

September 15, 2017

**By Email (wendi.horwitz@doj.ca.gov)**

Wendi A. Horwitz  
Deputy Attorney General  
State of California  
Department of Justice  
300 S. Spring St.  
Suite 1702  
Los Angeles, CA 90013

Re: Request to Amend 2010 Conditions to Approval of Sale  
Mission Community Hospital, Panorama City, California  
Title 11, California Code of Regulations, Section 999.5(h)

Dear Ms. Horwitz:

By this letter, Deanco Healthcare, LLC, d/b/a Mission Community Hospital (the "**Hospital**") respectfully requests that the Office of the Attorney General for the State of California (the "**AG**") amends Section XI of the September 2010 Conditions To Approval of Sale of Mission Community Hospital (the "**AG Decision**").

## **I. Introduction**

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 Section XI of the AG Decision, which states in pertinent part:

*With respect to each of Buyer's six (6) fiscal years after the transfer of the Seller's assets to the Buyer, Buyer shall provide an annual amount of Charity Care (as defined below) at Mission Community Hospital equal to or greater than the annual "Minimum Charity Care Amount" required by the Seller at the time of the transfer of Seller's assets to the Buyer. For purposes hereof, the term "Charity Care" shall mean the amount of charity care costs (not charges) incurred by the Buyer in connection with the operations and provision of services at Mission Community Hospital. The definition and methodology for calculating "charity care" and the methodology for calculating "cost" shall be the same as that used by the California Office of Statewide Health Planning and Development (OSHPD) for annual hospital reporting purposes . . . .*

*For each fiscal year thereafter, 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."*

*If the actual amount of Charity Care provided by Buyer at Mission Community Hospital 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, Buyer shall pay an amount equal to the deficiency to a nonprofit public benefit corporation for direct medical care to residents in the Mission Community Hospital's primary service area for Medical/Surgical Services.*

## **II. Proposed Amendment**

With respect to the condition set forth in Section XI of the AG Decision, and for the reasons set forth below, the Hospital respectfully requests that the AG modify its required charity care obligation in the following manner.

- A. 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 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.

- B. 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 AG specified charity care cost target to compute a community-wide reduction amount.
- C. Deduct the reduction amount from the AG specified charity care cost target to determine a modified minimum charity cost target.
- D. 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 * b = c)	Modified Minimum Charity Cost Target (a+c)
\$15,000,000	(40.0%)	\$6,000,000	\$9,000,000

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

<b>AG Required Charity Cost Target for the Hospital (a)</b>	<b>Community-based Reduction Percentage (b)</b>	<b>Reduction Amount (a * b = c)</b>	<b>Modified Minimum Charity Cost Target (a+c)</b>
\$2,424,235	(52.83%)	(\$1,280.723)	\$1,143,512

F. The modified minimum charity cost target would be applicable for the Hospital's fiscal year ended in 2015 and future subsequent fiscal years would adhere to conditions pursuant to the AG 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:

<b>Year</b>	<b>Charity (Other)</b>	<b>Gross Patient Revenue</b>	<b>Other Patient Revenue</b>	<b>Total Operating Expenses</b>	<b>Cost to Charge Ratio</b>	<b>Charity Costs</b>	<b>Reduction</b>
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	
<b>TOTAL</b>	<b>\$2,766,537,135</b>	<b>\$209,492,490,455</b>	<b>\$2,580,042,649</b>	<b>\$51,284,184,532</b>	<b>23.2%</b>	<b>\$643,182,087</b>	<b>(52.83%)</b>

### III. Change in Circumstances

Although the instruments of change<sup>1</sup> preceded the AG Decision by almost six months, the effects of health care reform on charity care in California were not immediate. The tenets of the ACA responsible for changes in charity care include, but are not limited to, the following:

<sup>1</sup> *Patient Protection and Affordable Care Act* (Pub. L. 111-148 (2010)); *Health Care and Education Reconciliation Act* (Pub. L. 111-152) (2010) (the "ACA").

- The requirement that qualified health plans must include “essential health benefits” (42 U.S.C. § 18022)
- Fair health insurance premiums (42 U.S.C. § 300gg)
- End of preexisting condition exclusion (42 U.S.C. § 300gg-3)
- Coverage for adult child until the age of 26 (42 U.S.C. § 300gg-14)
- Guaranteed availability of coverage (42 U.S.C. § 300gg-1)
- Bronze, silver, gold, platinum and catastrophic plans (42 U.S.C. § 18022(d), (e))
- Individual mandate (26 U.S.C. § 5000A), which does not apply to prisoners and undocumented aliens (26 U.S.C. § 5000A(d))
- Employer mandate (26 U.S.C. § 4980H)
- Health insurance exchanges (42 U.S.C. § 18031; Cal. Ins. Code § 10112.3)
- Medicaid expansion (42 U.S.C. § 1396d(a))

