November 30, 2016

The Honorable Kamala D. Harris
Attorney General for the State of California
California Department of Justice
1300 I Street
Sacramento, CA 95814

Wendi A. Horwitz
Deputy Attorney General
California Department of Justice
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Los Angeles, CA 90013

Susan C. Micheletti
Chief Executive Officer
Emanuel Medical Center
825 Delbon Avenue, P.O. Box 819005
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RE: Emanuel Medical Center's Request for Modification of Condition VII – OPPOSE

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

On behalf of The Greenlining Institute (Greenlining) and the California Rural Legal Assistance Foundation (CRLAF), we express our opposition to Emanuel Medical Center's (EMC) Request for Modification of Condition VII to reduce EMC's charity care spending obligation.[1] Given the uncertain future of the Affordable Care Act (ACA), we believe that any changes to existing requirements will jeopardize patients' access to vital services. Despite decreasing charity care spending among not-for-profit hospitals across the state,[2] this trend may reverse should significant portions of health care reform at the federal and state level be amended and/or repealed.

Furthermore, we are concerned with accessibility of charity care programs and lack of investments in upstream[3] determinants of health – such as housing, environmental conditions, education, employment opportunities, etc. – that target the root causes of health disparities. As an anchor institution, EMC has a moral and legal obligation to promote disease prevention and community health through its community benefit program; however, our research and analysis has found significant gaps in their disclosure of community benefit spending. We strongly urge the California Department of Justice (CDOJ) and EMC to enact and enforce strict accountability measures to improve community benefit and charity care reporting, ensure access to care, and direct significant investments towards upstream, preventive health interventions for underserved communities.

[1] Vizient, Inc. (November 2016). "Emanuel Medical Center's Request for Modification of Condition VII."
[2] Office of Statewide Health Planning and Development. "2010-2014 Summary Trends – Hospital Quarterly Financial and Utilization Data."
[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.*"

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.

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.

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, reducing 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.

Our research has revealed inconsistency and lack of transparency, particularly in the reporting of community benefit programs and charity care spending, across a several hospitals.[5] As such, we find the request to modify Condition VII particularly troubling, given the lack of information and detail that EMC has provided. In order to ensure adequate resources and services for patients most in need, EMC must commit to improving its existing community benefit and charity care practices. Our concerns and recommendations are outlined as follows:

I. DELAY CONSIDERATION OF ALL REQUESTS TO MODIFY CONDITIONS UNTIL JANUARY 1, 2018 IN ORDER TO DETERMINE THE FUTURE OF THE HEALTH CARE REFORM IN CALIFORNIA

Due to persistent attempts to weaken or repeal the ACA, modifications to existing standards would be devastating for vulnerable and underserved communities. Amendments to regulations regarding the state-based insurance marketplace (Covered California) and Medicaid/Medi-Cal expansion would result in loss of health coverage for millions of Californians, especially low-income communities and communities of color. By reconvening these discussions at a later date, CDOJ and EMC can have greater clarity in knowing that modifications will not adversely affect patients.

We strongly urge CDOJ to delay consideration of all requests to modify conditions of purchase or consolidation until January 1, 2018 in order to determine the future of the ACA in California.

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

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

II. INCREASE FUNDING FOR COMMUNITY BENEFIT PROGRAMS FOR UNDERSERVED COMMUNTIES

Per Condition VII of the original consolidation agreement, EMC is obligated to provide $3,212,054 in charity care for six fiscal years, increasing by an amount equal to the Annual Percent increase in the Consumer Price Index.[6] In calendar year 2015, EMC provided approximately $1.25 million less than the minimum amount required in Condition VII.[7]

Per Condition VIII of the original consolidation agreement, EMC is obligated to provide an annual amount of Community Benefit Services equal to or greater than $398,158 for six fiscal years, increasing by an amount equal to the Annual Percent increase in the Consumer Price Index.[8]

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

However, according to its 2014-2015 IRS Form 990, EMS did not invest any resources towards Community Building Activities. EMC could have contributed greatly to improving community health had it elected to reinvest the remaining $1.25 million 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 EMC's service area (19 zip codes) also exhibited decreasing charity care spending, EMC had a prime opportunity to redirect these dollars towards upstream, preventive health measures such as Community Building Activities.

We strongly urge the CDOJ to require SAMC to maintain the current threshold of charity care, and require EMC to direct unspent charity care dollars towards Community Building Activities.

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[6] Deputy Attorney General Wendi A. Horwitz. (January 2014). Conditions to the Proposed Sale of Emanuel Medical Center and Approval of Asset Purchase Agreement by and between Emanuel Medical Center, Inc., and Doctors Medical Center of Modesto, Inc. *California Department of Justice*.

[7] Vizient, Inc. (November 2016). "Emanuel Medical Center's Request for Modification of Condition VII."

[8] Deputy Attorney General Wendi A. Horwitz. (January 2014).

[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/

These investments will strengthen EMC's presence in underserved communities, and exhibit a greater commitment to improving the health of vulnerable populations.

III. PROVIDE MORE DETAILED AND STANDARDIZED COMMUNITY BENEFIT INFORMATION

Not-for-profit hospitals are required by Senate Bill 697 (Torres, 1994) to annually submit a copy of their community benefits report to the Office of Statewide Health Planning and Development (OSHPD). The community benefits report details each hospitals' community health needs assessment, community partners and stakeholders who were consulted for the implementation process, and the community benefit budget, which also outlines charity care spending.

EMC's community benefit reports from 2011-2014 lacked relevant detail and failed to itemize community benefit into categories defined by state and federal regulators. For example, EMC's did not disaggregate Medicare or Medi-Cal shortfall. By withholding this information, EMC failed to illustrate the impact that Medi-Cal spending had on its overall community benefit and health improvement efforts. We urge the CDOJ to mandate that EMC provide more detailed reporting for future community benefit and charity care spending. Additionally, with regards to EMC's proposed methodologies, we echo the following: "Vizient does not believe that using costs associated with providing care to newly insured Medi-Cal patients should be used in recalculating Emanuel Medical Center's required charity care cost amounts."

We recognize the importance of EMC as a vital anchor institution in providing health care, jobs, and community services; however, we oppose EMC's request for Modification of Condition VII unless the aforementioned conditions are met. We call on the CDOJ to strongly consider the concerns and recommendations outlined above.

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

Sincerely,

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Cc: Robert P. David, Director, Office of Statewide Health Planning and Development
The Honorable Jim Wood
The Honorable Ed Hernandez, O.D.
Members of the Assembly Health Committee
Members of the Senate Health Committee