical Center, as a tax-exempt hospital, was exempt. No taxes have become due since closing.

A: (12/5/14) Landmark is working with the City of Woonsocket on a Tax Stabilization Agreement. Because the City has not conducted an appraisal of real estate or tangible assets in some time, Landmark agreed to pay the City \$900,000 for 2014. If tax assessments are higher, subject to appeal, Landmark will pay more. If less, the City will credit Landmark on future bills. The City is presently reviewing the Tax Stabilization Agreement. Once that Agreement is signed, Landmark will pay the taxes.

Note: A Lincoln, RI publication, *The Valley Breeze*, described Prime-Landmark's tax agreement with Woonsocket in the same terms on December 10, 2014.³

Q: Has Prime-Landmark sought a tax treaty from Woonsocket?

A: (5/8/14) No.

Q: Has Prime-Landmark complied with the CyPres Order dated November 22, 2013 pertaining to naming rights and honoring previous naming agreements?

A: (5/8/14) Prime-Landmark has complied with the CyPres Order as to naming rights and agreements. No changes have been made.

³ www.valleybreeze.com/2014-12-10/woonsocket-north-smithfield/woonsocket-signs-tax-deals-hospital-six-city-clubs

8. Obtain information that all Landmark entities identified subject to Special Mastership were wound down and all necessary documents were filed with applicable state agencies, including, but not limited to the Secretary of State and the Division of Taxation.

AMI's question to Prime-Landmark regarding the Special Mastership and Prime-Landmark's responses follow:

Q: Please explain whether the entities subject to Special Mastership have been wound down. Please provide copies to Affiliated Monitors of any relevant filings with the Secretary of State.

A: (5/8/14) The entities subject to the Special Mastership have not been "wound down" as yet. James Atchison, counsel to the Special Master, advised that the entities will continue to exist during a "wind down" period during which bills will continue to be paid. When the Special Master is prepared to close the estate, he will file a final report with the Court and the Court will order dissolution of the subject entities. Estimated Time Period: December, 2014.

A: (12/5/14) The Special Master has not wound down the entities. The Special Master anticipates filing a final report with the Court in January, 2015. The major efforts yet to be completed are the final audit and tax return of the Mastership Estate.

As of the date of this Report, the Special Master had not filed a final report with the Court. The Special Master has advised Prime-Landmark that the winding down of the Landmark entities has been delayed due to litigation between Steward Health Care and Blue Cross & Blue Shield of Rhode Island

9. Obtain information that Prime has fulfilled the financial obligations contained in the Asset Purchase Agreement, including information that Prime is providing sufficient funds to Prime-Landmark to fulfill these obligations until such time that it has provided all funds to Prime-Landmark required by the Asset Purchase Agreement including the following:

- a. **Capital Expenditures:** Thirty Million (\$30,000,000) to be invested during the first five (5) years following the Closing dedicated to capital expenditures, including improvements to the physical plant and in connection with the operation of the facilities, expansion of services and investment in technology (APA Section 10.1);
- b. **Physician Recruitment:** the provision of funding in the amount of Four Million Five Hundred Thousand Dollars (\$4,500,000) for physician recruitment for a period of no less than five (5) years after Closing (APA Section 1.7 (a)); and
- c. **Routine Replacements:** the provision of funding in the amount of Fifteen Million Dollars (\$15,000,000.00) for routine equipment replacements (APA Section 1.7 (b)).

Below are the questions posed by AMI to determine whether the financial obligations set forth in the Asset Purchase Agreement are being met, and the responses submitted by Prime-Landmark. Copies of all materials submitted by Prime-Landmark, including all the documents provided in support of its reported expenditures, were also sent to the Attorney

General; therefore, we have not included those documents in this report. We did, however, analyze all supporting documentation, and our comments pertaining to the responses and materials are offered immediately after the recapitulation of questions and responses.

Q: Please provide documentation relative to the requirement to spend \$30,000,000 on capital expenditures (such as improvements to the physical plant and in connection with the operation of the facilities, expansion of services and investment in technology) in the first five years after the acquisition. Documentation should include a list of capital expenditures, the amount paid for each and the date it was received/completed/installed or functional, as well as supporting documentation such as receipts for these expenditures.

