



Office of the City Manager

ACTION CALENDAR
July 16, 2013

To: Honorable Mayor and Members of the City Council
From: Community Health Commission
Submitted by: Linda Franklin, Chair, Community Health Commission
Subject: Tax Exempt Status for Alta Bates Hospital

RECOMMENDATION

1. Adopt a Resolution requiring that Alta Bates Summit Medical Center (ABSMC) provide an Annual Report to City Council to include specific detail on the qualified charity care reported as part of community benefits on tax returns; and
2. Direct the City Manager to designate two hours a week of Finance staff time to work with the Community Health Commission (CHC) Alta Bates subcommittee to gather current data regarding ABSMC-Berkeley campuses' tax exempt status.

SUMMARY

The purpose of this report is to respond to the November 13, 2012 City Council referral to the CHC regarding ABSMC-Berkeley Campuses' Tax Exempt Status and Charity Care in the City of Berkeley. This report focuses on what taxes are due to Berkeley and what documented services are being provided to Berkeley residents.

The major recommendations are twofold:

1. First, the CHC recommends that ABSMC provide an annual report addressing Berkeley- specific information a-d (below).
 - a. The dollar amount of qualified charity care provided system-wide, and charity care provided to **Berkeley residents** during the prior four years.
 - b. The number of applications for charity care, acceptances and denials for charity care during the prior year, by zip code of each patient's residence, and number seeking, applying, or otherwise eligible for charity care that were referred to other medical facilities by facility, and for what reason were they referred.
 - c. The total number who received hospital services within the prior year as charity care by service (emergency, inpatient, or outpatient medical care, or for ancillary services etc.).
 - d. Detail on how valuations for community benefits were developed and differentiate between the community benefits that support **Berkeley residents** versus regional benefit.

2. Second, the CHC recommends that the City Manager designate two hours of Finance staff time, per week, to gather current data including a-d (below).
 - a. What taxes and fees were levied on ABSMC's Berkeley campuses and what was finally received by the City of Berkeley?
 - b. What is the dollar value of the services provided by the City of Berkeley to ABSMC-Berkeley campuses, such as fire, police, utilities, sanitation, street cleaning, traffic control, transportation and governance?
 - c. Confirm the comparison of operating revenues versus expenses; compare rates of charity care among similar hospitals as a percentage of operating costs.
 - d. Examine executive compensation for ABSMC-Berkeley Campuses, as reported on Form 990 returns.

The report contains additional related recommendations.

FISCAL IMPACTS OF RECOMMENDATION

This recommendation does not require any additional city expenditure. We believe staff time devoted to the financial analysis can be incorporated into the workplan of the Finance Department. There is potential significant long-term fiscal benefit for the City, depending on the results of the report and possible future changes in ABSMC's Community Benefits and Charity Care expenditures in the City and/or its tax-exempt status.

CURRENT SITUATION AND ITS EFFECTS

On November 13, 2012 City Council referred a proposed resolution regarding ABSMC-Berkeley Campuses' Tax Exempt Status and Charity Care in the City of Berkeley (Arreguín, Anderson and Moore) to the CHC for further investigation to prepare for a planned council work-session this summer. This report focuses on what taxes are due to Berkeley and what documented services are being provided to **Berkeley residents**. The fact that representatives from Sutter want to consolidate multiple campuses in multiple cities together serves as a barrier to finding out the facts.

The CHC has spent the intervening months researching this issue, including meetings and presentations from representatives of ABSMC-Oakland and Berkeley campuses, representatives from California Nurses Association (CNA) and a presentation on the report "Benefiting from Charity Care: California Not-for-Profit Hospitals", prepared by the Institute for Health & Socio-Economic Policy (IHSP). Our findings, covered below, address specific questions (bolded) from Councilmembers.

At its regularly scheduled meeting on June 13, 2013, the CHC took the following action: "To accept the report 'Tax Exempt Status for Alta Bates Hospital,'" including three specified revisions.

