

1 EXPEDITE
2 No hearing set
3 Hearing is set
4 Date: _____
5 Time: _____
6 Judge/Calendar:

7
8
9 SUPERIOR COURT OF THE STATE OF WASHINGTON
10 THURSTON COUNTY

11 WASHINGTON STATE HOSPITAL
12 ASSOCIATION,

13 Plaintiff/Petitioner,

14 v.

15 WASHINGTON STATE DEPARTMENT OF
16 HEALTH,

17 Defendant/Respondent.

No.

WASHINGTON STATE
HOSPITAL ASSOCIATION'S
COMPLAINT/PETITION FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

18 As its Complaint/Petition, the Washington State Hospital Association alleges as follows:

19 **INTRODUCTION**

20 1. In 1989, the State of Washington enacted what is commonly known as the Charity
21 Care Act, RCW Ch. 70.170, legislation that requires Washington hospitals to provide free or
22 discounted care to indigent Washingtonians. The Washington Legislature expressly stated the
23 Intent of the Act: "The legislature finds that rising health care costs and access to health care
24 services are of vital concern *to the people of this state*. It is, therefore, essential that strategies be
25
26
27

1 explored that *moderate health care costs* and *promote access* to health care services.”¹

2 (Emphasis added.)

3 2. As recently confirmed by the Washington Attorney General’s Office,
4 “Washington’s original charity care legislation passed in 1989, so this assistance has been
5 available *to Washington patients* for more than three decades.”² (Emphasis added.)
6

7 3. In the 34 years since the Charity Care Act was enacted, the Department of Health
8 (the “Department”)—the agency charged with enforcing the Act—has consistently approved
9 charity policies that limit free or discounted hospital care to residents of the State of Washington.

10 4. On September 18, 2023, the Department notified a number of Washington
11 hospitals that it had erroneously approved policies with geographic restrictions, and demanded
12 that they change their policies by January 16, 2024. That same day, the Department issued an
13 “Interpretive Statement” in which it announced: “The Department of Health interprets RCW
14 70.170 RCW to require hospitals to provide charity care to indigent persons without regard to a
15 person’s residency.” In other words, after more than 30 years of interpreting the Act as
16 addressing the issues of “cost” and “access” for “the people of this state,” the Department has
17 announced that certain “Tier 1” Washington hospitals will now be required to provide free or
18 discounted care to every person in the world who claims a household income of up to 400% of
19 the federal poverty level—income which (for a family of four) is currently more than \$100,000
20 (US) per year—with the remainder obligated to provide free or discounted care to those with a
21 household income up to 300% of the federal poverty level.
22
23

24
25 _____
¹ RCW 70.170.010(2).

26 ² <https://www.atg.wa.gov/charitycare>
27

1 services.

2 (3) The legislature further finds that access to health care is among
3 the state's goals and the provision of such care should be among
4 the purposes of health care providers and facilities. Therefore, the
5 legislature intends that charity care requirements and related
6 enforcement provisions for hospitals be explicitly established.
7

8 (4) The lack of reliable statistical information about the
9 delivery of charity care is a particular concern that should be
10 addressed. It is the purpose and intent of this chapter to require
11 hospitals to provide, and report to the state, charity care to persons
12 with acute care needs, and to have a state agency both monitor and
13 report on the relative commitment of hospitals to the delivery of
14 charity care services, as well as the relative commitment of public and private
15 purchasers or payers to charity care funding
16

17 RCW 70.170.010.

18 15. Since the enactment of the Charity Care Act in 1989, the Department has
19 regularly approved charity care policies that restrict the availability of free or discounted hospital
20 care to Washington residents, regardless of their immigration status.
21

22 16. While the Charity Care Act has been amended several times since it was enacted,
23 there have been no amendments directed to expanding the Act to require free or discounted
24 hospital care for non-Washingtonians.
25
26
27

1 17. In addition to the plainly stated legislative intent, a number of provisions in the
2 Act indicate the Act was intended to require free or discounted care for Washingtonians, not
3 those from outside the State and country.

