

# LEGISLATIVE AUDIT DIVISION

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## MEMORANDUM

**TO:** Legislative Audit Committee Members

**FROM:** Tina Chamberlain, Associate Management and Program Analyst

**CC:** Department of Public Health and Human Services  
Adam Meier, Director, Department of Public Health and Human Services  
Erica Johnston, Executive Director, Economic Security Services  
Carter Anderson, Office of Inspector General  
Chad Hultin, Internal Control and Risk Management

**DATE:** June 2022

**RE:** Performance Audit Follow-up (22SP-06): *Community Benefit and Charity Care Obligations at Montana Nonprofit Hospitals* (orig. 18P-07)

**ATTACHMENT:** Original Performance Audit Summary

### Introduction

The *Community Benefit and Charity Care Obligations at Montana Nonprofit Hospitals* (18P-07) performance audit was issued to the Legislative Audit Committee in September 2020. The audit included two recommendations, one to the Montana Legislature and one to the Department of Public Health and Human Services (DPHHS). In March and April 2022, we conducted follow-up work to assess implementation of the report recommendations. This memorandum summarizes the results of our follow-up work.

### **Overview**

State law requires larger Montana hospitals to provide healthcare for free or at reduced prices to low-income patients; these programs are called charity care. We found DPHHS collects minimal financial information from hospitals, and none related to charity care. We also found working on improving community health is a federally required activity of hospitals. We found effort in determining areas of a community's health that need improvement, but little on how to measure if community health is improving. The audit included two recommendations, one to the legislature and one to DPHHS. The first recommended the legislature enact law defining how hospitals report their community benefit spending, and whether the community has improved health outcomes as a result. The audit further recommends the legislature define the state agency responsible for oversight of community benefit spending. The legislature has not considered legislation related to community benefit spending. The second recommended DPHHS define charity care spending and eligibility expectations and develop an oversight and review process to ensure hospitals are meeting charity care policy industry standards. DPHHS has made no meaningful progress in defining spending and eligibility obligations for charity care policies of nonprofit hospitals. The department has not implemented additional reporting or review processes to ensure hospitals have charity care policies for free or discounted health services to qualified patients.

## **Background**

The Department of Health and Human Services, through their Licensure Bureau and Certification Bureau, is responsible for licensing and certifying Montana's hospitals. DPHHS is also tasked with ensuring hospitals follow state law including §50-5-121(1), MCA, that states "*a hospital must have in writing (b): a charity care policy consistent with industry standards applicable to the area the facility serves and the tax status of the hospital.*" Charity care refers to healthcare provided for free or at reduced prices to low-income patients. Our audit found that in 2016, Montana's 47 hospitals received an estimated \$146 million in federal, state, and local tax exemption benefits due to their nonprofit status. This favored tax status is intended to be an acknowledgement of community benefit, including charity care, provided by hospitals. Statute does not provide standards nor guidance on how Montana hospitals measure and self-report the value of community benefit or on specific activities hospitals should consider as community benefit. The audit also found the public has limited information about these activities beyond the total amount hospitals have self-reported they spent on community benefit, more than \$257 million in 2016.

## **Audit Follow-up Results**

The following sections summarize progress toward implementation of report recommendations. In conducting follow-up work, we interviewed DPHHS staff and reviewed language from hospital industry administration guidelines and federal law. We also reviewed state laws and administrative rules, and reviewed bills from the 2021 Montana legislative session to determine if the recommendations have been implemented.

## **RECOMMENDATION #1**

**We recommend the Legislature should enact law defining:**

- A. Expectations regarding detailed reporting of community benefit spending and its impact on community health.**
- B. The state government entity responsible for actively reviewing community benefit spending.**

## ***Implementation Status – Not implemented***

During original audit work, we found Montana nonprofit hospitals self-report detailed community benefit spending to the Internal Revenue Service (IRS) but are not required to report the same information to the state. We reviewed IRS forms as well as Department of Revenue (DOR) information related to tax-exempt property and determined hospitals measure and report these values in varying ways. We recommended the legislature define expectations regarding detailed reporting of community benefit spending and its impact on community health, including the state entity responsible for reviewing this spending. Currently, Montana administrative rule places responsibility for this work with DPHHS through its hospital licensing process. Other states do not use this approach. They place similar responsibilities with the general consumer protection office, or a specific health care consumer protection office. DPHHS licensing staff analyze things like infectious disease prevention protocols, staff to patient ratios, and hospital safety equipment; this work does not include review of charity care policies or community benefit spending. Agency staff suggest reviewing hospital revenue reports requires a specialized focus to understand hospital tax information and verify numbers are true and accurate. Presently, the licensing bureau focuses on ensuring hospitals' quality of care and the health and safety of patients, with limited attention given to the financial aspects of hospital operations.