M/S/C: (Rosales/Lewis-Hatheway)
Ayes: Franklin, Kwanele, Lee, Lewis-Hatheway, Mecklai, Rosales, Speich, Straus, Tempelis

Noes: None
Abstain: None
Absent: Namkung (excused), Fang, Stein

The CHC recommends including the following in an Annual Report for Berkeley Campuses by ABSMC. We agree with the proposed November resolution, namely that ABSMC-Berkeley Campuses provide specific detail on the qualified charity care reported as part of community benefits on tax returns:

The operational definition of “Charity Care” for our recommendations would be defined as the amount of emergency, inpatient or outpatient medical care, including ancillary services, provided to those who cannot afford to pay and without expectation of reimbursement and that qualifies for inclusion in the line item “Charity-Other” in the reports referred to in Section 128740(a) of the California Health and Safety Code after reduction by the ratio of costs-to-charges and excluding all “Bad Debt” defined as the unpaid accounts of any person who has received medical care or is financially responsible for the cost of care provide to another, where such person has the ability to pay, but is unwilling to pay.

- a. The dollar amount of qualified charity care (as defined above) provided system-wide, and in addition, charity care provided to **Berkeley residents** during the prior four years.
- b. The number of applications for charity care, acceptances and denials for charity care during the prior year, by zip code of each patient’s residence, and number seeking, applying, or otherwise eligible for charity care who were referred to other medical facilities by facility, and for what reason were they referred
- c. The total number who received hospital services within the prior year as charity care by service (emergency, inpatient, or outpatient medical care, or for ancillary services etc.).
- d. Provide detail on how valuations for community benefits were developed and differentiate between the community benefits that support **Berkeley residents** versus regional benefit.
- e. Finally, we recommend that Council work with state and federal lawmakers to create and pass legislation to provide needed standards for determining tax exempt status, such as supporting AB975.

The CHC further recommends that Council direct the City Manager to designate two hours a week of Finance (with specialty in taxes) staff time to work with the CHC Alta Bates Subcommittee to gather current data such as the tax exempt status of the approximately 15 ABSMC-Berkeley campuses (Note: a listing of resources for analyzing hospital financial status is available as Appendix A (page 20) in “Benefiting from Charity Care: California Not-for-Profit Hospitals”, from the Institute for Health & Socio-Economic Policy (IHSP), attached.)

- a. What taxes and fees were levied on ABSMC’s approximately 15 Berkeley campuses, by which governmental agency (Federal, State, County, City of

- Berkeley); what was received by the governmental agencies and what was finally received by the City of Berkeley; what was exempted (for four most recent tax years)?
- b. What is the dollar value of the services provided by the City to ABSMC-Berkeley's 15 campuses, such as fire, police, utilities, sanitation, street cleaning, traffic control, transportation and governance?
 - c. Confirm the comparison of operating revenues versus expenses; compare rates of charity care among similar hospitals as a percentage of operating costs. (See IHSP report).
 - d. Examine executive compensation for ABSMC-Berkeley Campuses, as reported on Form 990 returns. Although there is not a cap for hospital executive compensation in the Affordable Care Act, Council should look at whether the City could impose a cap on what is allowed as a valid operating expense.
 - e. Investigate whether ABSMC-Berkeley campuses are being effective in communicating financial policies to lower income **Berkeley residents**; how ABSMC-Berkeley campuses handle patients whose bills are paid by government programs or are low income/without insurance coverage. How are patients informed of charity care services and helped to navigate the process to qualify for charity care? How do ABSMC-Berkeley campuses handle debt collection?
 - f. Compare Berkeley's Public Health Division's Health Status Report with the ABSMC (Valley Vision-vendor) Needs Survey regarding whether or not ABSMC-Berkeley campuses' community benefits meet **Berkeley's** needs and priorities.
 - g. Look at what other communities are doing. For instance, the City of San Francisco, in allowing California Pacific Medical Center to move and expand its footprint in San Francisco has required CPMC to provide additional services for the poor.

