

# CA Hospitals Want OK to Provide Less Charitable Care

05.10.18 | Linda J. Rosenthal, JD



Nonprofit hospitals are a large and influential part of the charitable sector as well as the overall U.S. economy. Despite efforts, over many decades, by for-profit healthcare chains to corner the market share, nonprofit institutions still predominate.

A debate has raged for years about the purpose and effect of the 501(c)(3) tax-exempt status for the nonprofit hospitals and their communities. Their operations are often “indistinguishable” from for-profit hospitals; some, in fact, “provide less charity care than their for-profit counterparts.”

Back in December 2013, the late Rick Cohen wrote in a Nonprofit Quarterly article about a question being asked by a groundswell of observers: namely, “exactly what makes a nonprofit hospital a nonprofit.” At that time, he cited the recent criticisms of noted Boston University law professor Ray Madoff who had voiced the opinion that if nonprofit health-care institutions don’t provide charity care, they should not have tax exemptions at all. She continues to hold and express that point of view to the present time. Put another way, the issue was, and remains, “how charitable nonprofit hospitals actually are.”

In December 2017, there was another call for nonprofit hospitals to take on more charity care in order to keep their tax exemptions. The latest discussion has been prompted by a number of developments at the federal level as well as in various states around the nation.

In a 2017 ruling, the IRS revoked the tax-exempt status of a hospital for failing to comply with ACA-related “community needs assessments” duties. The agency is reportedly pursuing other hospitals for similar reasons. At the state level, communities and local governments have taken bold steps, including filing court challenges, to curb or eliminate property tax exemptions for hospitals not providing enough charity care. We reported on a number of those developments, especially in New Jersey.

In an opinion article in *Stat*, an online healthcare-related publication, a Duke University cardiologist “suggests that if nonprofit hospitals knew what was good for them, they would begin to live up to the spirit of their tax-exempt status far more substantively and assertively.

### *Federal Requirements for Nonprofit Hospitals*

In the journal *Health Affairs*, there is a comprehensive explanation of the federal charity care rules historically and under the ACA. It appears in an early 2016 article titled *Nonprofit Hospitals’ Community Benefits Requirements*. Of course, some of the information there must be considered in light of the current uncertainty about the application and future of the Affordable Care Act.

Bearing that in mind, the concept of “community benefit” earlier found in federal law is not as helpful as it might be. Its goal is to push nonprofit hospitals in the right direction, but there are two key challenges. First, the 2008 IRS community benefit requirement, as expressed in that year’s comprehensive revision of Form 990 (including the new Schedule H) is “vague”: It reads: “The purpose of Schedule H was to increase accountability and transparency, but it can sometimes muddy the waters. The categories of community benefit activities are numerous and include the net, unreimbursed costs of charity care; participation in means-tested government programs like Medicaid; health professions education, health services research; subsidized health services; community health improvement activities...the list seems to go on.”

Second, the hospital lobby (including the California Hospital Association) opposes rules requiring hospitals to establish their community benefit, asserting that it would “hamper the ability of hospitals to respond to specific needs in the communities they serve.”

### *California Hospitals Try Different Tactic*

Under federal law, nonprofit hospitals are generally required to provide some amount of free or discounted care in exchange for the benefits of the tax exemption. Since there is no particular amount specified, “... there is a lot of room to self-determine how much a hospital is giving back to its community.”

For California hospitals, though, there is an additional law that is available and is now being invoked by some institutions in the Golden State. That law allows California’s attorney general to determine specific requirements for charity care when a nonprofit hospital changes ownership.

Three hospitals in Southern California have petitioned Attorney General Javier Becerra to slash their charity requirements in half. A fourth institution has sought an almost 80% reduction. (One of the four had recently converted to for-profit status, but is required, under terms of the conversion approval, to continue to provide charity care for another six years.) The hospitals cite figures they assert show they already give considerably more in the way of charitable work than the benefit they receive from their tax exemptions. Advocates for greater community care disagree.

### *Conclusion*

The same requests were submitted to Becerra’s predecessor, Kamala Harris – now a U.S. senator; she had declined to approve them. There is a limited time – just 90 days – to respond to the current

petition.

*[Update 5/10/18: In mid-April, Attorney General Becerra denied the hospitals' requests, and ordered them to fulfill their obligations.]*

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