A: (5/8/14) Renovations to the Landmark Medical Center lobby, Emergency Department and Diagnostic Services are underway. To date, Prime-Landmark has invested \$457,447.52 in these improvements. See Exhibit 9(A) for supporting documentation.

A: (12/5/14) See Exhibit 4 for spreadsheet and invoices.

Total to date for Capital Expenditures: \$2,319,205.⁴

Q: [9a – Follow-up by AMI to question re capital expenditures] The materials included in Exhibit 9(A) total \$427,447.52 (not \$457,447.52). Please provide corrected information.

A: (12/5/14) We agree with the corrected figure.

Q: Please provide documentation relative to the requirement to spend \$4,500,000 on physician recruitment in the first five years after the acquisition. Please describe the expenditure, if possible including the amount paid, the date spent, and how it pertains to physician recruitment.

A: (5/8/14) To date, Prime-Landmark has recruited four (4) primary care physicians⁵ ... (collectively, the "Doctors") and assisted in the establishment of their practices in the Hospital's Service Area. In addition, Prime-Landmark purchased [one Internist's] practice for \$75,000 and anticipates that the foregoing doctors will provide services to . . . former patients [of the Internist]. It takes at least six (6) months for a newly established practice to become profitable.⁶ See Exhibit 9(b) for supporting documentation including the employment agreements of the Doctors and [the Internist's] Term Sheet.

⁴ Note, AMI believes the amount listed, \$2,319,205, as the year-to-date sum represents two errors. 1) It omits the capital expenditures set forth in the 5/8/14 response of \$427,448 and 2) It includes a Weisman Roofing expense of \$237,700 which should have been \$240,992.

⁵ Prime-Landmark provided the names of the physicians in its responses, but the names have been redacted for this report. The newly hired physicians are referred to herein as Dr. 1, Dr. 2, etc., and collectively as the Doctors. The physician whose practice was purchased is referred to as the Internist.

⁶ Prime-Landmark subsequently advised the Attorney General that it may take anywhere from 6 months to 3 years for each newly established practice to become profitable.

*Q: [9b – Follow up by AMI to question regarding physician recruitment expenditures]
(A) Please provide an overview of how Prime-Landmark plans to spend this money over the 5-year period for physician recruitment in order to avoid any disagreements over what types of expenditures are considered physician recruitment.*

A: (12/5/14) (A) There are three elements which make up Landmark's plans for physician recruitment over the next five years. Landmark will increase the number of primary care physicians in its service area. Second, if there is a market need, Landmark will assist retiring primary and specialty physicians to transition their practices to new primary/specialty physicians. Third, Landmark will recruit specialty physicians as market needs arise. Currently, Landmark is recruiting vascular surgeons. Other specialty physicians under consideration are dermatology and endocrinology.

Q: [9b – Follow up by AMI to question regarding physician recruitment expenditures](B)The materials included in Exhibit 9(B) indicate agreements to pay the Doctors an amount in consideration for release of restrictive covenants, as well as certain amounts for base salary and performance compensation. Please elaborate on how the expenses will be accounted for while taking into account: the requirement to spend \$4,500,000; any reimbursement agreements relative to base salary and performance compensation; and compliance with anti-kickback and Stark laws.

A: (12/5/14) (B) Investment in physician recruitment will be measured in three (3) ways. First, we will measure the difference in practice expenses over net receipts of recruited physicians each year. Second, in some cases, Landmark intends to purchase the assets of retiring physicians so that Landmark may transition those patients to Landmark's newly-recruited physicians. Accordingly, the value of the purchased assets will also be counted. Third, as practice build-out expenses are not included in the individual Profit and Loss Statements ("P&Ls") of the recruited physician, a third category of expenses will be those build-out expenses.

See Exhibit 1 for the P&L of [the Doctors] and [one additional doctor]. The first four (4) doctors were reported in the May Filing. Landmark hired [the additional doctor]⁷ to provide services in nursing homes. His contract is included at Exhibit 2.

The losses to date for these physicians, totaling \$644,530.15, as described on their respective P&Ls are as follows:

<i>[Dr. 1]</i>	<i>\$216,891.63</i>
<i>[Dr. 2]</i>	<i>\$ 79,112.55</i>
<i>[Dr.3]</i>	<i>\$ 92,956.59</i>
<i>[Dr.4]</i>	<i>\$243,790.40</i>
<i>[Dr.5]</i>	<i>\$ 11,778.98</i>

⁷From this point forward in the report, "the Doctors" refers to all five newly hired physicians.