BACKGROUND

Currently there is no legal definition for Charity Care nor Community Benefits, leaving communities in the dark when hospitals report their "charity care" or "community benefits". In years past, non-profit hospitals were run by a group of religious practitioners, for instance, and the efforts of volunteers. "Non-profit" meant they had no shareholders that they needed to distribute the profits to. That was before non-profits were transformed into the super-efficient models of business corporate-like structures that one sees today with--substantial charges and substantial profits. There is no doubt that businesses must balance revenue and provision of services in order to continue to exist as successful businesses. The question is: do they still warrant tax exempt status? Non-profit hospitals are facing continued scrutiny over whether they do enough for the public to justify their "non-profit/ tax-exempt" status. Federal rule expects these hospitals to show they benefit the community they serve through promotion of health in their community, benefits such as free or reduced price health care for the poor. In exchange

for this community service, non-profit hospitals may be exempted from federal and state income taxes on profits, property taxes, and almost all state and local sales taxes. In addition, these hospitals may seek financing through tax exempt bonds and receive tax deductible charitable contributions. Given the huge profits—are these exemptions still necessary? Or might a portion of the profits assist in paying for acute care services to the poor in the City where the properties are located?

Charity care is the amount of emergency, inpatient or outpatient medical care, including ancillary services, provided to those who cannot afford to pay and without expectation of reimbursement.

Community benefit currently refers to a broader category of benefits, that includes charity care, shortfall from reimbursement by government programs and funding for programs that benefit the community, especially the poor.

A 2009 California hospital survey showed 14% of community benefit reported was for charity care, 63% for unreimbursed government programs, and 23% for other community benefits. Non-profit hospitals are not mandated by federal or state law to provide a specific amount of these community benefits to qualify for these tax benefits. Several California State Auditors' reports and other researchers have underscored the lack of transparency and standards in determining eligibility for tax exempt status.

As a result, the responsibility for delivering charity care falls primarily on public hospitals and thus the taxpayers. In a 2012 article in the Oakland Tribune, Highland Hospital accounted for more than 53% of the charity care provided in 2010. Highland was cited as spending more than 15% of its operating expense on charity care, where as the non-profit ABSMC spent 2.4%, by the Tribune's report. An example of a community benefit is the current practice of certain non-profits advertising to the public to join their program at Warriors games.

1. What is the California standard for required services related to tax waiver? Is there a quid pro quo with the community for benefits/charity care?

There was once a Federal requirement that non-profit hospitals provide 5% of their operating costs to charity care; however that was discontinued in 1969. Currently there is NO STANDARD in California for the amount of charity care and community benefits that should be provided, no standards for how such benefits can be valued nor any consistency in the definition of what income level makes a patient eligible for charity care. Hospitals vary widely in their charges for similar services.

Without such standards, communities don't have assurance they are getting their fair return for the tax exemptions provided, so this issue keeps returning to the state and to Berkeley City Council for examination.

Unlike California, eleven states can suspend tax exempt status of hospitals if they fail to meet their standards. Texas and Alabama require specific thresholds for how much charity care a non-profit must provide. Indiana, Maryland, and Texas levy civil penalties for late filings of reports – all of which are well beyond what California requires.

AB975 is proposed legislation that would have created a definition of charity care, required the Office of Statewide Health Planning and Development (OSHPD) to develop

a standardized methodology for calculating community benefits, and clarified the scope of the property tax exemption for hospitals. The bill was held over for next year.

The information presented here is background for guidance in a Council work session. The CHC membership does not have tax or accounting expertise.

2. What are the specific criteria that permit property tax waiver for non-profits?

In California, we have a two-tiered system, jointly administered by the California Board of Equalization and county assessors' offices, (evolved out of a 1944 ballot initiative): the Welfare Exemption. To get property tax exemptions, the organization must:

- a. Have income-tax-exempt status under Internal Revenue Code section 501(c)(3) or 23701(d) of the Revenue and Taxation Code and be organized and operated exclusively for religious, charitable, scientific or hospital purposes.
- b. Submit State Board of Equalization form BOE-277, Claim for Organizational Clearance Certificate-Welfare Exemption; attach copies of articles of incorporation, bylaws, and letters of exemption from IRS and California Franchise Tax Board, and current financial statement. In California, property must be owned by the non-profit and used for a charitable purpose that is of primary benefit to California (community benefit test).
- c. Be approved by receiving an Organization Clearance Certificate, which the organization must then submit to (in our county) the Alameda County Assessor's Office for review, site visits are performed, and annual re-application is required. Per Brian Hitomi, Chief Deputy Assessor for Alameda County, the "amount of exemption is based on percentage use of building for charitable purposes."