- 4 a. The Act anticipates and addresses required applications for coverage
5 under Washington state health plans. RCW 70.170.060(5).
6 b. The minimum eligibility requirements for charity care are all couched in
7 terms of a household's income as a percent of the federal poverty
8 level. RCW 70.170.060(5)(a).
9 c. The charity care tiers are based on the number, location, and size of
10 hospitals in the State of Washington, without regard to hospitals in other
11 states. RCW 70.170.060(5)(a).
12 d. Assets that may be considered in certain circumstances are described in
13 U.S. dollars. RCW 70.170.060(5)(c).
14 e. The recent amendments to the Act provide that "the office of the insurance
15 commissioner, in consultation with the Washington health benefit
16 exchange, shall study and analyze how increasing eligibility for charity
17 care impacts enrollment in health plans with high deductibles over a four-
18 year time period." RCW 70.170.150(1).
19
20
21

22 17. The Legislature's intent that the Charity Care Act apply to (and benefit)
23 Washingtonians is well understood by all, including the Washington Attorney General. On its
24 website, the Washington State Attorney General's Office described the recent amendments to the
25 Act as follows:

26 As a result of legislation proposed by the Attorney General's
27 Office and adopted by the Legislature, ***4 million Washingtonians***

1 now qualify for free or discounted care at hospitals across
2 Washington state.

3 Approximately *half of all Washingtonians* are eligible for free or
4 reduced-cost care at Washington state hospitals. These protections
5 apply to out-of-pocket hospital costs, including co-pays and
6 deductibles, regardless of insurance status. Washington law now
7 provides the strongest protections in the country for out-of-pocket
8 hospital costs.

9 The new law significantly increases eligibility for out-of-pocket
10 hospital costs, such as co-pays and deductibles, as well as
11 expanding eligibility for discounts. Prior to the new law, a single
12 parent working two minimum wage jobs at 50 hours per week was
13 not eligible for financial assistance at Washington hospitals. The
14 new law changes that.

15 The law *ensures all Washingtonians within 300 percent of the*
16 *federal poverty* level are eligible for financial assistance on out-of-
17 pocket hospital bills. Families making up to 400 percent of the
18 federal poverty level could be eligible for financial assistance
19 depending on the hospital. The new law establishes two tiers of
20 financial assistance — one for large hospitals and large health care
21 systems (Tier 1) and another for smaller, independent hospitals
22 (Tier 2).

23 <https://www.atg.wa.gov/charitycare> (emphasis added).

24 18. Indeed, the Washington Attorney General’s Office lobbied the Legislature in
25 2022 to expand the eligibility for charity based on similar representations that the legislation
26 would benefit Washingtonians, with Assistant Attorney General Joyce Bruce arguing that the bill
27 would expand access to affordable healthcare for over “three million Washingtonians,” and that
as a result of the bill “more than a million Washingtonians” would be able to get care from a
hospital with no out of pocket costs, co-pays or deductible, and would have access to “truly
affordable care.” [https://tvw.org/video/house-health-care-wellness-committee-
2022011138/?eventID=2022011138](https://tvw.org/video/house-health-care-wellness-committee-2022011138/?eventID=2022011138).

1 19. For years, Washington hospitals have absorbed significant financial losses,
2 resulting in a decrease in the availability of some services for some Washingtonians.

