YAKIMA REGIONAL AND TOPPENISH HOSPITALS FAIL TO PROVIDE SUFFICIENT CHARITY CARE

A Report and Recommendations by Northwest Health Law Advocates and OneAmerica

INTRODUCTION

A new study reveals that Yakima Regional and Toppenish hospitals have provided low levels of charity care to low-income patients compared to other hospitals in the region, despite a state requirement to increase levels to the regional average. This report summarizes the study findings and recommends that safeguards be put in place to ensure enforcement of the hospitals' charity care obligations.

STATE LAW CHARITY CARE REQUIREMENTS AND THE YAKIMA/TOPPENISH HOSPITAL SALES

Under Washington law, hospitals are required to provide financial assistance, known as "charity care" to indigent patients. The law requires that hospitals provide care at no cost to patients with household incomes below 100% of the federal poverty guidelines (FPG), and at reduced cost on a sliding scale to patients with incomes below 200% FPG.[1] The hospital's compliance with its charity care policy is monitored by the Department of Health (DOH).[2]

In 2003, when Health Management Associates, Inc., a for-profit hospital chain purchased two nonprofit hospitals, the continued provision of charity care was raised as a concern. The two nonprofits, Yakima Regional Medical and Cardiac Center ("Yakima Regional") and Toppenish Community Hospital ("Toppenish"), underwent a "conversion" process to for-profit status under HMA. The conversion of a nonprofit hospital to a for-profit hospital is a complex transaction that is governed by state law.[3] While the benefit of such acquisitions in a free market are recognized, the law also requires state officials to consider the risk of limiting

[1] RCW 70.170.060; WAC 246-453-050. Hospitals are also prohibited from denying access to emergency care based on inability to pay or adopting admission policies that significantly reduce charity care. RCW 70.170.060.
[2] http://www.doh.wa.gov/DataandStatisticalReports/HealthcareinWashington/HospitalandPatientData/HospitalPatientInformationandCharityCare/CharityCareinWashingtonHospitals
[3] RCW 70.45; WAC Chapter 246-312.

health care access to vulnerable populations within the community. Under Washington law, a conversion may only be approved if it "will not detrimentally affect the continued existence of accessible, affordable health care that is responsive to the needs of the community in which the hospital to be acquired is located."[4] In the approval process, he state must determine that "sufficient safeguards . . . to assure the affected community continued access to affordable care" and that "the acquiring person and parties to the acquisition are committed to providing health care to the disadvantaged, the uninsured, and the underinsured and to providing benefits to promote improved health in the affected community."[5]

When a conversion is proposed, the purchaser must submit a Certificate of Need (CON) application to the state.[6] In the 2003 HMA acquisition, the state Department of Health (DOH) issued CONs for both hospitals, but approval was conditioned on the following requirements, among other the hospitals must provide charity care in compliance with the charity care policies outlined in the Certificate of Need application and approved by DOH; and the hospitals must use reasonable efforts to provide charity care at a level equal to the average in the Central Washington region.[7]

In 2014, the two hospitals were sold again, this time to Community Health Systems (CHS). CONs are also required whenever a hospital sale occurs.[8] The 2014 CONs for both hospitals again included the requirement of having DOH-approved charity care policies, and the requirement that they use reasonable efforts to provide charity care at a level equal to or exceeding the regional average.[9] In addition to the above conditions, CHS was required to maintain records documenting the amount of charity care it provides and demonstrating its compliance with its charity care policies. Annual budgets must include budgeted charity care amounts of at least the regional average amount of charity care. In addition, CHS was required to document to DOH the final outcome of the class action lawsuit described below, related to the amount of charity care provided at the two hospitals.[10]