Build-out expenses for a medical suite at 594 Great Road, North Smithfield, Rhode Island total \$183,771.91. See invoice at Exhibit 3. As reported in the May Filing, Landmark purchased the assets of [the Internist] for \$75,000.

The total for physician recruitment expenses to date total:

P&Ls	\$644,530.15
Build-out	\$183,771.91
Asset Purchase	<u>\$ 75,000.00</u>
Total:	\$903,302.06

From a regulatory standpoint, the Anti-Kickback Act provides a statutory exception for payments to individuals engaged in a “bona fide relationship”. The Stark exception, at 42 CFR 411.357(c), excludes “any amount paid by an employer to a physician who has a bona fide employment relationship with the employer for the provision of services if certain conditions are met.” Those conditions include:

- ♦ *The employment is for identifiable services; and*
- ♦ *The amount of payment is consistent with fair market value and not determined in a manner that takes into account the volume or value of any referrals by the referring physician, subject to certain permissible productivity compensation payments.*

As to all of the individuals above, all are engaged in a bona fide employment relationship with Landmark, as evidenced, among other indicia, by a W-2 that will be issued in the ordinary course. In each case payment is for identifiable services to be provided to Landmark patients, as noted in their respective Employment Agreements. See May Filing and [Dr. 5]’s Agreement at Exhibit 2. Compensation is at fair market value, as determined by comparing local salaries. The incentive compensation is based on collections only for services that the physician provides, i.e. not “designated health services”, as defined under Stark. Productivity bonuses based on services that physicians provide is permissible. See 42 CFR 411.357(c)(4).

Q: Please provide documentation relative to the requirement to spend \$15,000,000 on routine equipment replacement. Documentation should include a list of replacement expenditures, the amount paid for each and the date it was received/ completed/ installed or functional, as well as copies of receipts.

A: (5/8/14)

Facility	Department	Description	Vendor	QTY	Total Cost	PO Amount	PO Number	Year Approved
LMC	Hospital Wide	Patient Beds and Furniture	Stryker		1,849,478.78	1,849,478.78	RA122713	2013
LMC	Hospital Wide	IV pumps	Braun	150	331,223.77	331,223.77		2013
LMC	Hospital Wide	Telemetry system/Monitors	Mindray		1,002,484.80	854,028.00	Landmark-Mindray090413	2013
LMC	Respiratory Therapy	Pulmonary Function Test System	CareFusion	1	32,943.06	32,943.06	RAL102513	2013

Facility	Department	Description	Vendor	QTY	Total Cost	PO Amount	PO Number	Year Approved
LMC	Surgery	190 towers/ 180 scopes	Olympus		366,668.08	366,668.08	RA032114	2014
LMC	Hospital Wide	EKG carts	Philips	10	110,583.20	110,583.20	LMC 252011NL	2014
LMC	Hospital Wide	Defibrillators	Zoll Medical	22	268,558.10	256,950.90	LMC 251883NL	2014
LMC	Hospital Wide	Anesthesia Machines & B40 Monitors	GE Healthcare	7	297,339.56	297,339.56	GEBB2013-01-RA	2013
LMC	Hospital Wide	Cardiology Ultrasound	GE Healthcare	3	493,677.50	493,677.50	GEBB2013-01-RA	2013
LMC	Hospital Wide	Ultrasound	GE Healthcare	2	292,436.00	292,436.00	GEBB2013-01-RA	2013
		TOTAL			5,045,392.85	4,885,328.85		

See Exhibit 9(c) for supporting documentation.

A: (12/5/14) See Exhibit 5 for spreadsheet and invoices. Note that the invoices through Logic E-9 Ultrasound are not included because they were included with the May Filing.

Total to date for routine replacement of equipment: \$7,739,735.33.

Also included in this category is Informational Technology upgrades. The related spreadsheet is at Exhibit 6, totaling \$2,238,891.00. The corresponding invoices are on the enclosed thumb drive. One additional IT invoice is included at Exhibit 7, totaling \$206,780.00 for E Plus Technology.