3 20. In 2022, Washington hospitals had \$2.1 billion in operational losses from delivery
4 of patient care. In the first six months of 2023, Washington hospitals had \$750 million in
5 operational losses.
6

7 21. If Washington hospitals are required to provide free care to indigent persons from
8 other states and countries, Washington's hospitals will be required to offer scarce, costly and
9 complex medical care such as organ transplants and cancer treatment to non-Washingtonians
10 who, based on current requests to hospitals, will likely come from around the world. Hospitals
11 will also be required to offer common procedures, which may appeal to those in adjoining states
12 and provinces. In many instances these services will be provided by hospitals without any source
13 of reimbursement whatsoever.
14

15 22. The Department's new (and erroneous) interpretation of the Act will result in the
16 exact opposite of the Legislature's intent in enacting the Charity Care Act: By requiring
17 Washington hospitals to provide free or discounted care to indigent persons from anywhere in the
18 world, the Department will *decrease access for Washingtonians*, and will *increase the costs of*
19 *care for Washingtonians* who will inevitably subsidize the costs of free care to others from
20 outside of the State.
21

22 23. Under the Charity Care Act and associated regulations, hospitals which do not
23 accede to the Department's demands concerning the form of their charity care policies are
24 subject to penalties. WAC 246-453-090(1).

25 24. WSHA's members are aggrieved or will be adversely affected by the
26 Department's new interpretation and threatened enforcement of the Charity Care Act because
27

1 (i) the Department action has prejudiced or is likely to prejudice the members; (ii) the members'
2 asserted interests are among those the Department was required to consider; and (iii) the judicial
3 relief sought would substantially eliminate the prejudice caused by the Department action.

4
5 25. WSHA in turn has standing to represent the interests of its members in
6 challenging the Department's new interpretation and threatened enforcement of the Charity Care
7 Act because (i) its members would otherwise have standing to sue in their own right; (ii) the
8 interests it seeks to protect are germane to the association's purpose; and (iii) neither the claim
9 asserted nor the relief requested requires participation of individual members in the lawsuit.

10 CLAIMS

11 26. The allegations set forth above in paragraphs 1 through 25 are hereby
12 incorporated by reference.

13
14 27. There is (1) an actual, present and existing dispute, (2) between parties having
15 genuine and opposing interests, (3) which involves interests that are direct and substantial, rather
16 than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be
17 final and conclusive. There is thus a live, ripe, material, justiciable controversy between WSHA
18 (and its members) and the Department of Health concerning the proper interpretation and
19 application of the Charity Care Act, and specifically whether it requires Washington hospitals to
20 provide free or discounted care to residents of other states and countries, or whether the Act is
21 instead intended to benefit Washingtonians.

22
23 28. WSHA and its members are persons "whose rights, status or other legal relations
24 are affected by a statute," and "may have determined any question of construction or validity
25 arising under [a] . . . statute . . . and obtain a declaration of rights, status or other legal relations
26 thereunder." RCW 7.24.020 & 7.24.130.

1 enjoined; that WSHA be awarded its fees, costs and disbursements to the extent permitted by
2 law; and that the Court award such other relief as is just and proper under the circumstances.

3 DATED this 16th day of October, 2023.

4
5 Davis Wright Tremaine LLP
6 Attorneys for Plaintiff/Petitioner
7 Washington State Hospital Association

8 By



9 Brad Fisher, WSBA #19895

10 Tel: (206) 757-8042

11 Email: bradfisher@dwt.com

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 16th day of October 2023, I caused the foregoing
3 *Complaint/Petition for Declaratory Judgment and Injunctive Relief* to be delivered to the
4 following as indicated:
5

6 Umair A. Shah, MD, MPH
7 State of Washington
8 Secretary of Health
9 101 Israel Road SE
10 Tumwater, WA 98501

Via Messenger & Certified Mail

11 Robert W. Ferguson
12 Attorney General
13 State of Washington
14 1125 Washington St SE
15 Olympia, WA 98504-0100

Via Messenger & Certified Mail

16 Declared under penalty of perjury under the laws of the state of Washington and dated at
17 Seattle, Washington this 16th day of October 2023.