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[4] RCW 70.45.080.
[5] *Id.*
[6] *Id.*
[7] Evaluation of Certificate of Need for purchase of Providence Yakima Regional Center proposed by HMA, pg. 3, 2003. See Declaration of Eleanor Hamburger, Exh. B, in Lopez v. Health Management Associates Inc., Sup. Ct. of WA (October 21. 2013).
[8] RCW 70.38.105
[9] Evaluation of Certificate of Need proposed by CHS for purchase of Yakima Regional Medical and Cardiac Center, pg.2, January 9, 2014 (available at http://www.doh.wa.gov/portals/1/documents/2300/2014/14-13evalcoverletter.pdf; Evaluation of Certificate of Need for Toppenish Community Hospital, pg.2, January 9, 2014. (available at http://www.doh.wa.gov/Portals/1/Documents/2300/2014/14-12EvalCoverLetter.pdf).
[10] *Id.*

DID YAKIMA REGIONAL AND TOPPENISH HOSPITALS MEET THEIR CHARITY CARE OBLIGATIONS AFTER THE 2003 CONVERSION?

A recent study found that HMA did not comply with the charity care "regional average" requirements. A pending class action lawsuit against HMA has provided an opportunity for an expert to review detailed information about how much charity care the two hospitals actually provided over a seven-year period. The suit was filed by former patients at the two hospitals who claim that they qualified for charity care assistance and did not receive it. The plaintiffs allege that HMA did not offer them charity care, implemented policies to decrease their access to charity care, and engaged in practices to discourage uninsured patients from seeking medical assistance from their facilities. For example:

- One plaintiff, a cook making minimum wage, needed emergency surgery and was in a coma for four days. After she awoke from her coma, a hospital representative came to talk to her about her medical expenses and demanded payment. She alleges that even though she qualified for charity care, she was never informed of charity care or given an application and was subsequently pursued for close to $100,000 in medical expenses.
- Another plaintiff needed to schedule surgery, but was told she must first give a $5,000 deposit. She informed the scheduler that she had limited means and thought that she could put down $500. The scheduler spoke to a supervisor and dropped the deposit amount to a $1,000. She had to borrow money from family and others to pay the deposit. She was never informed or given an application for charity care. If she had applied, she would have likely qualified for 100% free care.

As part of the case, a study was conducted by an independent expert, Dr. Frank Fox, to assess the levels of charity care that the two hospitals actually provided over the period November 2007-August 2014.[11] Dr. Fox holds a Ph.D. in economics and has extensive experience in health economics. The study estimated the hospitals' actual charity care levels as compared to the regional average, and also looked at their gross revenues during that period. The study revealed that both hospitals provided a significantly lower level of charity care than that required by the Certificates of Need.

To estimate actual charity care levels, Dr. Fox reviewed hospital charges and amounts paid by uninsured individuals with incomes below 100% FPG. His conclusions based on data for the seven-year period were the following:

- Very low-income individuals paid an estimated $2.4 million for services at Yakima Regional and an estimated $762,000 at Toppenish.

[11] Fox, Frank. Lopez v. HMA: Estimating Models to Assess Damages. May 30, 2016, filed as Exhibit A to Declaration of Eleanor Hamburger (June 17, 2016), *Lopez v. Health Management Associates Inc.*, Sup. Ct. of WA (No. 13-2-03580-3 (Filed May 31, 2016).

- Yakima Regional provided $33.5 million less in charity care than the Central Washington regional average – an average of $4.2 million less per year. This was significantly less than hospitals in the region as a whole, as a percentage of gross revenues.
- Toppenish never provided as high a charity percentage as the region, but the difference is not as striking as at Yakima Regional. Toppenish provided $5.54 million less in charity care than the Central Washington regional average – an average of $692,000 less per year.

Dr. Fox also simulated the effect on the hospitals' gross revenues if they had provided charity care at the level equal to the regional average. He concluded that over the seven-year period:

- Yakima Regional was consistently the most profitable hospital in the region. In 2011 alone, its operating margin was over twice the state average.[12]
- If Yakima Regional had provided charity care at the level of the regional average, it still would have performed better financially than other hospitals in the state over the majority of the study period. The hospital would still have exceeded the state average for all but 2011, 2013 and 2014.
- Toppenish had some years of profitability and some years of operating losses during this period. Toppenish has performed better than the state average in terms of its percent operating margin for the years 2007-2009; since then it has performed worse.