AMI Observations Regarding Responses to Questions about Required Spending

Affiliated Monitors has compiled Excel spreadsheets for the capital expenditures, recruitment expenses and replacement expenses (copies included as Attachments 1, 2 and 3). These should facilitate tracking of necessary documentation.

Capital Expenditures

An error pertaining to the capital expenditure amount listed in the 5/8/14 response was acknowledged by Prime-Landmark. The correct figure is \$427,447.52.

An additional error was found in the 12/5/14 submission: three invoices from Weisman Roofing (5/7/14, 6/27/14, and 8/4/14) were erroneously listed for combined total of \$237,700, when it appears Prime-Landmark actually paid \$240,992. If the difference (\$3,292) is added to the Prime-Landmark's sum for the 12/5/14 expenses (\$2,319,205), the resulting figure is \$2,322,497.⁸

Corrected figure from 5/8/14:	\$427,448
Corrected figure from 12/5/14:	<u>\$2,322,497</u>
	\$2,749,945

⁸ Prime representatives subsequently confirmed the corrected figure.

AMI tallied the capital expenses based on the documentation provided by Prime-Landmark as of December 5, 2014, and arrived at a total of \$2,749,945 for the year 2014. We note that this figure is slightly less than 10% of the amount required to be spent over the five-year period. That is, 10% was spent, although 20% of the term elapsed.

The instructions to Prime-Landmark regarding its claimed capital expenditures said, "Documentation should include a list of capital expenditures, the amount paid for each and the date it was received/completed/installed or functional, as well as supporting documentation such as receipts for these expenditures." The documents AMI received in the two responses fell into five main categories: proposals, quotes, requests for capital purchases, invoices, and copies of checks. In some cases, supporting documentation in two or more categories was provided for a single expenditure. In order to better track what was ear-marked versus what was actually spent, AMI asked Prime-Landmark to provide the following for each capital expenditure:

- the date of payment, and
- either a copy of the check OR the electronic funds transfer record.

Additional materials were provided to AMI by Prime-Landmark in April 2015. Some of these documented 4th-quarter expenses which were not captured by December 5, 2014, and some were supplemental materials, such as copies of checks, indicating that payment had been made. With the additional expenses, AMI arrived at a total of \$4,572,090 in invoices. Prime-Landmark arrived at \$4,315,665 and explained the variance of \$256,425 was due to two invoices which were partially paid and two items which were duplicates.

With the new materials, there were 216 total line items in the 2014 Capital Expenditures spreadsheet. Of these, there are 41 which need further clarification, such as copies of checks, reconciliation of figures, etc. All are highlighted on the attached spreadsheet, and annotated as to the matter requiring follow-up.

At a meeting held on May 7, 2015 regarding the finalization of this report, a discussion ensued regarding whether Condition 9 requires Prime-Landmark to: (a) actually spend the amounts enumerated in the Condition⁹; or (b) commit to spending these amounts. In a simplified example, Prime-Landmark was operating under the assumption that if it entered into a 10-year/\$1,000,000 lease-to-own agreement with an equipment company, the full million could be applied toward its required capital expenditures upon signing of the lease agreement. In contrast, AMI assumed that, in this situation, the medical center would "book" \$100,000 per year for each of the ten years toward the required capital expenditures. In this example, at the end of five years, the amount "spent" would be \$1,000,000 under one accounting method and \$500,000 under the other. Mr. Charest said he thought the medical center would spend at least as much money as was required by Condition 9, regardless of which accounting method was used. It was agreed to revisit this matter in the future, if necessary. In the meantime, Prime-Landmark also

⁹ Condition 9(a) states as follows: "Capital expenditures: Thirty Million (\$30,000,000) to be invested during the first five (5) years following the Closing dedicated to capital expenditures, including improvements to the physical plant and in connection with the operation of the facilities, expansion of services and investment in technology (APA Section 10.1)." See Attorney General's Hospital Conversions Act Decision dated October 28, 2013.

agreed to identify leases or other term-type payments when it submits its documentation of expenditures.

In the course of discussing accounting methods, the definition of “capital expenditures” also came up, particularly as they are distinguished from “routine replacements.” Prime-Landmark Accounting staff said that, other than for the purposes of complying with the Conditions of the Decision, they normally designate all expenditures over \$1,500 as capital expenditures. They suggested designating project-related expenses (such as renovations) as capital expenditures for the purposes of reporting to the Attorney General, and classifying those related to replacement of existing equipment and infrastructure as routine replacements. This proposal was accepted.

