



December 18, 2017

Wendi Horwitz  
 Deputy Attorney General  
 California Department of Justice  
 300 S. Spring Street, Suite 1702  
 Los Angeles, CA 90013  
 Via Email to: [Wendi.Horwitz@doj.ca.gov](mailto:Wendi.Horwitz@doj.ca.gov)

**Re: Opposition to Requests for Modification of Charity Care Obligations**

Dear Ms. Horwitz:

On behalf of the undersigned consumer and labor groups, we write in opposition to all requests from nonprofit hospitals seeking to reduce their obligation to provide minimum levels of charity care required by conditions imposed by your office as a result of a sale or merger. Nonprofit

hospitals' favored tax status imposes specific "community benefit" obligations on them, and state law and your office have carefully fleshed out those requirements with specific duties to provide free and reduced-price care for consumers. Recently, nonprofit hospitals have submitted an alarming number of requests seeking to revise and reduce their charity care obligations, and we urge you to deny all of them.

Since the November 2016 election, President Donald Trump and Congressional leaders have made clear their intention not only to repeal the Affordable Care Act (ACA), but also to unravel entitlements to Medicare and Medicaid through deep spending cuts. Should they succeed, millions of Californians will become uninsured, and state and local budgets will be strained to compensate for the disproportionate impact of these proposals on California. In addition to threats and volatility at the federal level, California has 3 million remaining uninsured and many millions more individuals who are underinsured, which makes access to coverage cost-prohibitive.

The requests by these nonprofits for reduced charity care are predicated on the continued availability of federal funds sufficient to provide coverage for the millions of Californians who rely on Medicare, Medicaid, and the ACA today. While our organizations are working tirelessly to prevent these cuts, we understand how vulnerable these programs are, and ask you to reject outright any request to reduce mandated levels of charity care.

Charity care provides an essential safety net for struggling individuals and families who would otherwise forgo needed care or be locked in poverty due to medical debts from hospital visits.

### **Millions of Californians Still Uninsured**

While California's uninsured rate is at an historic low thanks to our robust implementation of the ACA, recent analyses indicate that nearly 3 million Californians remain uninsured<sup>i</sup>. This number includes the undocumented, who are legally excluded from coverage under the ACA, as well as individuals who are exempted from the ACA's individual mandate for lack of affordability or other reasons.

- **Low-income Californians are still most likely to be uninsured.** Californians with family incomes under \$25,000 experienced the largest drop in the likelihood of being uninsured from 2013 to 2015. Still, about 1 in 6 Californians with incomes under \$25,000 was uninsured compared to about 1 in 26 with incomes of \$75,000 or more.<sup>ii</sup>
- **Uninsured people have poorer health status and no usual source of care.** According to a 2015 survey, uninsured Californians were more likely to report that their general health was fair or poor, compared to residents with insurance. More than 4 in 10 Californians without health insurance reported they had no usual source of care.<sup>iii</sup>
- **Affordability is a key reason for remaining uninsured.** Among uninsured Californians, lack of affordability was cited by one in three uninsured as the main reason for going without insurance.<sup>iv</sup>

### **Insured Californians Still Face Affordability Concerns**

Consumers with employer-based coverage and new coverage options through Covered California still face affordability issues, particularly if they are enrolled in plans with expensive out-of-pocket costs, such as high deductibles and cost-sharing.<sup>v</sup> In addition, those who receive employer-based coverage are facing reduced coverage or increased cost sharing, which has major implications for

household budgets. Therefore, consumers with coverage still need the financial assistance provided by hospital charity care programs. For example:

- **Premiums continue to far outpace inflation.** Since 2002, health insurance premiums have increased by 234%, compared to a 40% increase in the overall inflation rate.<sup>vi</sup>
- **More Californians with employer-based coverage have high deductible plans.** Large deductible (\$1000+) plans have become more common. The number of California workers with large deductible plans increased from 6% in 2006 to 25% in 2016. 23% of workers in single PPO coverage plans with a deductible faced deductibles of \$1,000 or more, while 66% faced with an aggregate family deductible had deductibles of \$2,000 or more.<sup>vii</sup> Finally, the number of small firms offering large deductible plans increased from 27% in 2010 to 41% in 2016.<sup>viii</sup>
- **Annual out-of-pocket limits have increased.** Although a large majority (96%) of workers had an out-of-pocket limit, for 37% of workers that limit was \$3,000 or more.<sup>ix</sup>
- **Employers likely to increase costs for workers.** Twenty-seven percent of California employers reported being very likely or somewhat likely to increase the amount that workers pay for premiums in the next year. Seventeen percent stated that they are very likely or somewhat likely to increase employees' deductibles and what employees pay for prescriptions.<sup>x</sup>
- **The Hospital Fair Pricing Act was amended in 2014 to account for the implementation of the ACA.** SB 1276 modified the definition of “patients with high medical costs” so that Californians with deductibles and out-of-pocket costs that exceeded 10% of their income would be eligible for discounted care.<sup>xi</sup> Previously, only those underinsured with insurance that offered no discount on services (also known as “junk insurance”) were included. SB 1276’s amendments require hospitals to offer discounts to the increasing number of consumers with high deductible health plans such as Bronze ACA plans.

