



PIH Health Hospital - Downey
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October 19, 2017

Via Electronic Mail and U.S. Mail

Ms. Wendi Horwitz, Deputy Attorney General
State of California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

Dear Ms. Horwitz:

Reference: Application to Modify Conditions of Approval Respecting the Amount of Required Annual Charity Care (Title XI, California Code of Regulations Section 999.5(h))

Applicant: PIH Health Hospital - Downey, formerly known as Downey Regional Medical Center - Hospital, Inc.

This letter constitutes the application of PIH Health Hospital - Downey formerly known as Downey Regional Medical Center - Hospital, Inc. ("Hospital") for a modification to the charity care conditions set forth in the "Conditions to Change in Governance of Downey Regional Medical Center and Approval of the Member Substitution Agreement by and among Downey Regional Medical Center, Inc., Downey Regional Medical Center - Hospital, Inc., and InterHealth Corp. dated August 15, 2013 (the "Conditions of Approval Letter"). This Application is made pursuant to Title XI of the California Code of Regulations, Section 999.5(h) for the purpose of requesting a modification of the amount of required annual charity care to be provided by the Hospital pursuant to the Conditions of Approval Letter, Part VII.

A. Conditions of Approval Letter/Charity Care

Condition VII of the Conditions of Approval Letter requires the Hospital to maintain a minimum amount of annual charity care equal to or exceeding the annual historical charity care average as determined by the Attorney General utilizing the Hospital's previously filed Office of Statewide Health Planning and Development (OSHPD) reports as they pertain to charity care costs. This requirement arose from the Member Substitution Agreement by and between InterHealth Corp., Downey Regional Medical Center, Inc., and Downey Regional Medical Center - Hospital, Inc.

B. FY 2016 Charity Care

For FY 2016, the Hospital's Minimum Charity Care Amount approximates to \$1,287,080.00. The Hospital's annual financial disclosure report to OSHPD sets forth a charity care amount of \$819,378.00, which falls short of the Minimum Charity Care Amount by \$467,702.00.

C. Application for Modification

The authority by which the Hospital makes this submission is Title 11, California Code of Regulations, Section 999.5(h) ("Section 999.5"), which states as follows:

"(h) Amendment of Consent Terms and Conditions

(1) Either the selling or acquiring corporation or entity, or their successors in interest, may request Attorney General approval of any amendment of the terms and conditions of any agreement or transaction for which the Attorney General has given consent or conditional consent under Corporations Code section 5915 or 5921. The sole basis for such a request shall be a change in circumstances that could not have reasonably been foreseen at the time of the Attorney General's action.

(2) A request for an amendment shall include a description of each proposed amendment, a description of the change in circumstance requiring each such amendment, a description of how each such amendment is consistent with the Attorney General's consent or conditional consent to the transaction, and a description of the efforts of the entity making the request to avoid the need for amendment.

(3) The Attorney General shall issue a decision on the proposed amendments within 90 days of the submission of all of the information set forth in section 999.5(h)(2) of these regulations. The Attorney General shall provide public notice of the proposed amendments. A public meeting shall be held before the decision is made either at the discretion of the Attorney General or upon the request of any person within 7 days of the public notice.

(4) In approving proposed amendments to conditions relating to the operation of a health facility or facility that provides similar health care services such as required levels of charity care and continuation of essential services, the Attorney General shall consider the effect of the proposed amendments on the availability or accessibility of health care services to the affected community. The Attorney General shall approve proposed amendments of the use of sales proceeds only if

the proposed amendments are necessary to carry out charitable trust purposes, or in the case of a proposed change in charitable purpose only if that change complies with the principles of the cy pres doctrine.

(5) The provisions of section 999.5(g)(2), (3), (4) and (5) shall apply to Attorney General review of proposed amendments of the terms and conditions of any agreement or transaction for which the Attorney General has given consent or conditional consent under Corporations Code section 5915 and 5921.

