



July 6, 2016

The Honorable Kamala D. Harris
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California Department of Justice
1300 I Street
Sacramento, CA 95814

Wendy Horwitz
Deputy Attorney General
California Department of Justice
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Nancy Hollingsworth
President and CEO
Saint Agnes Medical Center
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RE: Saint Agnes Medical Center’s Request for Modification of Condition VII

Dear Attorney General Harris, Deputy Attorney General Horwitz, and Ms. Hollingsworth:

On behalf of The Greenlining Institute (Greenlining), Fresno Building Healthy Communities (Fresno BHC), California Rural Legal Assistance Foundation (CRLAF), and the Fresno Center for New Americans (FCNA), we express our opposition to Saint Agnes Medical Center’s (SAMC) Request for Modification of Condition VII, which would reduce SAMC’s charity care spending obligation.¹ Despite decreasing charity care spending among not-for-profit hospitals across the state,² we are concerned with accessibility of charity care programs and the lack of investments

¹ Vizient, Inc. (June 2016). “Saint Agnes Medical Center’s Request for Modification of Condition VII.” *Vizient, Inc.*

² Office of Statewide Health Planning and Development. “2010-2014 Summary Trends – Hospital Quarterly Financial and Utilization Data.”

being directed towards upstream,³ preventive health measures – for example, housing, environmental conditions, education, employment opportunities, etc. – that target the root causes of health disparities. As an anchor institution, SAMC has a moral and legal obligation to promote disease prevention and community health through its community benefit program; however, through our research and analysis, we have found significant gaps in their transparency. We strongly urge the California Department of Justice and SAMC to enact and enforce strict accountability measures to ensure proper reporting, remove artificial barriers to care, and direct significant investments towards upstream, preventive health interventions for underserved communities.

Greenlining is a statewide, multi-ethnic policy organization committed to racial and economic justice. We strive to build a state and nation where race and income are no longer barriers to economic opportunity or good health. We advocate on a host of issues, including banking and financial services, environmental equity, voting rights, energy, telecommunications, and health.

Fresno BHC is a coalition of residents, young people, faith and community-based organizations working together to foster thriving communities where all children and families can live healthy, safe, and productive lives. We work together with residents from central, southeast, and southwest Fresno to address critical issues in order to create one healthy Fresno for all.

CRLAF is a statewide not-for-profit organization providing legal services and policy advocacy for California's most marginalized communities: the unrepresented, the unorganized and the undocumented. We engage in impact litigation, community education and outreach, legislative and administrative advocacy, and public policy leadership on the state and local levels in the areas of labor, housing, education, health, worker safety, pesticides, citizenship, immigration, and environmental justice.

Established in 1991 as a not-for-profit organization, FCNA provides integral services that equip new Americans with skills and tools to become contributing members of their community. FCNA advocates on issues of health, education, employment services, safety, research, and civic participation. FCNA strives to promote leadership development, personal empowerment; health education, and a safe and active lifestyle. FCNA's core values and beliefs are to respect human dignity by promoting equality and diversity in all cultures.

Our organizations have worked together to monitor the community benefit investments of not-for-profit hospitals across the San Joaquin Valley. Together, we have convened several community forums to raise awareness about the importance of charity care and community benefits in improving health outcomes, targeting racial health disparities, and promoting equitable community development.⁴ We strongly believe that community benefit represents a vital opportunity to address health disparities, particularly in disadvantaged regions across the San Joaquin Valley.

³ The World Health Organization has defined upstream factors as “*the conditions in which people are born, grow, live, work, and age. These circumstances are shaped by the distribution of money, power, and resources.*” Retrieved from http://www.who.int/social_determinants/sdh_definition/en/

⁴ Retrieved from: <http://greenlining.org/blog/2015/3-ways-to-put-the-community-back-into-community-benefit-in-the-central-valley/>

We recently partnered on a report analyzing the community benefit practices of 11 not-for-profit hospitals in the San Joaquin Valley, including SAMC.⁵ Our research yielded several findings that highlighted the inconsistency and lack of transparency, particularly in SAMC's reporting of its community benefit programs, including its charity care spending. As such, we find the request to modify Condition VII particularly troubling, given the lack of publicly available information. Moreover, given the uncertain political future of the Affordable Care Act (ACA), we believe that any immediate changes to existing requirements may jeopardize patients' access to vital resources.