3. What information is available about the taxes and fees that ABSMC pays, and those for which it is exempt?

Tax exempt organizations are exempt from most property tax assessments, sales tax and state and federal income taxes, but do pay some fees and assessments.

One source, the Institute for Health & Socio-Economic Policy in its 2012 report "Benefiting from Charity Care: California Not-for-Profit Hospitals" reports that ABSMC was exempted from more than \$2.3M in property tax, \$38.8M federal income tax, \$6M in state income tax and \$6M in sales tax in 2010. The total value of the exemptions received was \$53M, for which they report that \$4.8M in charity care was provided (according to charity care figures reported in hospital IRS 990 filing) leaving exemptions in excess of charity care provided of \$48.4 M.

Sutter Health East Bay Region's Public Affairs and Community Relations Office states they will provide information on fees and taxes paid. Sutter's State and Federal taxes are published in the Sutter Audited Financial Statements for 2012. Sutter Health East Bay Region's Public Affairs and Community Relations Department wrote in an email on 5/31/13 that they paid \$338,517.55 in fees in 2013, of which it stated that \$250,000 was a business fee for buildings greater than 120,000 square feet (Berkeley Municipal Code Chapter 9.04.305, established 1999).

The city website lists taxes and assessments (City and School District), how they are calculated and indicates when a non-profit would be exempted. From this information, it would appear that a non-profit would pay assessments for street lighting, refuse collection, clean storm water and be exempted from City Landscaping and Parks, City Library Services, Emergency Services for the Severely Disabled (Paratransit), Berkeley Unified School District Taxes, and Disaster Fire Equipment.

http://www.ci.berkeley.ca.us/Finance/Home/Real_Property_Annual_Tax_Statements.aspx

Alameda County Assessor's Office maintains current assessments for tax exempt property and sends a report to the State Board of Equalization.

CHC members obtained a recent listing of ABSMC owned properties from the Alameda County Assessor's office, listing 15 properties including the hospitals, nursing home parking lots and garages, office buildings and vacant property. The tax records for these can be obtained from the Assessors website. Per our tallying, it appears that this year, ABSMC Berkeley properties had an assessed value of \$174M, on which they paid nearly \$439K in taxes, and received exemptions on \$1.9M in taxes. Three of the tax bills showed no exemptions and one showed only a very small exemption.

When queried, the Berkeley City Auditor referred us to the Berkeley City Manager to obtain information from the finance department. A response has been promised.

4. What charitable services does ABSMC-Berkeley Campuses provide for Berkeley? What is the annual dollar value?

ABSMC publishes an annual report, which lists community benefits and charity care delivered through ABSMC. This report can be obtained from the Public Relations Department and is updated annually. In 2012, they reported fifty-three programs, valued at \$11,985,625, serving 66,308 people. For the same period, ABSMC claimed \$12.2M in charity care and \$96M in unreimbursed Medi-Cal.

Values are provided for each type of care, but no detail is provided as to how valuation is determined. The report does not differentiate between benefits provided to **Berkeley residents** versus those provided to the whole region served by the hospital. The East Bay Region's Public Affairs and Community Relations Office indicated they were not able to provide that information without payment for the analysis.

It is important to note that widely varying hospital rates may inflate value of charity care reported, because hospitals have used varying and often extremely high values for their procedures. Hospitals use a "chargemaster," a master-list of prices. This matter is discussed in the "Your Price May Vary" report published by CALPIRG, summer 2012. These prices are used as a starting point for negotiation with insurance companies and the government, but they have also been used to calculate the value of charity care provided. This year, the IRS changed that, by requiring hospitals to charge indigent

patients no more than the “amounts generally billed” to patients with insurance coverage.

5. What reporting is currently required of not-for-profit hospitals and what changes will come as a result of Affordable Care Act (ACA) and new IRS rulings?

Since 1994, State law (SB 1994) has required a Community Needs assessment and annual update, submitted to OSHPD. While some states do require that community benefits contribution exceed a specific percentage of net patient revenue, IRS dropped this requirement in 1969 and California does not have a requirement. If hospitals do not file the required reports, California currently has no authority to levy a fine.