### **Charity care programs continue to be a needed and valued part of the safety net.**

Charity care continues to play a critical role in the health care safety net, both for those who do not have coverage and those who have coverage that is unaffordable to them. The post-ACA landscape requires hospital charity care programs to evolve and adapt to meet the changing needs of the health care safety net. As outlined above, significant need for financial assistance persists, and should be addressed through charity care programs. For example, charity care programs can continue to serve the uninsured in their communities, fill coverage gaps for the “churn” population (those who will continue to move in and out of eligibility for Medi-Cal or Covered California premium subsidies), or provide complementary services to those newly covered by Medi-Cal or Covered California.<sup>xii</sup> In addition, hospitals can leverage the reductions in uncompensated care to offer more generous financial assistance to a broader range of patients, including those who have health plans but still struggle to pay medical bills.<sup>xiii</sup> Finally, hospitals can partner with local clinics to increase access to specialty care for clinics’ Medi-Cal and uninsured patients. For example, in Contra Costa County, three local hospitals have matched county dollars to fund Contra Costa CARES, a coverage-like program where (mostly undocumented) uninsured patients are provided a medical home at local clinics.<sup>xiv</sup>

In addition to providing health care services for those who cannot afford them, nonprofit hospitals must continue working with their communities to support and create programs that improve the

overall health of their communities by addressing health disparities that impact rural communities, communities of color, low-income communities, and other underserved populations such as LGBTQ populations. Research shows that the social determinants of health, including low education, racial segregation, low social supports, income inequality, and area-level poverty negatively impact the health and well-being of the populations that constitute the majority of California.<sup>xv</sup>

Given the uncertain and changing federal landscape we are facing and the ongoing need for affordable health care, we do not believe it is prudent to reduce charity care obligations on the basis that the number of uninsured people have dropped due to the ACA. For these reasons, we respectfully request you to deny all requests to modify and reduce charity care obligations.

Sincerely,

Asian Americans Advancing Justice –Los Angeles  
California Immigrant Policy Center  
California Labor Federation  
California Pan-Ethnic Health Network  
California Partnership  
California Rural Legal Assistance Foundation  
Coalition for Humane Immigrant Rights  
Consumers Union  
Greenlining Institute  
El Centro Binacional para el Desarrollo Indígena Oaxaqueño/Binational Center for the  
Development of Oaxacan Indigenous Communities  
El Quinto Sol de America  
Health Access California  
Mi Familia Vota  
Mixteco/Indígena Community Organizing Project  
National Health Law Program  
NextGen America  
PALS for Health  
SEIU California  
United Nurses Associations of California/Union of Health Care Professionals  
Western Center on Law and Poverty

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<sup>i</sup> <http://www.chcf.org/publications/2017/11/californias-uninsured>

<sup>ii</sup> Id.

<sup>iii</sup> Id.

<sup>iv</sup> Id.

<sup>v</sup> New York Times, *Unable to Meet the Deductible or the Doctor*, October 17, 2014. Available at: <http://www.nytimes.com/2014/10/18/us/unable-to-meet-the-deductible-or-the-doctor.html>

<sup>vi</sup> California Healthcare Foundation, *California Employer Health Benefits: California Employer Health Benefits: Prices Up, Coverage Down*, March 2017. Available at: <http://www.chcf.org/publications/2017/03/employer-health-benefits>

<sup>vii</sup> Id.

<sup>viii</sup> Id.

<sup>ix</sup> Id.

<sup>x</sup> Id.

<sup>xi</sup> Health & Safety Code §127400(g). See SB 1276 (Hernandez) available at [http://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201320140SB1276](http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201320140SB1276). Note also the Senate Health and Assembly Health analyses available on the same page acknowledging the changing health coverage landscape due to the ACA as a reason for changing the definition of who is underinsured.

<sup>xii</sup> Center for Health Care Strategies, *Impact of the Affordable Care Act on Charity Care Programs*, September 2013. Available at: [http://www.chcs.org/media/Charity\\_Care\\_Brief\\_090413\\_FINAL.pdf](http://www.chcs.org/media/Charity_Care_Brief_090413_FINAL.pdf)

<sup>xiii</sup> For example, in California, Kaiser Permanente is offering free hospital care for individuals with incomes up to 350 percent of the federal poverty guidelines, which converts to annual income of \$84,875 for a family of four in 2015. See: [http://share.kaiserpermanente.org/wp-content/uploads/2013/10/NCAL-Medical-Financial-AssistancePolicy-Final-9\\_1\\_14.pdf](http://share.kaiserpermanente.org/wp-content/uploads/2013/10/NCAL-Medical-Financial-AssistancePolicy-Final-9_1_14.pdf); and [http://share.kaiserpermanente.org/wp-content/uploads/2013/12/scal\\_MFA-Policy-10-31-14.pdf](http://share.kaiserpermanente.org/wp-content/uploads/2013/12/scal_MFA-Policy-10-31-14.pdf)

<sup>xiv</sup> See Health Access California, *Profiles of Progress: California Counties Taking Steps to a More Inclusive and Smarter Safety-Net*, May 31, 2016. Available at: [http://www.health-access.org/images/pdfs/2016\\_Health\\_Access\\_Profiles\\_of\\_Progress\\_County\\_Report\\_5\\_31\\_16.pdf](http://www.health-access.org/images/pdfs/2016_Health_Access_Profiles_of_Progress_County_Report_5_31_16.pdf)

<sup>xv</sup> Office of Health Equity, California Department of Public Health, *PORTRAIT OF PROMISE: The California Statewide Plan to Promote Health and Mental Health Equity*, Report to the Legislature and the People of California, August 2015. Available at: [https://www.cdph.ca.gov/programs/Documents/CDPH\\_OHE\\_Disparity\\_Report\\_Final\\_Jun17\\_LowRes.pdf](https://www.cdph.ca.gov/programs/Documents/CDPH_OHE_Disparity_Report_Final_Jun17_LowRes.pdf)