(6) Unless otherwise provided in the decision consenting to an agreement or transaction, the approval of the Attorney General shall not be required for modifications to the agreement or transaction that are not material to the Attorney General's consent. The provisions of section 999.5(h) shall not limit the authority of the Attorney General to interpret the terms and conditions of any consent decision."

By this request, the Hospital seeks to modify Part VII of the Attorney General Decision, which states in pertinent part:

"For six fiscal years from the closing date of the Member Substitution Agreement, Downey Regional Medical Center shall provide an annual amount of Charity Care (as defined below) at Downey Regional Medical Center equal to or greater than . . . (the "Minimum Charity Care Amount"). For purposes hereof, the term "charity care" shall mean the amount of charity care costs (not charges) incurred by Downey Regional Medical Center in connection with the operation and provision of services at Downey Regional Medical Center. The definition and methodology for calculating "charity care" and the methodology for calculating "costs" shall be the same as that used by the California Office of Statewide Health Planning and Development (OSHPD) for annual hospital reporting purposes.

...for the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Riverside-Orange County Consolidated Metropolitan Statistical Area Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of charity care provided at Downey Regional Medical Center for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal

year, Downey Regional Medical Center shall pay an amount equal to the deficiency to a tax-exempt entity that provides direct health care services to residents in Downey Regional Medical Center's service area..."

D. Proposed Charity Care Modification

With respect to the condition set forth in Part VII of the Attorney General Decision, and for the reasons set forth below, the Hospital respectfully requests that the Attorney General modify its required charity care obligation in the following manner:

1. Using the Hospital's Annual Financial Disclosure reports from the Office of Statewide Health Planning and Development (OSHPD) for fiscal years ended 2013 through 2015 (the latest information available), calculate the charity care costs for each fiscal year for the Hospital within the community it serves.

Costs are determined by applying the charity care write-offs, multiplied by the Hospital's cost-to-charge ratio.

2. Document the percentage change from 2013 to 2015 for all of the hospitals in a specific community for the unique group that has undergone a sale or transfer of not-for-profit facilities during a window of time experiencing the tremendous change that has affected the health care industry (as discussed below) and apply the percentage change to the Attorney General specified charity care cost target to compute a community-wide reduction amount.
3. Deduct the reduction amount from the Attorney General specified charity care cost target to determine a modified minimum charity cost target.
4. The following is an example provided in the September 8, 2017, letter from California Hospital Association to Melanie Fontes Rainer, Special Assistant to Attorney General Xavier Bacerra, a copy of which is attached as Exhibit A.

AG Required Charity Cost Target (a)	Community- based Reduction Percentage (b)	Reduction Amount (a x b = c)	Modified Minimum Charity Cost Target (a + c)
\$15,000,000	(40.0%)	(\$6,000,000)	\$9,000,000

5. The following is an application of the Hospital's charity care calculation under the formula in item "D" above:

AG Required Charity Cost Target for the Hospital (a)	Community- based Reduction Percentage (b)	Reduction Amount (a x b = c)	Modified Minimum Charity Cost Target (a + c)
\$1,287,080	(52.83%)	(\$680,007)	\$607,072

6. The modified minimum charity cost target would be applicable for the Hospital's fiscal year ended in 2016 and future subsequent fiscal years would adhere to conditions pursuant to any subsequent Attorney General decision.