The Supreme Court summarized the purpose of the ACA in its seminal decision *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566, 2580 (2012) (“In 2010, Congress enacted the Patient Protection and Affordable Care Act, 124 Stat. 119. The Act aims to increase the number of Americans covered by health insurance and decrease the cost of health care.”). In regard to some of the changes referenced above, the Supreme Court also stated: “The individual mandate requires most Americans to maintain ‘minimum essential’ health insurance coverage . . . Many individuals will receive the required coverage through their employer, or from a government program such as Medicaid or Medicare. . . . But for individuals who are not exempt and do not receive health insurance through a third party, the means of satisfying the requirement is to purchase insurance from a private company.” *Id.*

In many ways, the ACA has a trifold agenda that attempts to address the future. At its core, the bill seeks to improve the long-term health of Americans by promoting innovation in the delivery of medicine, placing stronger emphasis on the prevention of disease and enhancing education in the adoption and maintenance of healthier lifestyles. More often than not, however, such laudable goals are overshadowed by the fact that it also seeks to expand accessibility to the 50 million who are currently uninsured. Nevertheless, the spirit and intent of charity care at the Hospital has not changed, and the reasons for the originally imposed conditions remain valid. What has changed, however, is the number of patients for whom the Hospital can provide this charity care, and this change remains outside of the control of the Hospital.

#### **IV. Reduction in the Number of Patients without Insurance**

According to the United States Census Bureau, in 2009 approximately 48.6 million (15.7%) of the population was uninsured. A 2015 study by the Centers for Disease Control and Prevention indicated that the total uninsured rate was reduced 9.2%.

Here in this state, 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.

The Hospital had similar results. The Hospital experienced a 55% reduction in indigent discharges and a 20% increase in Medi-Cal discharges.

#### **V. The Proposed Amendment is Consistent with the AG Decision**

Verité Healthcare Consulting issued a report on August 13, 2010, entitled “Effect of Deanco Healthcare LLC’s Acquisition of Mission Community Hospital on the Availability or Accessibility of Healthcare Services” (the “Impact Report”). With respect to charity care, the Impact Report stated about the Hospital charity care policy before the AG Decision:

*The current MCH policy indicates the following:*

- *The necessity of medical treatment of any patient will be based upon clinical judgment without regard to the financial status of the patient.*
- *MCH’s financial counselors should interview each patient who lacks adequate insurance coverage. The interview will gather certain demographic data, information regarding third-party coverage, and indications regarding the ability to pay.*
- *Patients appearing unable to meet their financial obligations are offered the opportunity to apply for charity care.*
- *The application obtains information on family size and income.*
- *Patients who apply and are approved for charity care obtain the following discounts based on family income.*

- *MCH's policy provides for "free care" for patients in households up to 200 percent of Federal Poverty Guidelines ("FPG"). Patients in households at 350 percent of FPG qualify for a 25 percent discount.*
- *The April 2010 amendment provides that patients that have attempted to qualify for Medi-Cal coverage but have been denied "are deemed to be qualified for charity care for 100 percent of the services they received." MCH indicates that this change in policy has greatly increased the amount of charity care reported from prior years.*
- *MCH's policies include FPG levels based on schedules for 2003. Those schedules are updated annually by the U.S. Department of Health and Human Services. The income level at 200 percent of FPG for a family of four in 2009 was \$44,100 – an increase from the \$36,800 level included in the MCH policies.*

The spirit and intent of charity care at the Hospital has not changed. Health care reform is alive and well in California, especially seven years after its passage. Although this was contemplated in September 2010, no one could have anticipated the ultimate impact of health care reform on the charity care obligations in California.

As was its intent, the ACA dramatically reduced the number of individuals without health care insurance. This fundamental purpose of the ACA did not intend to punish hospitals experiencing such a reduction in charity care. To the contrary, the Hospital has maintained its level of charity care to match the needs of the community. As the needs of the community have now changed, the obligations on the part of the Hospital under the AG Decision should also adjust.

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Deputy Attorney General  
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**VI. Efforts of the Hospital to Avoid this Request**

The Affordable Care Act is a force with which to be reckoned. The Hospital is just one of the estimated 5,600 hospitals in the United States. The financial burden of maintaining pre-health care reform levels of charity care is also something the Hospital cannot avoid, nor is the request made to the AG by this letter.

Thank you again for your assistance, and please let me know if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Craig B. Garner". The signature is written in a cursive style with a large initial "C" and a long horizontal stroke at the end.

Craig B. Garner

Exhibit A

Cc: James K. Theiring, CEO, Mission Community Hospital

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Deputy Attorney General  
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# **EXHIBIT A**



**CALIFORNIA  
HOSPITAL  
ASSOCIATION**

*Providing Leadership in  
Health Policy and Advocacy*

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.

The hospitals reiterate that they remain committed to providing a level of charity care and services to patients at levels responsive to the needs of their headier communities.

CHA appreciates the opportunity to work with the AG and staff to ensure those commitments are achieved. We would like to request a meeting with the AG’s Office in early September to further discuss the proposal.

Sincerely,

A handwritten signature in cursive script that reads "Anne McLeod".

Anne McLeod  
Senior Vice President  
Health Policy & Innovation