In order to ensure adequate resources and services for patients most in need, SAMC must commit to improving its existing community benefit and charity care practices. Our concerns and recommendations are outlined as follows:

I. SIMPLIFY, STREAMLINE, AND WIDELY PROMOTE CHARITY CARE PROGRAMS TO ENSURE PATIENTS CAN EASILY ACCESS THESE SERVICES

Fresno BHC partners work with residents on a day-to-day basis. We have found that too many residents are unaware about available charity care programs or how to access them. SAMC and other local hospitals must simplify the application process and better promote the availability of services to ensure adequate and appropriate use. We attribute, in part, SAMC's reported decline in charity care spending to lack of awareness.

Moreover, over the last two years, Fresno County eliminated eligibility under the Medically Indigent Services Program (MISP) for undocumented, uninsured low-income Fresnans. The MISP previously allowed residents to access primary, secondary, and emergency care. The Fresno County Department of Public Health issued letters to all MISP recipients informing them of this change, leading many to believe that health care was no longer available to this population. In fact, charity care programs can provide many of the services previously covered under MISP. Charity care programs are instrumental and absolutely necessary to fill in the gaps that were further widened by the elimination of MISP for a huge segment of our population. Hospitals play a pivotal role in our local system of care, and must do their part to ensure all residents have access to medically necessary patient services, including inpatient, outpatient and emergency services.

SAMC should partner with local Federally Qualified Health Centers, the Fresno County Public Health Department, community-based organizations, and residents to simplify and streamline their charity care enrollment process, identify barriers to care, and widely promote their charity care program before any reduction is considered. Furthermore, SAMC should establish a diverse community advisory council, that represents diverse advocacy perspectives, including health, immigration, environmental equity, housing, etc., that meets regularly with the hospital president to discuss issues of equitable access to care, adequate outreach and community engagement, and strategies for improving community partnerships.

II. INCREASE FUNDING FOR COMMUNITY BENEFIT SERVICES FOR UNDERSERVED COMMUNITIES

⁵ Sakimoto, K., Galace, A. (March 2016). "Insufficient Data; Do Central Valley Not-for-Profit Hospitals Meet Their Community Benefit Obligations?". *The Greenlining Institute*.

Per Condition VII of the original consolidation agreement, SAMC is obligated to provide \$6,792,442 in charity care for six fiscal years, increasing by an amount equal to the Annual Percent increase in the Consumer Price Index; by fiscal year 2015, this amount had increased to \$6,979,093.55.⁶ When SAMC submitted its Annual Financial Disclosure Report to the Office of Statewide Health Planning and Development (OSHPD) on February 1, 2016, it indicated that it provided \$4,891,702.00 in charity care – \$2,087,391.55 less than the required amount.

Per Condition VIII of the original consolidation agreement, SAMC is obligated to provide an annual amount of Community Benefit Services equal to or greater than \$2,900,000 for six fiscal years, increasing by an amount equal to the Annual Percent increase in the Consumer Price Index.⁷ In fiscal year 2015, SAMC directed \$3,309,010 to Community Benefit Services, which included \$491,159 in pastoral care expenses.⁸ These services include: The Holy Cross Center for Women, The Holy Cross Clinic at Poverello House, First Source/Health Advocates, and The Adult Sickle Cell Program. SAMC should consider redirecting its charity care savings towards supporting these vital Community Benefit Services.

Moreover, we strongly urge SAMC to direct its charity care savings towards specific Community Benefit Services known as Community Building Activities, which are outlined in the Schedule H, Part II of the Internal Revenue Service (IRS) Form 990. Community Building Activities are investments outside of the hospital that promote community health and prevention. The IRS provides the following examples as Community Building Activities:⁹

- Physical improvements to infrastructure and housing
- Economic development
- Community support
- Environmental improvements
- Leadership development and training for community members
- Coalition building
- Community health improvement advocacy
- Workforce development
- Other

Unfortunately, SAMC only invested \$16,549 in Community Building Activities according to its most recently available IRS Form 990, which covers July 2013-June 2014. This constituted less than **0.00004 percent** of its total expenses during this time period. SAMC must increase its lackluster investments in Community Building Activities, thus improving the social determinants of health. SAMC could have contributed greatly to improving community health had it elected to

⁶ Attorney General Kamala D. Harris. (April 2013). Conditions to Change in Governance of Saint Agnes Medical Center and Approval of Consolidation Agreement among Trinity Health Corporation, Catholic Health east, and CHE Trinity, Inc. *California Department of Justice*.

⁷ Ibid.

⁸ Wolf, Rick. (February 2016). *Request for Modification of Condition VII*. Saint Agnes Medical Center.

