

July 11, 2017

Karen Nidermayer
Department of Health Certificate of Need Program
Mail Stop 47852
Olympia, WA 98504-7852
Sent via email to: karen.nidermayer@doh.wa.gov

Re: Comments on Regional Health's Certificate of Need Applications for Acquiring Yakima Regional and Toppenish Hospitals

Dear Ms. Nidermayer:

Northwest Health Law Advocates and OneAmerica are organizations that support and advocate for access to health care for low-income Washington residents. Having reviewed the Certificate of Need applications of Regional Health, we write to urge DOH to adopt more robust Certificate of Need conditions regarding access to charity care for patients at Yakima Regional and Toppenish Hospitals, in light of a history of ongoing problems.

OneAmerica members in the Yakima Valley include low-income workers, largely in the Latino community. We've encountered many examples of individuals who defer hospital treatment out of concerns over costs, and we've encountered individuals who have been negatively impacted by the use of collections, often in pursuit of relatively low hospital bills, that can disrupt the lives of community residents living from paycheck to paycheck. Also concerning are reports about lack of access to translated materials or interpretation that may lead individuals to make uninformed decisions about their treatment, or examples when individuals were not aware of charity care.

Regional Health states in its Certificate of Need applications that it intends to adopt the charity care policies currently in place at both Yakima Regional and Toppenish hospitals.¹ While these policies as written comply with the charity care law, this is not enough to ensure a strong, ongoing commitment to charity care. Both Yakima Regional and Toppenish hospital have a history of systematic failures in implementing charity care under previous owners, culminating in a class action lawsuit that was recently settled to provide relief to patients who were harmed by the hospitals' practices. For example, patients who should have been determined eligible for no-cost care under the charity care law were never evaluated for eligibility, and many were improperly billed for the cost of care, including demands for payment and even pre-hospitalization deposits without any prior evaluation of charity care eligibility. These concerns

¹ Certificate of Need application of SHC Medical Center – Toppenish, pg. 14; Certificate of Need application of SHC Medical Center – Yakima, pg. 14

are summarized in our report, Yakima Regional and Toppenish Hospitals Fail to Provide Sufficient Charity Care.²

DOH Should Evaluate Implementation of Prior Certificate of Need

Before evaluating the current Certificate of Need application, the Department of Health must evaluate whether the seller has met its past commitment to implement the conditions of the Certificate of Need currently in place. Were the 2014 charity care obligations under the CN met? If not – and it appears from DOH data that the hospitals’ recent levels of charity care fall well below the regional average³ - then the Department should calculate the dollar value of the deficiency and should capture this amount from the sale price. These funds should be subtracted from the sale proceeds going to the seller, and should be used to compensate the community for the lack of charity care provided. The funds should go to a local community organization concerned with the health of low-income residents in the region. Only after this is done should the current CN be considered.

DOH Should Include Conditions in Proposed Certificate of Need

In reviewing the current CN, DOH must consider the hospitals’ past and ongoing noncompliance with both the state charity care law and DOH’s previous Certificate of Need requirements. We ask DOH to require that Regional Health put in place a formal system to remedy its procedures through safeguards that ensure that charity care is provided to all who are eligible. We recommend that the following conditions be included in both Certificate of Need determinations:

- Maintain the charity care conditions in the 2014 Certificate of Need. The 2014 conditions should be continuing requirements imposed on the new owners. Thus, in addition to requiring the purchaser to have DOH-approved charity care policies and to use reasonable efforts to provide charity care at a level equal to or exceeding the regional average, the Certificate of Need should require the purchaser to maintain records documenting the amount of charity care it provides, to demonstrate its compliance with its charity care policies, and to submit annual budgets that include budgeted charity care amounts of at least the regional average amount of charity care.
- Regional Health should establish regular, direct meetings with community institutions and community members to discuss how to improve and enhance the charity care

² <http://nohla.org/wordpress/wp-content/uploads/2016/08/Yakima-Toppenish-Hospitals-Charity-Care-Report-August-2016-1.pdf>

³ Yakima Regional reported its 2014 charity care at .68% of total revenue compared to the regional average of 1.48%; for 2015, Yakima Regional reported .24% of total revenue compared to the regional average of 0.86%. In both cases, this is less than half of the regional average. Toppenish’s rates were 1.47% in 2014 and .56% in 2015, also below the regional averages.

policies and practices at both Yakima Regional and Toppenish Hospital so they are truly helpful to the hospital's low-income patients.