Because discussion of the distinction between capital expenditures and routine replacements occurred at the May 7, 2015 meeting, which followed Prime-Landmark’s submission, there are 121 line items in the Capital Expenses spreadsheet which, according to the agreed-upon definitions, would more properly be considered Replacement Expenses. They represent \$1.24M – \$1.5M, although the exact amount is subject to the clarification of some line items (38 of the line items noted above which need follow-up are matters that will likely be deemed Replacement Expenses).

Physician Recruitment

Allowable Expenses –AMI asked Prime-Landmark how they planned to spend the required \$4.5M on “physician recruitment.” Based on Prime-Landmark’s response and on the data provided, the 2014 hiring of the Doctors appears to be a reasonable recruitment expenditure. Similarly, the purchase of the assets of the Internist, with the expectation that the new physicians would be able to provide care to his former patients, as well as the build-out of office space for the Doctors, appear to be reasonable ways to support the launch these new practices.

AMI did not ask whether Prime-Landmark intends to declare as recruitment expenditures any further losses pertaining to the Doctors. This subject was discussed, however, at the meeting of May 7, 2015, and Prime-Landmark indicated it would continue to declare the losses of each practice as recruitment expenditures until such time as each became profitable. As noted previously, Prime-Landmark has increased its estimate of how long it may take to achieve profitability from six months to three years, based on the patient volume, payor mix and other factors. Mr. Charest also said Prime-Landmark is working to recruit additional physicians to fill the needs of the community and the hospital.

We note that the agreement provided as evidence of the expense to buy the practice of the Internist is an Agreement in Principle. AMI subsequently asked Prime-Landmark for documentation that such payment actually occurred:

- the date of payment, and
- either a copy of the check OR the electronic funds transfer record.

These records were provided to AMI following the May 7th meeting.

The Agreement with the Internist refers to a lease of his office space and to hiring of his staff. It would be helpful to know if these aspects of the Agreement were effected and, if so, whether and how Prime-Landmark claims these as physician recruitment expenses. In addition, it would be helpful to discuss the profit-loss statement for the Doctors to better understand what it being claimed.

No Overlap of Expenses – AMI attempted to ascertain that the amount claimed for “build-out expenses” for the new physicians was not also counted as either a capital expense or as an equipment replacement expense. According to the invoice provided in support of the build-out figure of \$183,771.91 for the practices of the recruited physicians, this Project Number is 25-14-032. AMI reviewed the capital expenses listed elsewhere in Prime-Landmark’s submissions and we did not find this project number listed among the claimed capital expenses.

Similarly, AMI would like to be able to confirm that the build-out expenses were not included with the routine equipment replacement expenses. Although there is no indication of overlap, there was also not enough detail relative to Project 25-14-032 for us to make such a determination. The documentation provided pertaining to Project 25-14-032 consisted of a request for capital purchase and a copy of the check to the vendor; for this and future build-out expenses pertaining to physician recruitment, AMI will ask Prime-Landmark for:

- documentation describing the project (e.g., number of offices, location, scope of work)
- the date of payment, and
- either a copy of the check OR the electronic funds transfer record.

Consideration for Release of Restrictive Covenants – There was no indication that any of the newly recruited physicians has sought release from restrictive covenants with Prime-Landmark, to date. However, the contracts of the recruited physicians specify that the physician would pay \$300,000 for release from restrictive covenants, in part because “[t]his investment includes many aspects of developing the goodwill of the Group, including, without limitation, advertising, employee recruitment, employee training, and development of information systems, methods of operations, accounting systems, performance improvement criteria and policies and procedures...” Therefore, AMI will ask to be notified if any of the recruited physicians seeks such a release and, should such release be granted, will ask for an explanation of how this will be accounted for.