18 

19 _____
20 Brad Fisher, WSBA #19895
21
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Appendix A



STATE OF WASHINGTON

DEPARTMENT OF HEALTH
COMMUNITY HEALTH SYSTEMS

PO Box 47853 • Olympia, Washington 98504-7853
Tel: (360) 236-4210 • Fax: (360) 236-2870

September 18, 2023



Dear [REDACTED]

Last winter, it came to our attention that a small number of hospitals in Washington had implemented charity care policies restricting eligibility for charity care to persons who reside inside hospital-specified geographic boundaries (defined by, e.g., zip code(s), city(ies), county(ies), state(s), or country) and denying charity care to persons who reside outside those hospital-specified geographic boundaries.

The purpose of this letter is to inform you that Washington's Charity Care Act (Chapter 70.170 RCW) and associated regulations (Chapter 246-453 WAC) require hospitals to provide charity care to indigent persons without regard to a person's residency. Using geographic boundaries to determine charity care eligibility is not supported under current law. Please refer to the Department of Health's Interpretive Statement Number CC23-01, attached for additional information.

The Legislature has provided that hospitals must provide charity care and must determine charity care eligibility based on the income (relative to the federal poverty level, adjusted for family size) of patients who have exhausted third-party coverage. Statutory eligibility for charity care under chapter 70.170 RCW, as implemented under chapter 246-453 WAC, shall not be based, in whole or in part, on an indigent person's residency. Hospitals may not adopt policies that exclude patients from eligibility for charity care if they are otherwise income-eligible according to the income eligibility requirements in statute and regulation.

The Department of Health acknowledges that previously approved hospital policies containing geographic boundaries to charity care were erroneously approved. Your hospital's charity care policy has been identified as having a geographic boundary element. This letter is to inform you that your charity care policy must be revised by January 16, 2024. Please submit revised policies to charitycare@doh.wa.gov.

In addition, please update hospital website charity care materials, hospital training programs and provide training to appropriate hospital staff that ensures understanding that residency is not a requirement to apply for or obtain charity care.

If you have any questions or need additional information, please contact Carrie Baranowski, Charity Care Program Manager, (360) 236-4210 or carrie.baranowski@doh.wa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sasha De Leon', written in a cursive style.

Sasha De Leon, MA, MSPH, MS
Assistant Secretary, Health Systems Quality Assurance
Washington State Department of Health

Appendix B



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

**NOTICE OF ADOPTION
INTERPRETIVE STATEMENT**

Title of Interpretive Statement: Charity Care Geographic Restrictions | CC23-01

Issuing Entity: Department of Health

Subject Matter: Statutory eligibility for charity care under chapter 70.170 RCW, as implemented under chapter 246-453 WAC, is based on income and shall not be based, in whole or in part, on an indigent person's residency.

Effective Date: September 18, 2023

Contact Person: Carrie Baranowski
Charity Care Program Manager
(360) 236-4210
carrie.baranowski@doh.wa.gov

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 18, 2023

TIME: 9:59 AM

WSR 23-19-065

Interpretive Statement

<i>Title:</i>	Charity Care Geographic Restrictions	<i>Number:</i> CC23-01
<i>References:</i>	Health Data and Charity Care (Chapter 70.170 RCW) https://app.leg.wa.gov/RCW/default.aspx?cite=70.170 Hospital Charity Care (Chapter 246-453 WAC) https://apps.leg.wa.gov/WAC/default.aspx?cite=246-453&full=true	
<i>Contact:</i>	Carrie Baranowski – Charity Care Program Manager	
<i>Phone:</i>	(360) 236-4210	
<i>Email:</i>	carrie.baranowski@doh.wa.gov	
<i>Effective Date:</i>	September 18, 2023	
<i>Supersedes:</i>	NA	
<i>Approved By:</i>	Sasha De Leon, MA, MSPH, MS	

The Department of Health interprets chapter 70.170 RCW to require hospitals to provide charity care to indigent persons without regard to a person’s residency. A hospital charity care policy restricting eligibility to patients residing within specified geographic boundaries would not be considered to comply with chapter 70.170 RCW.