RECOMMENDATIONS TO ASSURE CHARITY CARE COMPLIANCE IN THE FUTURE

The Fox study's findings clearly indicate that HMA's charity care levels during the study period were substantially below the regional average, especially at Yakima Regional, the much larger of the two hospitals. Plaintiffs in the *Lopez* lawsuit described the impact on plaintiffs – restrictions on access to health care and financial hardships. The actions of HMA also placed additional burdens on neighboring hospitals.[13]

Now, CHS has announced its intent to sell the two hospitals yet again, to an undisclosed buyer. This is a critical point to ensure enforcement and put safeguards in place to protect the charity care rights of low-income individuals in Yakima Valley. In light of the hospitals' serious noncompliance with the Certificate of Need requirements over an extended period, a formal system is needed to remedy the situation and ensure charity care is provided at or above the regional average.

[12] Dr. Fox further explained: "These findings are important since operating margin percentage is a useful measure of financial performance. In comparison to the state as-a-whole, YR has been financially profitable."
[13] See Class's Mot. For Part. Sum. J., *Lopez v. Health Management Associates Inc.*, Sup. Ct. of WA (No. 13-2-03580-3 (Filed May 31, 2016).

NoHLA and OneAmerica recommend that the Department of Health require the following measures as conditions of sale and before any transaction is finalized:

- **MAINTAIN ALL EXISTING CHARITY CARE CONDITIONS IN THE 2014 CERTIFICATE OF NEED EVALUATION.** The 2014 conditions should be continuing requirements imposed on the new owners. But these are only a starting point. We strongly recommend that the hospitals' new owners engage in an ongoing dialogue with the community about improving charity care. They should establish regular, direct meetings with community institutions and community members to discuss how to improve and enhance their charity care policies and practices so they are truly helpful to the hospital's patients.

- **APPOINT AN INDEPENDENT MONITOR FOR CHARITY CARE COMPLIANCE.** A neutral, unbiased individual should be selected by the buyer from a list provided by DOH and the Yakima Valley Community Foundation to closely track compliance with the regional average requirement, identify barriers to access to charity care, and propose ways to address them. The monitor should be required to periodically review and report on the charity care data to the Department of Health and the public. Moreover, to ensure that patients are made aware of the availability of charity care, the monitor should create procedures that notify patients of the availability of charity care at every stage in the process in order to increase patient awareness of potential charity care eligibility and benefits.[14]

- **REQUIRE THAT THE HOSPITALS DESIGNATE AN OMBUDSPERSON.** An ombudsperson on the hospitals' staff should be available 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. An ombudsperson designated to assist the patient population would likely result in faster resolution of issues and help avoid litigation.

- **REVIEW AND REVISE HOSPITAL CHARITY CARE AND COLLECTIONS POLICIES AND PROCEDURES.** To address the financial hardships imposed upon patients who cannot afford to pay for care, the hospitals should review their policies and procedures for charity care and collections. They should make all changes necessary to ensure that they fully comply with federal and state law. An internal

[14] The Washington State Hospital Association has developed model application and communications procedures that could assist in this task.

system of review before referring a case to collection would allow hospitals to identify and troubleshoot existing problems. This system could provide helpful information to develop more effective policies and procedures. A community board should be designated to review and oversee the adoption of these changes.

CONCLUSION

Our state, and the hospital owners, must ensure that charity care laws and policies fully protect and assist all low-income individuals. In a time of increasing medical costs, growing income disparities, and rising rates of homelessness, charity care is needed more than ever. No Washington resident should have to suffer financially, emotionally, or medically from an improper denial of charity care. Strong enforcement is needed to keep the hospitals accountable, and the new buyers should engage with the community to strengthen existing policies.

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