Fair Market Value – It was not clear how fair market value was determined for the salaries of the recruited doctors. The December filing simply states that “compensation is at fair market value, as determined by comparing local salaries” but does not say whether the data forming the basis of comparison came from other Prime-Landmark physicians, other physicians in the Woonsocket area, others in Rhode Island, etc. AMI reviewed online salary compensation documents, including several issued by Medscape on April 15, 2014: the Medscape Physician Compensation Report 2014, the Medscape Internist Compensation Report 2014, and the Medscape Family Physician Compensation Report 2014.¹⁰ These reports were published in slideshow format and

¹⁰ See www.medscape.com/features/slideshow/compensation/2014/public/overview;
www.medscape.com/features/slideshow/compensation/2014/internal-medicine#1; and
www.medscape.com/features/slideshow/compensation/2014/familymedicine.

indicate that, on average, employed primary care physicians in the U.S. earned \$180,000/ year compared to self-employed primary care physicians who earned \$188,000/ year. Employed internists earned \$183,000/year on average, and family physicians earned \$176,000/ year. The reports also note that, among all U.S. internists, those in the Northeast make the lowest amount (\$172,000/year). The table below summarizes these data.

Area of Practice	Average Annual Earnings
Employed Primary Care Physicians	\$180,000
Self-employed Primary Care Physicians	\$188,000
Employed Internists	\$183,000
Employed Family Physicians	\$176,000
Employed and Self-employed Internists in the Northeastern U.S.	\$172,000

The salaries of the recruited physicians are commensurate with these numbers. We note that achievement of Board Certification status increases the salaries by \$20,000. In addition, Performance Compensation terms allow the physicians to increase their overall revenue. The Performance Compensation provisions do not appear to be in conflict with the Stark and Anti-Kickback Laws.

Routine Replacements

The parties agreed that Affiliated Monitors would track the “provision of funding in the amount of Fifteen Million Dollars (\$15,000,000.00) for routine equipment replacements (APA Section 1.7 (b)).” There were several issues with the materials sent to AMI which prevent us from fully confirming the amounts asserted as having been spent by Prime-Landmark on routine equipment expenses to date.

- As with the capital expenditures, much of the documentation provided indicated an earmark of funds for replacements, but not the actual expenditure. In addition to the purchase orders, quotes and invoices, AMI has subsequently asked Prime-Landmark to provide the following for each replacement expense:
 - ♦ the date of payment, and
 - ♦ either a copy of the check OR the electronic funds transfer record.

Some replacement equipment will be acquired through leases or other term-payment arrangements. AMI has asked Prime-Landmark to identify these expenditures in its annual tracking/reporting process.

- With regard to the Information Technology expenses, the documentation provided did not contain enough information for AMI to confirm each line item. In some cases, the amounts on the invoices and checks did not correspond to the amounts listed by Prime-Landmark as expenses. In other cases, it was not clear whether the amounts claimed were for replacement expenses or for ongoing services (pager and telephone invoices,
-

e.g., did not specify). Prime-Landmark has been forthcoming with requested information so we will highlight the line items in question and ask Prime-Landmark to review and re-submit these materials, as well as additional descriptions of the expenses. For the sake of closing out this report, we suggest that this category, which represents \$1,072,720 in claimed expenses, be clarified in the next report.

- In interim communication with Prime-Landmark, AMI noted that documentation for an expense of \$10,775 (for Mindray “additional tele”) seemed to have been omitted (in error) from the submitted materials. In a subsequent submission, this amount was subtracted from the spreadsheet; however, the rationale for the change was not given. AMI will ask Prime-Landmark to clarify.
- As with the capital expenses, the replacement expenses were updated in April, 2015 to reflect the year-end items not included in the materials of December 5, 2014.

A spreadsheet of 2014 Replacement Expenses is included with this report. Prime-Landmark has provided documentation in support of the first 67 line items, representing \$2,264,408. According to Prime-Landmark’s notes, an additional amount of \$2,449,732 was earmarked in 2014 for equipment that had not been delivered or was not running, and these items were therefore not yet invoiced. We will ask for the supplemental materials for these expenditures with the next report.

As noted above, Prime-Landmark Accounting staff suggested designating project-related expenses as capital expenditures, and designating those related to replacement of existing equipment and infrastructure as routine replacements. This distinction will likely cause some items which were listed as “capital expenses” to be re-classified as “replacement expenses.” Again, for the sake of closure, we suggest that these line items be moved when Prime-Landmark makes its next submission.

10. Obtain information from Prime about any actions taken against Prime or any final resolution to the investigation currently being conducted by the Department of Justice and Office of Inspector General regarding coding at Prime’s hospitals.

