



## **Charity Care and Community Benefit in Texas: Frequently Asked Questions**

*September 2024*

### **What is charity care?**

Charity care is free or discounted care for patients who are unable to pay. Patients qualify for charity care by demonstrating financial hardship according to the criteria in a hospital's charity care or financial assistance policy.

### **What are community benefits?**

Community benefits refer to hospital activities, programs or services that improve the health of their communities. Charity care is one piece of a hospital's portfolio of community benefits. Another is its Medicaid and indigent care shortfall – the unreimbursed cost of delivering care to low-income people who qualify for Medicaid or state and local indigent care programs. But the term "community benefits" also encompasses many other types of hospital programs, such as health screening programs and vaccination clinics, as well as housing, transportation and food-bank initiatives. Costs incurred to support workforce training and medical research are other categories of community benefits.

### **How is charity care regulated under federal law?**

Under the federal Affordable Care Act (ACA), nonprofit hospitals must establish and publicize a financial assistance policy, also known as its "charity care policy," to deliver free or discounted care for patients who aren't able to pay. The ACA also limits hospitals' ability to charge, bill or collect from patients who qualify for financial assistance. Beyond those basic requirements outlined in the ACA, charity care laws vary widely by state. Texas is one of the states with a charity care law that goes above and beyond the requirements of the ACA.

### **Who must comply with Texas' charity care law?**

All nonprofit hospitals must meet the charity care minimums prescribed in Texas law. Texas' charity care law defines nonprofit hospitals expansively. Under the Texas law, the term "nonprofit hospital" includes hospitals that are organized as nonprofit entities, are tax-exempt or are eligible for tax-exempt bond financing.

For purposes of the law's charity care and community benefit *reporting* requirements, it also defines certain public and investor-owned hospitals as "nonprofit" depending on whether they qualify for

Medicaid Disproportionate Share Hospital (DSH) status and the size and needs of the community they serve.

All hospitals subject to the law report their charity care and community benefits data to the Texas Department of State Health Services (DSHS) on a financial reporting instrument called the Annual Statement of Community Benefits Standard (ASCBS). DSHS measures and publicly reports hospitals' fulfillment of charitable duties under Texas law. In 2023, 209 hospitals were *required to report*.

### **What does Texas charity care/community benefit law require?**

Texas' charity care law is known as one of the most stringent in the nation, requiring nonprofit hospitals to provide a minimum amount of charity care annually.

They can do so in one of two ways:

- Be designated as a DSH, a status granted to facilities that provide care to the highest numbers of Medicaid and other low-income patients; or
- Provide charity care and community benefits in at least the amounts required by state law.

If a nonprofit hospital is not a DSH, the law gives three ways the hospital can demonstrate it provides the minimum amount of charity care required annually:

1. Provide charity care and community benefit amounting to at least 5% of the hospital's or system's net patient revenue, including 4% devoted to charity care and government-sponsored indigent health care;
2. Provide charity care exceeding the value of the hospital's tax-exempt benefits; or
3. Otherwise demonstrate charity care is delivered at a reasonable level in relation to community needs, the available resources of the hospital and the tax-exempt benefits received by the hospital. *(This third option is rarely used; only about 5% of hospitals that have to comply with the law select this option each year.)*

If a nonprofit hospital does not meet the minimum charity care or community benefit standards, the hospital has to make up the shortfall in the following year, and is only allowed to use the make-up option once every five years. Otherwise, the hospital could lose its tax exemption.

### **How do Texas nonprofit hospitals do at complying with these state requirements?**

In 2022 – the latest year for which data by hospital is available – all 127 nonprofit hospitals in Texas that were required to meet charity care minimums did so.

That year, nonprofit hospitals subject to the law delivered \$9.1 billion in unreimbursed community benefits. These 127 hospitals cumulatively provided \$2.4 billion in unreimbursed charity care. That includes \$576 million – or 32% – over the amount required by the most common standard: the 5%/4% test.

When certain public and investor-owned hospitals also *required to report* their charity care are added to the nonprofits – a total of 209 hospitals – the value of unreimbursed charity care provided grows to \$3.8 billion, and all community benefits total \$14.8 billion.

| <b>Community benefit type</b>                                       | <b>Nonprofit<br/>(127<br/>hospitals)</b> | <b>All Reporting Hospitals (Nonprofit,<br/>Public and Investor-Owned)<br/>Subject to Texas Charity Care Law<br/>(209 hospitals)</b> |
|---|--|---|
| Unreimbursed charity care   | \$2.4 billion                            | \$3.8 billion   |
| Unreimbursed Medicaid and government-sponsored indigent health care | \$0.9 billion                            | \$1.7 billion   |
| Unreimbursed costs of providing other community benefits            | \$5.8 billion                            | \$9.3 billion   |
| <b>TOTAL</b>  | <b>\$9.1 billion</b>                     | <b>\$14.8 billion</b>   |

These data do not include the charity care and community benefits delivered by approximately 400 other licensed hospitals in Texas not subject to the charity care law’s reporting requirements.

### **How much are Texas hospitals reimbursed for the charity care they provide?**

Charity care, by definition, carries no expectation of payment from the patient on any portion of care that is discounted.

Texas hospitals receive partial reimbursement on uninsured charity care through two state-administered supplemental payment programs: the Medicaid 1115 waiver uncompensated care (UC) pool, and the Medicaid DSH program, for which the most charitable hospitals qualify.

In 2023, Texas DSH and UC hospitals – including those not subject to the charity care law – provided at least \$8.1 billion in uninsured charity care. DSH and UC payments together reimbursed hospitals \$5 billion on that care. The remaining \$3.1 billion in uninsured charity care went completely unreimbursed.<sup>1</sup> Furthermore, 40% of the DSH and UC supplemental payments come from hospitals’ own money, meaning they only net about 60% of the gross payment.

Texas’ nation-leading uninsured rate plays a role in Texas hospitals providing hundreds of millions of dollars above the minimum required by law. That factor, plus perpetual underpayments from government payers such as Medicare and Medicaid, ensure that Texas hospitals will be eating millions in charity-care costs for the foreseeable future.

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<sup>1</sup> [Texas HHSC, 2023. Texas Uncompensated Care Pool Model – Final Rule 7-6-23](#). Unreimbursed charity care estimates are lower than shown in the 2022 ASCBS data. This file uses different data sources (CMS/Texas HHSC), estimation methods, a different year (2023), and includes unreimbursed *uninsured* charity care only.