Background

Washington’s charity care law (chapter 70.170 RCW or Charity Care Act) and the regulations promulgated thereunder (chapter 246-453 WAC) require acute care and psychiatric hospitals to provide medically necessary hospital health care to indigent persons to the extent the persons are unable to pay for the care or for the deductibles or coinsurance amounts required by third-party payers.

The most recent amendments to the Charity Care Act, signed into law by Governor Inslee on March 30, 2022, specify that indigent persons “are those patients or their guarantors who qualify for charity care pursuant to RCW 70.170.060(5) based on the federal poverty level, adjusted for family size, and who have exhausted any third-party coverage.” RCW 70.170.020(5) (Laws of 2022, ch. 197, § 1). The 2022 amendments to RCW 70.170.060(5), in turn, require that “each hospital shall develop, implement, and maintain a policy which shall enable indigent persons access to charity care.” RCW 70.170.060(5) (Laws of 2022, ch. 197, § 2.) As amended, this statute further stipulates which patients “shall be deemed charity care patients” and which patients “shall be entitled to” specified discounts, according to the patients’ incomes relative to the federal poverty level adjusted for family size. *Id.*

A small number of hospitals in Washington have implemented charity care policies and practices that restrict eligibility for charity care to persons who reside inside hospital-specified geographic boundaries (e.g., by zip code(s), city(ies), county(ies), state(s), or country), and deny charity care to persons who reside outside those hospital-specified geographic boundaries.

Examples of hospital policies and practices denying charity care eligibility based on geographic location of residence could include restrictions such as the following:

- “Patient must reside within [zip code, city, county] to be eligible for charity care at [hospital name].”
- “Patient must be a Washington resident to receive charity care.”
- “Patients who reside outside the [hospital] service area are not eligible for Charity Care/Financial Assistance.”
- “Eligibility for Charity Care requires an individual to be a resident of Washington State in the service area of [county 1, county 2, and county 3].”

Applicable law/rules

RCW 70.170.020(2) states: “‘Charity care’ means medically necessary hospital health care rendered to indigent persons when third-party coverage, if any, has been exhausted, to the extent that the persons are unable to pay for the care or to pay deductibles or coinsurance amounts required by a third-party payer, as determined by the department.”

RCW 70.170.020(5) states: “‘Indigent persons’ are those patients or their guarantors who qualify for charity care pursuant to RCW 70.170.060(5) based on the federal poverty level, adjusted for family size, and who have exhausted any third-party coverage.”

RCW 70.170.060(5) states: “For the purpose of providing charity care, each hospital shall develop, implement, and maintain a policy which shall enable indigent persons access to charity care. The policy shall include procedures for identifying patients who may be eligible for health care coverage through medical assistance programs under chapter 74.09 RCW or the Washington health benefit exchange and actively assisting patients to apply for any available coverage. If a hospital determines that a patient or their guarantor is qualified for retroactive health care coverage through the medical assistance programs under chapter 74.09 RCW, a hospital shall assist the patient or guarantor with applying for such coverage. If a hospital determines that a patient or their guarantor qualifies for retroactive health care coverage through the medical assistance programs under chapter 74.09 RCW, a hospital is not obligated to provide charity care under this section to any patient or their guarantor if the patient or their guarantor fails to make reasonable efforts to cooperate with the hospital's efforts to assist them in applying for such coverage. Hospitals may not impose application procedures for charity care or for assistance with retroactive coverage applications which place an unreasonable burden upon the patient or guarantor, taking into account any physical, mental, intellectual, or sensory deficiencies, or language barriers which may hinder the responsible party's capability of complying with application procedures. It is an unreasonable burden to require a patient to apply for any state or federal program where the patient is obviously or categorically ineligible or has been deemed ineligible in the prior 12 months.