Prime-Landmark attested that “there has been no final resolution of this matter,” and “[t]here are no other actions involving the Department of Justice or Office of Inspector General.”

11. Obtain information from Prime of any actions initiated against it or any of its hospitals or affiliates by any governmental entities.

Prior to the engagement of AMI for this matter, Prime and the Attorney General agreed to a reporting format for actions initiated by any government agencies against Prime, any of its hospitals, or affiliates. To track the various matters reported (complaints, violations, fines, etc.), AMI has compiled a spreadsheet of the actions, a copy of which is attached.

In some cases, a single incident resulted in more than one violation (e.g., a medication administration error was both a violation with regard to following medication procedures and a violation for delayed reporting of the event). Counting just the incidents, then, for all of

2014 across the 30 Prime hospitals (rather than the actions), we find there were only eight. Considering the number of hospitals involved, the low number of reported actions raised a question as to how “an action initiated against [Prime] or any of its hospitals or affiliates by any governmental entities” had been defined. We were advised by Attorney Warren that she discussed the matter with Attorney Savitala, Deputy General Counsel of Prime Healthcare, who said “Prime-Landmark reports all fines and penalties that government entities have assessed against Prime Healthcare and its affiliated hospitals,” in the manner agreed upon with the Attorney General in 2014. AMI notes that if the Attorney General is interested in reviewing this reporting standard, what is considered reportable may need to be revisited.

Other Matters – Prime acquired or entered into acquisition agreements with several hospitals in 2014. The hospitals are listed below.

Name	State	Acquisition Date
Riverview Regional Medical Center	AL	Acquired 3/2/15
Glendora Community Hospital (formerly East Valley Hospital Medical Center)	CA	Acquired 5/23/14
Daughters of Charity Hospitals:	CA	Sale approved by CA AG 2/20/15, awaiting decision by Prime
a) St. Vincent Medical Center	CA	
b) St. Francis Medical Center	CA	
c) O’Connor Hospital	CA	
d) Saint Louise Regional Hospital	CA	
e) Seton Medical Center	CA	
f) Seton Coastside	CA	
Garden City Hospital	MI	Acquired 7/1/14
St. Joseph Mercy Port Huron Hospital	MI	Agreement announced 11/20/14, sale pending approval
St. Mary’s Medical Center	MO	
St. Joseph Medical Center	MO	
St. Mary’s Hospital	NJ	Acquired 8/15/14
St. Michael’s Medical Center	NJ	Pending state approval
St. Clare Hospitals:	NJ	Pending state approval
a) Denville	NJ	
b) Dover	NJ	
c) Boonton	NJ	
North Vista Hospital	NV	Acquired 1/22/15
Dallas Regional Medical Center	TX	Acquired 3/2/15

MATTERS FOR FOLLOW-UP

The preparation of this first annual report led AMI to identify some areas which would benefit from additional attention, review, or clarification of intent. Below is a list of such matters, many of which AMI and the Attorney General reviewed with representatives of Prime-Landmark prior to issuing this report. The purpose of this section is to guide the parties in the effort to

accomplish compliance with R.I. Gen. Laws §23-17.14-28 requiring the Attorney General to monitor, assess and evaluate Prime-Landmark, as a for-profit acquiror, for three (3) years following the effective date of the conversion.

1. Prime-Landmark: Notify AMI of the process and result if/when the ambulance service contracts are renegotiated.
2. Prime-Landmark: Notify AMI when the Landmark entities have been wound down and provide confirmation that all necessary documents were filed with applicable state agencies, including, but not limited to the Secretary of State and the Division of Taxation.
3. Prime-Landmark: Reconcile errors and omissions in submissions, such as the error pertaining to the invoices from Weisman Roofing (5/7/14, 6/27/14, and 8/4/14).

May 2015 Update: Additional materials were provided and errors were reconciled. The attached spreadsheets have been revised to reflect corrections, as well as matters requiring additional attention.

4. Attorney General/ AMI/ Prime-Landmark: As noted with regard to capital expenditures, by December 31, 2014, Prime had spent approximately 10% of the required \$30 million, although 20% of the term elapsed. Discuss whether Prime-Landmark is willing to share its 5-year plan for capital expenditures to allay any concerns about whether the required amount will be spent in the remaining period of the monitorship.