⁹ Rosenbaum, Sara et al. (2004). “Encouraging Nonprofit Hospitals to Invest in Community Building: The Role of the IRS ‘Safe Harbors.’” Health Affairs Blog. Retrieved from: <http://healthaffairs.org/blog/2014/02/11/encouraging-nonprofit-hospitals-to-invest-in-community-building-the-roleof-irs-safe-harbors/>

reinvest the remaining \$2,087,391.55 of unspent charity care dollars towards Community Building Activities. Because not-for-profit hospitals and other tax-exempt entities that provide community benefit services in SAMC's service area (41 zip codes) also exhibited decreasing charity care spending, SAMC had a prime opportunity to redirect these dollars towards upstream, preventive health measures such as Community Building Activities.

We strongly urge the California Department of Justice to require SAMC to maintain the 2015 level of charity care (\$6,979,093.55), and require SAMC to direct remaining unspent dollars towards services noted in Condition VIII, or to Community Building Activities outlined in the Schedule H, Part II of the IRS Form 990. These investments will strengthen SAMC's presence in the underserved communities, and will exhibit a greater commitment to improving the health of vulnerable populations.

III. RELEASE COMMUNITY BENEFIT INFORMATION FROM 2011-2013

Not-for-profit hospitals are required to annually submit a copy of its community benefits implementation plan to OSHPD as mandated by Senate Bill 697 (Torres, 1994). The annual community benefits implementation plan outlines findings from each hospital's community needs assessment, community partners and stakeholders who were consulted for the implementation process, and the community benefit budget, which also outlines charity care spending.

However, from 2011-2013, SAMC did not submit a community benefit implementation plan to OSHPD. The community benefit implementation plan for 2011 does not specify SAMC's community benefit investments; rather, it outlines the entire Trinity Health System community benefit portfolio, of which SAMC is the only hospital in California.

This lack of accountability and blatant disregard for transparency is extremely troubling given the request for modification of Condition VII, because community residents and advocates have not been able to review SAMC's community benefit or charity care spending from 2011-2013. SAMC must not be allowed to modify its conditions unless it discloses this data, commits to releasing future community benefit information, and includes community residents and advocates in the overall assessment and implementation process.

We urge the California Department of Justice to mandate that SAMC disclose its community benefit and charity care investments from 2011-2013 in order to comply with state law under SB 697 and federal law under the ACA. Additionally, SAMC must release its community benefit implementation strategies from 2011-2013 time in order to determine whether it met state and federal community benefit guidelines. Finally, we strongly urge the California Department of Justice to levy a strict penalty against SAMC if future community benefit implementation plans are not made publicly available in a timely manner. Failure to comply should result in a severe fine and potential revocation of SAMC's tax-exempt status.

IV. DELAY CONSIDERATION OF REQUESTS TO MODIFY CONDITIONS UNTIL JULY 1, 2017 IN ORDER TO DETERMINE THE FUTURE OF THE AFFORDABLE CARE ACT AND ITS EFFECT ON CALIFORNIA

Despite California's leadership for the past six and a half years in implementing the ACA, the future of health care reform remains uncertain. Due to persistent attempts at the federal level to weaken or repeal this law, changes to existing standards could have devastating effects given the possibility of significant changes after the upcoming Presidential election. Partisan rhetoric has consistently called for the repeal and/or divestment from key components of the ACA, including the state-based insurance marketplace (Covered California) and Medicaid/Medi-Cal expansion. If these proposals were to be enacted, they would be hugely damaging to millions of Californians, especially low-income communities and communities of color.

As the nationwide leader in ACA implementation, California has made significant strides in reducing the uninsured rate, and providing health coverage to millions of vulnerable communities.¹⁰ Modifying requirements at this time would put California's most underserved populations in greater risk of not having the care they need in the future. By reconvening these discussions at a late date, the California Department of Justice and SAMC can have greater clarity and assuredness in knowing that modifications will not adversely affect patients in need.

We strongly urge the California Department of Justice to delay consideration of requests to modify conditions set in the original consolidation agreement until July 1, 2017 in order to determine the future of the ACA, and its effect on California.

We recognize the importance of SAMC as a vital anchor institution. SAMC's role in providing health care, jobs, and community services cannot be understated; however, there are significant shortcomings in SAMC's current practices that raise far too many concerns. At this time, we oppose SAMC's request for modification of Condition VII unless the aforementioned conditions are met. We call on Attorney General Kamala D. Harris and the California Department of Justice to strongly consider the concerns and recommendations outlined above when deliberating on SAMC's request.

If you have any questions or need additional clarification, please contact us at any time.

Sincerely,



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¹⁰ Kafka, S. (2015). U.S. Uninsured Rate at 11.4% in Second Quarter. Gallup. Retrieved from <http://www.gallup.com/poll/184064/uninsured-ratessecond-quarter.aspx>



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