IRS: Prior to 1969, nonprofit hospitals, as a condition of their tax-exempt status, were expected to furnish uncompensated care to persons unable to pay. In 1969, this obligation was expanded to incorporate "community benefits." Examples of community benefits include not only free or reduced-cost care, but also maintaining an emergency room open to all persons regardless of their ability to pay, health promotion activities, research, and education and training.

Under the Affordable Care Act, hospitals must provide more information, although there still are no standards from the federal government. The hospital must continue to provide a Community Health Needs Assessment, which must now be specific to the community of each licensed facility, and design implementation strategies based on that assessment. The needs assessment must cite what sources the hospital used.

The hospital must develop a financial policy for those who require charity care. At the presentation to the CHC in May 2013, the hospital representative stated that patients who earn less than 350% of the poverty level can receive free care at ABSMC-Berkeley Campuses. This policy then begs the question of why there are widespread reports of facilitating transfer of patients to Highland Hospital after the medical screening exam is completed in the Emergency Department. The ACA requires the hospital to widely publicize the policy within the community. ABSMC reported this is achieved by posting a sign in the emergency room and on their website.

IRS Annual reporting requirements require that ABSMC-Berkeley Campuses show how it is addressing the needs identified in its CHNA, any needs not addressed and why; IRS Schedule H (filed with IRS form 990, the primary compliance tool for tax-exempt organizations), reports on asset mapping of existing resources, and whether the community needs identified were met. The report also requires a description of community building activities. Hospitals must attach audited financial statements.

The above requirements must be met to retain federal tax exemption. A \$50,000 federal excise tax can be charged if a hospital fails to meet the requirements.

RATIONALE FOR RECOMMENDATION

The current information provided by ABSMC-Berkeley Campuses has not provided sufficient detail for Council to confirm whether there are tax exemptions provided for all

approximately fifteen Berkeley campuses, whether or not those tax exemptions are justified, and whether or not the appropriate monies are being transferred to the City. The Institute for Health and Economic Policy provides a fine reference. But the Finance Department of the City needs to participate in the detail. Specifically, the City needs to ascertain what documented services are being provided for **Berkeley residents** and how much the City is giving out in deductions.

ALTERNATIVE ACTIONS CONSIDERED

Take no action and await the actions that may or may not take place as the ACA gets implemented. The downside is the time it will take for the ACA to be fully implemented and whether or not it will address the City's issues regarding lack of documented services provided to financially challenged **Berkeley residents**. Some analysts have noted that ABSMC and Sutter could change their status to "for profit", as Daughters of Charity did in the last year.

CITY MANAGER

See City Manager companion report.

CONTACT PERSON

Linda Franklin, Chair CHC, (510) 919-8715

Janet Berreman, Health Officer, Secretary to the CHC (510) 981-5301

Attachments:

1: Resolution

Exhibit A: Annual Report

Exhibit B: Finance Investigation

2: Definitions: Eight IRS categories of allowed community benefit activity

3: ABSMC, 2011-2013 Community Benefits Plan-Community Needs Assessment 2010-2010 Update. This document is obtainable at the Public Affairs and Community Relations Office, Sutter Health East Bay Region. It is available electronically if one has "Package" software

4: Benefiting from Charity Care: California Not-for-Profit Hospitals, Institute for Health & Socio-Economic Policy (IHSP)

http://nurses.3cdn.net/2c18b9633089481d2c_qrm6yn2ci.pdf

5: April 16, 2013, Alta Bates Summit Medical Center, Program Details, for report from January 1, 2012 through December 31, 2012. This document may assist Council in determining what portion of ABSMC claimed community benefits are for Berkeley residents. It can be obtained through the Public Affairs and Community Relations Office, Sutter East Bay Region office.

6: Initial resolution, as proposed by Councilmember Arreguin from consent calendar November 13, 2012, and action taken by Council.

7: Understanding California's Property Taxes - MAC Taylor • Legislative Analyst • November 29, 2012 www.lao.ca.gov Legislative Analyst's Office

8: Your Price May Vary, CALPIRG, 2012

RESOLUTION NO. ##,###-N.S.