The Community-based Reduction percentage above (52.83%) has been calculated using OSHPD data for Los Angeles County over a period of three years. The numbers with which the Hospital worked in making its determination included:

Year	Charity (Other)	Gross Patient Revenue	Other Patient Revenue	Total Operating Expenses	Cost to Charge Ratio	Charity Costs	Reduction
2013	\$1,299,495,923	\$66,017,043,874	\$802,465,005	\$16,126,924,013	23.2%	\$301,650,465	
2014	\$864,099,263	\$68,979,278,145	\$909,533,438	\$16,668,588,924	22.9%	\$197,932,472	
2015	\$602,941,949	\$74,496,168,436	\$909,533,438	\$18,488,671,595	23.6%	\$142,278,456	
TOTAL	\$2,766,537,135	\$209,492,490,455	\$2,580,042,649	\$51,284,184,532	23.2%	\$643,182,087	(52.83%)

E. Change in Circumstances

Title XI, Chapter 15, Section 999.5(h)(1) permits an entity to request approval of any amendment of the terms and conditions of any agreement or transaction from which the Attorney General has given consent or conditional consent, based on a "change in circumstances that could not have been reasonably foreseen at the time of the Attorney General's action." The Hospital submits that the impact of the Affordable Care Act on charity care and Medi-Cal service costs constitutes just that sort of "change in circumstances" that the foregoing regulation addresses. Quite clearly, the Attorney General's Condition of Approval pertaining to charity care is principally aimed at preventing a hospital from causing a change in its former historical level of charity care by reason of intentional decisions or actions and should not be used as a punitive measure against a hospital which finds itself in a completely new healthcare environment, not the making of its own initiative, and without any evidence whatsoever, the hospital in any way caused or contributed to the reduction in patients requiring charity care assistance.

F. All Other Conditions of Approval Have Been Met or Exceeded

With regard to all other Conditions of Approval, the Hospital has met or greatly exceeded all such requirements.¹

G. Hospital Has Maintained and Applied Charity Care Policies and Procedures That Meet or Exceed Applicable Legal Requirements

The Camden Group, now GE Healthcare Camden Group, issued a report on July 8, 2013, respecting PIH Health's acquisition of Downey Regional Medical Center – Hospital, Inc. (the "Impact Report"). Likewise, in or about August 2016, Vizient Consulting issued yet another Impact Report when reviewing the Hospital's charity care in connection with an earlier application for modification. With respect to charity care, both Impact Reports concluded that the Hospital charity care policy met or exceeded the federal and State legal requirements and that Hospital's experience of significantly reduced charity care need was not of its making.

From and after its acquisition of the Hospital, the charity care policies and procedures have been maintained and appropriately applied to any and all patients eligible for financial assistance. Notwithstanding, through no fault of the Hospital, the ACA has dramatically reduced the number of individuals without healthcare insurance who would

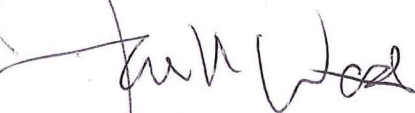
¹ See the prior filings submitted to the Attorney General by the Hospital for FY 2013/14 and 2014/15, respectively.

otherwise have been eligible for charity care at the Hospital. Thus, the consequent reduction of charity care by the Hospital is not derivative from any change in its policies and procedures but, rather, the reduction matches the level of charity care required in the Hospital's community. As the needs of the community have now changed, the obligations on the part of the Hospital under the Attorney General decision should also be adjusted. Furthermore, the Hospital's acquisition virtually saved the institution from closing following its bankruptcy commenced in 2009. As a result, millions of dollars have been expended at the Hospital to improve its physical campus, e.g., seismic retrofitting, purchase deferred capital items, and to maintain essential core healthcare services. Imposing further financial burdens upon the Hospital in its precarious financial position serves no purpose in assuring the continuation of general acute care hospital services in the greater Downey, California, service area.

Thank you for your consideration of this Application for modification. The Hospital continues to provide charity care for those patients meeting the Hospital's charity care policy which meets or exceeds all applicable legal requirements. Should you require any additional information, please contact me at 562-698-0811, Extension 12411, or at Jim.West@pihhealth.org.

Sincerely,

PIH Health Hospital - Downey

A handwritten signature in black ink, appearing to read "Jim West", is written over a large, loopy circular mark.