(a) At a minimum, a hospital owned or operated by a health system that owns or operates three or more acute hospitals licensed under chapter 70.41 RCW, an acute care hospital with over 300 licensed beds located in the most populous county in Washington, or an acute care hospital with over 200 licensed beds located in a county with at least 450,000 residents and located on Washington's southern border shall grant charity care per the following guidelines:

(i) All patients and their guarantors whose income is not more than 300 percent of the federal poverty level, adjusted for family size, shall be deemed charity care patients for the full amount of the patient responsibility portion of their hospital charges;

(ii) All patients and their guarantors whose income is between 301 and 350 percent of the federal poverty level, adjusted for family size, shall be entitled to a 75 percent discount for the full amount of the patient responsibility portion of their hospital charges, which may be reduced by amounts reasonably related to assets considered pursuant to (c) of this subsection;

(iii) All patients and their guarantors whose income is between 351 and 400 percent of the federal poverty level, adjusted for family size, shall be entitled to a 50 percent discount for the full amount of the patient responsibility portion of their hospital charges, which may be reduced by amounts reasonably related to assets considered pursuant to (c) of this subsection.

(b) At a minimum, a hospital not subject to (a) of this subsection shall grant charity care per the following guidelines:

(i) All patients and their guarantors whose income is not more than 200 percent of the federal poverty level, adjusted for family size, shall be deemed charity care patients for the full amount of the patient responsibility portion of their hospital charges;

(ii) All patients and their guarantors whose income is between 201 and 250 percent of the federal poverty level, adjusted for family size, shall be entitled to a 75 percent discount for the full amount of the patient responsibility portion of their hospital charges, which may be reduced by amounts reasonably related to assets considered pursuant to (c) of this subsection; and

(iii) All patients and their guarantors whose income is between 251 and 300 percent of the federal poverty level, adjusted for family size, shall be entitled to a 50 percent discount for the full amount of the patient responsibility portion of their hospital charges, which may be reduced by amounts reasonably related to assets considered pursuant to (c) of this subsection.

(c) (i) If a hospital considers the existence, availability, and value of assets in order to reduce the discount extended, it must establish and make publicly available a policy on asset considerations and corresponding discount reductions.

(ii) If a hospital considers assets, the following types of assets shall be excluded from consideration:

(A) The first \$5,000 of monetary assets for an individual or \$8,000 of monetary assets for a family of two, and \$1,500 of monetary assets for each additional family member. The value of any asset that has a penalty for early withdrawal shall be the value of the asset after the penalty has been paid;

(B) Any equity in a primary residence;

(C) Retirement plans other than 401(k) plans;

(D) One motor vehicle and a second motor vehicle if it is necessary for employment or medical purposes;

(E) Any prepaid burial contract or burial plot; and

(F) Any life insurance policy with a face value of \$10,000 or less.

(iii) In considering assets, a hospital may not impose procedures which place an unreasonable burden on the responsible party. Information requests from the hospital to the responsible party for the verification of assets shall be limited to that which is reasonably necessary and readily available to substantiate the responsible party's qualification for charity sponsorship and may not be used to discourage application for such sponsorship. Only those facts relevant to eligibility may be verified and duplicate forms of verification may not be demanded.

(A) In considering monetary assets, one current account statement shall be considered sufficient for a hospital to verify a patient's assets.

(B) In the event that no documentation for an asset is available, a hospital shall rely upon a written and signed statement from the responsible party.

(iv) Asset information obtained by the hospital in evaluating a patient for charity care eligibility shall not be used for collection activities.

(v) Nothing in this section prevents a hospital from considering assets as required by the centers for medicare and medicaid services related to medicare cost reporting.”

Conclusion

The Legislature has provided that hospitals must provide charity care and must determine charity care eligibility based on the income (relative to the federal poverty level, adjusted for family size) of patients who have exhausted third-party coverage. Statutory eligibility for charity care under chapter 70.170 RCW, as implemented under chapter 246-453 WAC, shall not be based, in whole or in part, on an indigent person’s residency.