



February 8, 2018

The Honorable Xavier Becerra  
Attorney General, State of California  
1300 I Street  
Sacramento, CA 95814

Via Email to: [Tania.Ibanez@doj.ca.gov](mailto:Tania.Ibanez@doj.ca.gov) and [Melanie.Rainer@doj.ca.gov](mailto:Melanie.Rainer@doj.ca.gov)

### Re: Hospital Requests to Decrease Charity Care Obligations

Dear Attorney General Becerra:

The undersigned labor and consumer advocacy organizations recently met with your staff to discuss requests by various hospitals to decrease the level of charity care they are required to provide to patients pursuant to conditions imposed by former attorneys general when their nonprofit hospital transactions were approved. We remain firmly opposed to the hospitals' requests and ask your office to reject them. In addition, we do not believe your consultants' suggested alternative proposal, which would calculate ongoing charity care levels based on a three-year rolling average, addresses the concerns we have raised regarding this matter.

These same hospitals unsuccessfully made similar requests in 2016. Once again, they have failed to demonstrate that there has been a change in circumstances that could not have reasonably been foreseen at the time the AG imposed the conditions that necessitate a reduction in their charity care obligations, the sole legal basis for any amendment in the terms and conditions of any agreement or transaction for which the AG has given consent or conditional consent. 11 CCR § 999.5(h)(1). The AG gave conditional consent to all of the transactions in question after the Affordable Care Act (ACA) was signed into law in March 2010. The entire purpose of the ACA is to provide more people with health coverage. Therefore, the hospitals' suggestion that the subsequent reduction in the uninsured rate could not have reasonably been foreseen is absurd.

In addition to failing to provide a legally cognizable reason for revisiting the conditions imposed by the AG, the requesting hospitals have not demonstrated that there is a lack of need for charity care in surrounding communities or that they have complied with existing law and the AG's conditions. These hospitals simply argue that they cannot meet the charity care levels required by the AG's conditional consent due to higher insurance levels.

Should your office consider lowering these hospitals' charity care obligations, we request your office investigate each hospital for compliance with existing charity care laws, transaction conditions, and review the needs of the surrounding communities, and the financial condition of the hospital to ensure adequate compliance with existing laws and requirements.

Furthermore, if your office is considering new criteria for how to calculate charity care levels, the undersigned organizations request a public meeting with stakeholders to discuss any proposed policy change that would be used by the AG's office moving forward.

With respect to the concept put forward by the AG's consultants<sup>1</sup> of basing required charity care levels on a rolling three-year average, the undersigned organizations strongly oppose that proposal as we believe it would reward bad actors who provide the least amount of charity care, regardless of need in the surrounding communities or ability to comply, based on the hospital's financial condition. This subjective standard allows the hospital to determine its own preferred level of charity care, and potentially ratchet down its investment in charity care, rather than demonstrate compliance based on actual needs.

For example, in Turlock, where one of the requesting hospitals is located, the rate of county residents covered by Medi-Cal is high, 44.5%, compared with the statewide average. While this figure indicates good news for the newly insured, it also shows high levels of poverty and, by extension, need in the surrounding communities. Furthermore, this particular hospital recorded net profits of \$216 million in 2016, according to OSHPD financial data.

The number of newly insured under the ACA does not accurately reflect the ongoing need for charity care, particularly given the fact that millions of Californians remain uninsured or underinsured, as we described in our December 18, 2017 letter to your office. Furthermore, charity care need not be limited to patients coming to the hospital through the emergency department. Many uninsured and underinsured patients lack access to specialists or cannot afford preplanned treatment available in hospital inpatient and outpatient facilities. It is for the aforementioned reasons that we request your office reject requests to reduce required charity care levels.

We appreciate your office's willingness to engage consumer advocates and community stakeholders in this important process of ensuring the charitable assets of hospitals are held in the public's trust, and your thoughtful consideration of our concerns and suggestions. Please do not hesitate to contact us via Tam Ma, Health Access California, at (916) 497-0923 x. 808 or [tma@health-access.org](mailto:tma@health-access.org).

Sincerely,

Doreena Wong, Asian Americans Advancing Justice-Los Angeles

Betzabel Estudillo, California Immigrant Policy Center

Sara Flocks, California Labor Federation

Cary Sanders, California Pan-Ethnic Health Network

Betsy Imholz, Consumers Union

Tam Ma, Health Access California

Kim Lewis, National Health Law Program

Elena Santamaria, NextGen America

Michelle Cabrera, SEIU California

Eric Robles, United Nurses Associations of California/Union of Health Care Professionals

Jen Flory, Western Center on Law and Poverty

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<sup>1</sup> JD Healthcare. Mission Community Hospital's Request for Amendment of Condition XI. November 22, 2017 and JD Healthcare. Emanuel Medical Center's Request for Amendment of Condition VII. February 1, 2018.