It is important for hospitals to report on population health outcomes of their community benefit activities in relation to taxable benefit received in exchange. Millions of dollars in tax exemption benefits hospitals receive should result in improved community health outcomes. It is also important for an identified state agency to actively review community benefit spending to ensure that requirements defined by the legislature are consistently followed across the state. This will ensure oversight of information related to community benefit spending, increasing transparency to the public and policymakers, and ensuring

accurate and comparable data about community benefit spending is gathered and used to develop better health outcomes in Montana communities.

## **RECOMMENDATION #2**

**The Department of Public Health and Human Services should:**

- A. Define spending and eligibility expectations related to charity care.**
- B. Develop an active oversight and review process that will ensure hospitals have charity care policies consistent with industry standards.**

**Implementation Status – *Not implemented***

### Recommendation 2A

During original audit work, we found hospitals did not have guidelines from the state on how to develop charity care policies consistent with other state standards or those found in industry guidelines. An interview during follow-up found DPHHS has not set spending or eligibility guidelines. Agency staff did some research on the subject including review of state statute and possible guidelines from the Patient Protection and Affordable Care Act (Affordable Care Act) of 2010, checking if the state Attorney General's website had updated reports on charity care, and doing a general Google search. The department found no guidance or information on industry standards.

During follow-up work we reviewed federal laws, federal guidelines, state statute and rules to determine if there are any additional charity care-related requirements and found the following:

- 1) The Affordable Care Act of 2010 lists measures a hospital organization must meet to qualify for tax exemption, in addition to those required by other federal and state laws, including a hospital organization's financial assistance policy: providing free or discounted health services to persons who meet the organization's criteria for financial assistance and are unable to pay for all or a portion of the services; this assistance is considered charity care.
- 2) The IRS-990 form and accompanying Schedule H for hospitals have specific reporting requirements including an estimate of a hospital's total amount of community benefit spending, including charity care. Some information is included in DPHHS' required report that hospitals must submit annually, except for charity care information and community benefit spending.
- 3) Montana Administrative Rule 37.106.138 requires every hospital and critical access hospital to submit an annual financial report to the department that includes gross revenue as well as deductions for charity care.
- 4) Montana Administrative Rule 37.106.811 requires specialty hospitals to have charity care requirements and provides policy criteria, including eight specific categories for eligibility.

This review of laws, statute, rules, and guidelines illustrates that sufficient information exists for the department to develop a foundation for state charity care standards.

We requested and reviewed the department's report that is submitted annually by hospitals. In the Certificate of Need Hospital and Critical Access Hospital Annual Report, the department collects quality of care information and gross revenue, net revenue, and operating revenue from hospitals. The department does not require a list of deductions (including for charity) nor does it require detail from some hospitals that fall under additional federal rules on charity care from community benefit spending.

In their concurrence to the recommendation, the agency reported that they would implement administrative rules to identify minimum criteria for charity care policies in nonprofit hospitals. Agency

staff have indicated that the department has not been given authority to create charity care standards. However, existing administrative rule gives this authority to the department.

#### Recommendation 2B

To determine if the department has developed an oversight and review process to ensure hospitals have charity care policies that are consistent with industry standards, we asked staff if they have implemented this process. We were told the department has determined that current administrative rules do not give them authority to collect financial information beyond revenue.

In their concurrence, the agency agreed to strengthen monitoring activities to ensure the existence of written charity care policies in these facilities. The bureau is tasked with monitoring the health and safety of their clients through annual reports and inspections for licensure. They do not collect information on the annual report to determine if a hospital has a charity care policy, therefore the agency has implemented neither the recommendation nor their concurrence.

The department is not meeting state administrative rules to provide detailed information on charity care deductions. We disagree there are no guidelines or industry standards that DPHHS can use to define spending and eligibility expectations. As demonstrated above, there are several laws that require hospitals to report on charity care that could be used to design a framework of spending and eligibility expectations related to charity care. The agency could request a copy of a hospital's IRS Schedule H form as it includes standards for eligibility, reporting on community benefits, and reporting on the community's health needs through their assessment. The policy criteria listed in ARM 37.106.811 could also be used as a guide for consistent use by hospitals and critical access hospitals. There are ways an agency can collect charity care information as shown by neighboring states. Using any of these models would reduce the need to create new policies or rules to implement these recommendations. Collection of this information would be useful for the department to determine the level of charity care of hospitals across the state. We see no legal barriers or prohibitions in administrative rule that would prevent establishing spending and eligibility guidelines as part of the department's oversight.