TAX EXEMPT STATUS FOR ALTA BATES HOSPITAL

WHEREAS, the City Council for Berkeley has requested that the Community Health Commission look into and make recommendations regarding Charity Care from Alta Bates Hospital; and

WHEREAS, the Community Health Commission has determined that further information is needed about Alta Bates Summit Medical Center's Charity Care and Community Benefits for Berkeley residents; and

WHEREAS, the Community Health Commission has determined that further information is needed about Alta Bates Summit Medical Center -Berkeley Campuses tax exempt status.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Alta Bates Summit Medical Center shall provide an Annual Report to City Council to include specific detail on the qualified charity care reported as part of community benefits on tax returns, as described in Exhibit A.

BE IT FURTHER RESOLVED that the City Manager shall designate two hours a week of Finance staff time to work with the CHC Alta Bates subcommittee to gather current data regarding Alta Bates Berkeley campuses' tax exempt status, as described in Exhibit B.

Exhibits

A: Annual Report

B: Finance Investigation

Annual Report

The following shall be included in an Annual Report for Berkeley Campuses by ABSMC. The report shall provide specific detail on the qualified charity care reported as part of community benefits on tax returns.

The operational definition of “Charity Care” is defined as the amount of emergency, inpatient or outpatient medical care, including ancillary services, provided to those who cannot afford to pay and without expectation of reimbursement and that qualifies for inclusion in the line item “Charity-Other” in the reports referred to in Section 128740(a) of the California Health and Safety Code after reduction by the ratio of costs-to-charges and excluding all “Bad Debt” defined as the unpaid accounts of any person who has received medical care or is financially responsible for the cost of care provide to another, where such person has the ability to pay, but is unwilling to pay.

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- b. The number of applications for charity care, acceptances and denials for charity care during the prior year, by zip code of each patient’s residence, and number seeking, applying, or otherwise eligible for charity care who were referred to other medical facilities by facility, and for what reason were they referred
- c. The total number who received hospital services within the prior year as charity care by service (emergency, inpatient, or outpatient medical care, or for ancillary services etc.).
- d. Provide detail on how valuations for community benefits were developed and differentiate between the community benefits that support **Berkeley residents** versus regional benefit.

Finance Investigation

Finance staff (with specialty in taxes) work with the CHC Subcommittee shall include gathering current data such as the tax exempt status of the approximately 15 Alta Bates Berkeley campuses (Note: a listing of resources for analyzing hospital financial status is available as Appendix A (page 20) in “Benefiting from Charity Care: California Not-for-Profit Hospitals”, from the Institute for Health & Socio-Economic Policy (IHSP), attached.)

- a. What taxes and fees were levied on ABSMC’s approximately 15 Berkeley campuses, by which governmental agency (Federal, State, County, City of Berkeley); what was received by the governmental agencies and what was finally received by the City of Berkeley; what was exempted (for four most recent tax years)?
- b. What is the dollar value of the services provided by the City to ABSMC-Berkeley’s 15 campuses, such as fire, police, utilities, sanitation, street cleaning, traffic control, transportation and governance?
- c. Confirm the comparison of operating revenues versus expenses; compare rates of charity care among similar hospitals as a percentage of operating costs. (See IHSP report).
- d. Examine executive compensation for ABSMC-Berkeley Campuses, as reported on Form 990 returns. Although there is not a cap for hospital executive compensation in the Affordable Care Act, Council should look at whether the City could impose a cap on what is allowed as a valid operating expense.
- e. Investigate whether ABSMC-Berkeley campuses are being effective in communicating financial policies to lower income **Berkeley residents**; how ABSMC-Berkeley campuses handle patients whose bills are paid by government programs or are low income/without insurance coverage. How are patients informed of charity care services and helped to navigate the process to qualify for charity care? How do ABSMC-Berkeley campuses handle debt collection?
- f. Compare Berkeley’s Public Health Division’s Health Status Report with the ABSMC (Valley Vision-vendor) Needs Survey regarding whether or not ABSMC-Berkeley campuses’ community benefits meet **Berkeley’s** needs and priorities.
- g. Look at what other communities are doing. For instance, the City of San Francisco, in allowing California Pacific Medical Center to move and expand its footprint in San Francisco has required CPMC to provide additional services for the poor.