James R. West
President and Chief Executive Officer

c Rich Atwood
Chair, Board of Directors

Enclosures

EXHIBIT "A"



September 8, 2017

Melanie Fontes Rainer
Special Assistant to Attorney General Xavier Becerra
Office of the Attorney General
1300 I Street
Sacramento, CA 95814-2919

**SUBJECT: California Hospital Association Proposal – Request of Attorney General's
Office for Modification of Charity Care Cost Conditions**

Dear Melanie:

The California Hospital Association (CHA) has convened a group of hospitals to develop a proposal that provides flexibility to the Attorney General (AG) when determining the Charity Care conditions. The represented group numbers nine individual hospitals and two systems for a total of 32 hospitals. This unique group of hospitals has undergone a sale or transfer of not-for-profit facilities during a window of time experiencing tremendous change that has affected the entire healthcare industry and California in particular.

The AG's Office determines charity care requirements as part of a set of conditions established during the sale and transfer of not-for-profit hospitals. Those conditions state that if a hospital does not incur the specified cost in a specified amount, then the hospital must pay cash equal to any "deficiency" to a non-profit public benefit entity.

CHA believes that the required level of charity care should not be based on a period of time prior to the implementation of the coverage provisions of the Affordable Care Act (ACA). The implementation of the ACA in California resulted in the expansion of Medi-Cal and the development of the Covered California Marketplace, resulting in new coverage for more than 5 million individuals. CHA is proposing a modification of the approach to determining the charity care requirement that would consider the changing environment, yet preserves the State's interest in maintaining a commensurate level of charity care to the local communities served by hospitals.

Under the ACA, California has achieved the following:

- Over 5 million Californians have insurance as a result of the ACA — roughly a quarter of all Americans covered under the law.

- 91 percent of Californians are now insured. The uninsured rate in California fell from 17 percent in 2013 to a historic low of 8.5 percent in 2015.

Given the unforeseen impact of the ACA on charity care costs, the hospitals propose that the minimum charity care costs amount, as required by the AG’s Office, be modified in the following manner:

1. Using Hospital Annual Financial Disclosure reports from the Office of Statewide Health Planning and Development (OSHPD) for fiscal years ended 2013 through 2015 (the latest information available), calculate the charity care costs for each fiscal year for all not-for-profit hospitals within the community served by the hospital. Costs are determined by applying the charity care write-offs, multiplied by the hospital’s cost-to-charge ratio.
2. Document the percentage change from 2013 to 2015 for these hospitals in the community and apply the percentage change to the AG specified charity care cost target to compute a community-wide reduction amount.
3. Deduct the reduction amount from the AG specified charity care cost target to determine a modified minimum charity cost target.
4. Below is an example:

AG Required Charity Cost Target (a)	Community-based Reduction Percentage (b)	Reduction Amount (a * b = c)	Modified Minimum Charity Cost Target (a+c)
\$15,000,000	(40.0%)	(\$6,000,000)	\$9,000,000

5. The modified minimum charity cost target would be applicable for a hospital’s fiscal year ended in 2015 and future subsequent fiscal years would adhere to conditions pursuant to the Consent Letter between the AG’s Office and the hospital.

This request for revision is consistent with the regulations at Title 11, Chapter 15, Section 999.5(h)(1), which state that an entity may request approval of any amendment of their terms and conditions of any agreement or transaction for which the AG has given consent or conditional consent, based solely on “a change in circumstances that could not have reasonably been foreseen at the time of the Attorney General’s action.”

The impact of the ACA on charity care costs is, most certainly, a “change in circumstances that could not have reasonably been foreseen at the time of the Attorney General’s action.” The spirit and intent of charity care at these hospitals has not changed, and the reasons for the originally imposed conditions remain valid. What has changed, however, is the number of patients for whom each of these hospitals can provide this charity care, and this change remains outside of the control of these providers. While this proposal relates to a finite group of hospitals, should unforeseen yet substantial changes occur in the shifting future of healthcare, this proposal may provide a starting point for the AG to contemplate the appropriate response.