



**USC University of  
Southern California**

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OFFICE OF THE GENERAL COUNSEL

**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 2013 Conditions to Approval of Sale of  
USC Verdugo Hills Hospital, LLC

Dear Ms. Horwitz:

Through this letter, USC Verdugo Hills Hospital (the "Hospital"), respectfully requests that the Office of the Attorney General for the State of California (the "AG") amend Section VII of the July, 2013 Conditions to Approval of Sale of USC Verdugo Hills Hospital (the "AG Decision"). Section VII of the conditions that were included in the AG Decision, obligates the Hospital to sustain a defined level of charity care for a five year period. These conditions were imposed by the AG when the Hospital was rescued from financial distress and acquired by USC Verdugo Hills Hospital LLC in 2013.<sup>1</sup>

This request is being submitted pursuant to Section 999.5(h)(2), of Title 11, California Code of Regulations, which requires that all amendment requests describe the following:

- The proposed amendment,
- Change in circumstances that requires an amendment,
- How the amendment is consistent with the Attorney General's consent or conditional consent to the transaction, and
- The entity's efforts to avoid the need to request an amendment.

**I. Proposed Amendment**

In light of the unprecedented impact of the Patient Protection and Affordable Care Act ("ACA"), the Hospital respectfully requests that the AG consider modifying the required charity care obligation in Section VII of the AG Decision, for the reasons identified below and in the following manner.

University of Southern California

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<sup>1</sup> The University of Southern California ("USC") was the sole member of USC Verdugo Hills Hospital LLC at the time of the AG Decision. USC now directly owns the Hospital due to a subsequent change in ownership, which was disclosed to the Attorney General in 2015.

- A. Using Hospital Annual Financial Disclosure reports from the Office of Statewide Health Planning and Development (“OSHPD”) for fiscal years ended 2013 through 2016 (the latest information available), calculate the charity care costs for each fiscal year for the Hospital 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.
- B. Document the percentage change from 2013 to 2016 for all hospitals in a specific community 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 Becerra, 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>
\$1,978,848	(45%)	\$890,481.60	\$1,088,366.40

F. The modified minimum charity cost target would be applicable for the Hospital's fiscal year ended in 2015 and subsequent fiscal years for which the hospital is subject to a charity care minimum.

The Community-based Reduction percentage above 45% has been calculated using OSHPD data for Los Angeles County over a period of four years. The numbers with which the Hospital worked in making its determination included:

<b>Hospital</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Change (as of 2016)</b>
Glendale Memorial <sup>2</sup>	25,046,765	15,785,073	28,837,088	9,098,790	
Cost-to-Charge	23.99%	21.37%	24.69%	24.25%	
Net Charity Care	6,008,719	3,373,270	7,119,877	2,206,457	<b>-63%</b>
Glendale Adventist <sup>*3</sup>	25,026,528	10,134,601	7,137,147	26,989,716*	
Cost-to-Charge	19.15%	19.14%	18.85%	18.23%	
Net Charity Care	4,792,580	1,939,763	1,345,352	4,920,225	<b>3%</b>
Arcadia Methodist *	9,183,656	4,664,026	3,198,212	3,821,846	
Cost-to-Charge	21.75%	20.44%	19.78%	18.46%	
Net Charity Care	1,997,445	953,327	632,606	705,513	<b>-65%</b>
Huntington Memorial *	18,519,071	38,940,643	13,035,263	7,404,390	
Cost-to-Charge	23.75%	23.53%	22.01%	22.40%	
Net Charity Care	4,398,279	9,162,733	2,869,061	1,658,583	<b>-62%</b>
<b>Net Charity Care Total</b>	<b>17,197,024</b>	<b>15,429,093</b>	<b>11,966,897</b>	<b>9,490,778</b>	<b>-45%</b>

<sup>2</sup> It is noteworthy that the 2016 data for Glendale Memorial Hospital appears to be aberrational. If the hospital were excluded the reduction percentage would be much higher (63%)

<sup>3</sup> All hospital calculations noted with an asterisk are based on unaudited financial data.

## **II. Change in Circumstances**

While the ACA successfully accomplished the desired expansion of health care coverage, it also resulted in a corresponding decline in qualifying hospital charity care costs. Following implementation of the ACA, the Hospital experienced an unforeseeable increase in the volume of insured patients presenting for medical care, which has significantly reduced the volume of hospital costs that would have otherwise qualified as charity care.

This trend is not specific to the Hospital and has been identified by the California Health Association (“CHA”) as a concomitant effect of the ACA. In fact, OSHPD data reported by CHA shows a significant reduction in charity care costs for California hospitals, which were estimated to be over \$2 billion in 2013 and decreased to approximately \$700 million in 2015. In addition, reporting data published by the U.S. Census Bureau reflects a decline of over 70% in the State’s uninsured volume following the expansion of Medicaid eligibility through the ACA. Due to these changes in community needs and insurance expansion, the Hospital is simply unable to sustain the pre-health care reform levels of charity care that were appropriate when the AG Decision was originally adopted. As a result, the Hospital is proposing an amendment whereby the Hospital can meet its obligations by serving current community needs.

## **III. Description of How the Amendment is Consistent with the AG Decision and Hospital Efforts to Avoid This Request**

An amendment of the original Charity Care obligation is within the discretion of the Attorney General and consistent with the AG Decision. This request meets regulatory review standards, which permit a provider to request an amendment of a condition due to “a change in circumstances that could not have reasonably been foreseen at the time of the Attorney General’s action.” (Title 11, chapter 15, Section 999.5(h)(1)). In this case, the AG could not have anticipated the ultimate impact of health care reform when the charity care condition was established in 2013. And now, as the needs of the community have changed, the corresponding obligations imposed on the Hospital should likewise adjust.

The charity care obligation was intended to encourage the Hospital to generously extend charity care to eligible patients. The Hospital remains committed to the spirit of this Condition and continues to provide the level of charity care needed to match the needs of the community, however, the Hospital cannot control the decline in charity care eligible patients who now present for care. While the ACA succeeded in dramatically reducing the number of individuals without health care insurance, it did not intend to punish hospitals experiencing such a reduction in charity care. For these reasons, the Hospital believes that an amendment of the prior AG Conditions would create an appropriate avenue for the Hospital to continue to honor the intent of the charity care obligation in the post ACA environment.

Wendi A. Horwitz  
Deputy Attorney General  
State of California  
January 4, 2017  
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Thank you again for your consideration of this request. Please feel free to contact me if you have any questions at (323) 442-1336 or [jytaylor@usc.edu](mailto:jytaylor@usc.edu).

Respectfully yours,



Jeannine Taylor

Exhibit A

Cc:

Keith Hobbs, CEO, USC Verdugo Hills Hospital

Scott Chan, Esq. Deputy Attorney General, California Department of Justice

# **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