May 2015 Update: Landmark CEO Richard Charest gave many examples of the types of expenditures which have been or are being made by the medical center since its acquisition by Prime. As noted within this report, he did not think Prime-Landmark would have any trouble hitting the expenditure requirements set forth in Condition 9. In addition, the supplemental materials provided in April and May 2015 indicate that more expenses were made in the 4th quarter of 2014, bringing the percent of expenses closer to the percent of time elapsed.

5. Prime-Landmark: In the limited number of instances in which it has not already been provided, forward the following documentation of expenditures to AMI:
 - A brief description of the expense, project, etc.
 - The date of payment, and
 - Either a copy of the check OR the electronic funds transfer record.¹¹

Note: The attached Excel spreadsheets indicate which expenditures need additional documentation.

6. Attorney General/ AMI/ Prime-Landmark: Review “recruitment expenditures” and Prime-Landmark’s plan for this category of expenses going forward. For example, discuss how long and/or under what conditions Prime-Landmark’s employment of the newly-hired physicians (and any others hired after the Decision) will be credited as “recruitment.”

¹¹ As noted previously in this report, there may be leases or other term-payment expenditures. It was agreed that Prime-Landmark would flag these expenses and explain how they were booking them.

May 2015 Update: Discussion on this topic centered on Prime-Landmark's plans to bring on additional physicians to meet the needs of its community. As with other expenditures, Mr. Charest indicated that he thought the facility would spend more than the required amount. He also said it was likely the medical center would claim the expenses of the newly hired physicians as "recruitment" until their practices became profitable.

7. Prime-Landmark: Clarify whether and how certain aspects of the Agreement with the Internist, such as the lease of his office space and hiring of his staff, are calculated with respect to physician recruitment expenses.

May 2015 Update: Prime-Landmark proposed tracking and reporting all costs associated with each new practice until it becomes profitable.

8. Prime-Landmark: If any of the recruited physicians seeks a release of the restrictive covenants (as permitted by the employment contract), notify AMI of the interaction and explain how the funds will be accounted for relative to the total physician recruitment expenses.
9. Attorney General/ AMI/ Prime-Landmark: Review what qualifies as a "replacement expense." For example, the inclusion of replacement of materials which are not necessarily classified as equipment, such as software upgrades.

May 2015 Update: Prime-Landmark Accounting staff has suggested designating project-related expenses as capital expenditures, and designating those related to replacement of existing equipment and infrastructure as routine replacements. This distinction will likely cause some items which were listed as "capital expenses" to be re-classified as "replacement expenses." Prime-Landmark: Review and supplement the materials submitted pertaining to Information Technology expenses, with documentation to support the amounts claimed. Unless specifically agreed to by the Attorney General, do not include expenses for ongoing services (e.g., telephone, cable, internet services) as replacement expenses.

10. Attorney General/ AMI/ Prime-Landmark: Review reporting requirements for "action[s] initiated against [Prime] or any of its hospitals or affiliates by any governmental entities."

May 2015 Update: Prime-Landmark has confirmed that it has reported all fines and penalties that government entities have assessed against Prime Healthcare and its affiliated hospitals. Prior to the release of this report, the parties discussed that it may be necessary to tweak the definition of what is reportable ("loosen the valve") at some time in the future.

CONCLUSION

Affiliated Monitors has found Prime-Landmark to be cooperative in this matter. Meetings were arranged without difficulty; Richard Charest, Landmark Medical Center's President, attended and was forthright in discussing the facility, its role in the community, and the plans for the future. The changes we observed at Landmark Medical Center are impressive and staff members seem genuinely pleased with the facility's upgrades.

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Based on meetings with the parties; the materials submitted by Prime-Landmark and Prime Healthcare, including, in some instances, attestations of compliance; and on our independent research in some matters, such as fair market value of physician practices, we believe that Prime Landmark has complied with the Conditions to date.

Respectfully submitted,

A handwritten signature in black ink that reads "Donald K. Stern". The signature is written in a cursive style with a large initial "D".

Donald K. Stern
Managing Director, Corporate Monitoring
and Consulting Services

A handwritten signature in black ink that reads "Catherine Keyes". The signature is written in a cursive style with a large initial "C".

Catherine Keyes
Vice President of Operations