- A neutral, unbiased individual should be selected by Regional Health from a list provided by the DOH and the Yakima Valley Community Foundation to closely track Yakima Regional and Toppenish hospitals' compliance with the regional average requirement, identify barriers to access to charity care, and propose ways to address these barriers. The monitor should be required to periodically review and report on the charity care data to the DOH and the public. The monitor should create procedures that notify patients of the availability of the charity care at every stage in the process in order to increase patient awareness of potential charity care eligibility and benefits.
- The hospitals should be required to designate an ombudsperson to resolve any issues that patients encounter regarding charity care, coverage of benefits, billing and payment. The ombudsperson's contact information should be placed on every bill and the person should be easily accessible. For those who are limited English proficient, this information should include taglines on how to obtain assistance in one's preferred language.
- Regional Health should revise both Yakima Regional and Toppenish hospitals' policies regarding charity care and collections. Regional Health should create an internal system of review before referring a case to collection. Such a system would allow the hospitals to identify and troubleshoot existing problems and provide helpful information to develop more effective policies and procedures.

Maintaining the Regional Average Level of Charity Care over Time

Regional Health has committed to maintaining charity care levels at Yakima Regional and Toppenish hospitals consistent with the 2015 Central Washington regional average of 0.86% of Total Revenue.⁴ That year's regional average is significantly lower than the 2011-14 regional averages.⁵ The drop in regional average between 2013 and 2015 reflects the impact of expanded coverage availability due to the Medicaid expansion and the establishment of the Health Benefit Exchange, and may also reflect post-recession economic improvements. However, these factors are subject to change. Regional Health should not be allowed to freeze the 0.86% charity care rate in place in the event that the community's need for charity care increases. With the current uncertainty regarding changes to federal health care programs and economic conditions, it is possible that there could be increases in the regional average in

⁴ Certificate of Need application of SHC Medical Center – Toppenish, pg. 16; Certificate of Need application of SHC Medical Center – Yakima, pg. 16

⁵ Washington State Dep't of Health Annual Charity Care Reports 2011-2014, *available at* <http://www.doh.wa.gov/DataandStatisticalReports/HealthcareinWashington/HospitalandPatientData/HospitalPatientInformationandCharityCare/CharityCareinWashingtonHospitals>

future years. At a minimum, Regional Health should be required to meet or exceed the regional average each year.

While Regional Health claims that RH Sunnyside has an excellent charity care record, it appears that Sunnyside Community Hospital's charity care average for 2015 was below the regional average. Regional Health relies on a three-year average for charity care provided at RH Sunnyside for the time period of 2013-2015 in its Certificate of Need applications. Charity care averages were much higher for all hospitals in 2013 and 2014 compared with 2015 due to the impact of the 2014 Medicaid expansion on the percentage of uninsured low-income people. Thus, post-expansion charity care data (2014-16) is more relevant to establishing a history of charity care to support Regional Health's current Certificate of Need applications. Sunnyside Community Hospital has not submitted its year-end report for 2016, and only recently submitted its charity care data for 2014 and 2015. This information is essential for assessing Regional Health's commitment to charity care at Yakima Regional and Toppenish hospitals and should be reviewed by DOH. Both Yakima Regional and Toppenish have an established history of failure to implement charity care. In order to meet the needs of the community, the new owner of both of these hospitals must be prepared to consistently implement effective charity care policies.

Right of First Refusal

The hospitals' communities have a stake in the fate of their hospitals. An important safeguard for the community when a sale is proposed is the ability of the Yakima Valley Community Foundation to have a right of first refusal. The Certificate of Need should state that the Foundation continues to have the right of first refusal.

We look forward to DOH's careful review and strong commitment to charity care as it evaluates these applications. Thank you for your consideration of our comments.

Sincerely,

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