

July 21, 2016

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, the Hospital respectfully requests that the AG reduce its required charity care obligation by seventy-five percent (75%) for the Hospital's FY 2015 Report and thereafter.

III. Change in Circumstances

Although the instruments of change¹ 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:

- 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

¹ *Patient Protection and Affordable Care Act* (Pub. L. 111-148 (2010)); *Health Care and Education Reconciliation Act* (Pub. L. 111-152) (2010) (the “ACA”).

fact that it also seeks to expand accessibility to the 50 million who are currently uninsured.

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%.

In California, the uninsured rate dropped between 2013 and 2014 from 21.6% to 15.3%. Included within this statistic is the estimated 3,013,138 Californians who gained Medicaid (Medi-Cal) or CHIP coverage since the first open enrollment period of the health insurance exchanges.

In a report issued by Kaiser Family Foundation, between 2013 and 2014, for states with Medicaid Expansion, indigent inpatient stays decreased by 40%. These same states typically saw a 16.3% increase in Medicaid inpatient discharges.

A separate request filed by Saint Agnes Medical Center to the AG compared Medi-Cal inpatient discharges and outpatient visits with indigent inpatient discharges and outpatient visits at four separate hospitals in California between 2013 and 2015. The four hospitals averaged 28% *additional* Medi-Cal inpatient discharges. The same four hospitals averaged an 89% *decrease* in indigent inpatient discharges.

The Hospital had similar results. Between 2013 and 2015, the Hospital experienced a 79% reduction in indigent inpatient discharges and a 23% increase in Medi-Cal inpatient discharges. The Hospital also saw between 2013 and 2015 a 65% increase in private insurance patients.

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*

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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, and the reasons for the originally imposed Section XI remain valid. What has changed, however, is the number of patients for whom the Hospital can provide this charity care, and this modification remains outside of the Hospital's control. Health care reform is alive and well in California, especially six 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.

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,



Craig B. Garner