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1199SEIU
United Healthcare Workers East

July 26, 2007

RE: Charity Care Reporting at BIDMC

Dear

As part of our work to ensure comprehensive access to healthcare, 1199 SEIU has conducted an examination that raises serious concerns about the reporting of charity care by Beth Israel Deaconess Medical Center (BIDMC) in its audited financial statements.

The caregivers of 1199 SEIU are committed to ensure that every person in Massachusetts has access to affordable, high-quality healthcare; to advocate for increased funding for healthcare institutions; to work to deliver the highest quality care to patients; and to ensure a well-trained and motivated workforce.

This mission has taken on new urgency as we attempt to solve the healthcare crisis. Our members worked hard to pass the recent healthcare reforms and continue our efforts to realize the promise of this legislation. We believe the way to overcome the serious challenges ahead is for unionized healthcare workers to work together with healthcare providers, elected leaders and patient advocates throughout Massachusetts.

How we provide quality healthcare to the poor and the uninsured and the cost of that care are not only central public policy concerns, but also a reflection of our compassion and priorities as a society. Unfortunately, BIDMC's financial reporting with respect to charity care may deny board members necessary information to evaluate the extent of the hospital's charitable activity, and whether it is at risk for related consequences. Specifically, we have found that:

- BIDMC's audit language provides an incomplete and potentially misleading representation of charity care.
- BIDMC's peers have adopted more extensive and transparent disclosures of charity care.
- In 2006 audits, BIDMC revised 2005 unreimbursed charity care figures down by 30% without explanation

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- BIDMC's 2005 audits may have originally overstated charity care by nearly $11 million by combining income-qualified free care with bad debt on which BIDMC attempted collection, based on disclosures to other regulators.

- BIDMC's audit presentation of charity care would likely not comply with the new definition of charity care proposed by the IRS in its June 2007 revision of the IRS Form 990.

A more complete description of these issues is enclosed.

An understanding of BIDMC's level of actual charity care is necessary to enable a board member to assess BIDMC's commitment to its charitable mission. Particularly in light of the IRS proposals and increased legislative and legal scrutiny of charity care levels in connection with an institution's tax exemption, board members must ensure that they receive fully accurate, transparent and honest disclosure from BIDMC around charity care.

As a fiduciary, we know that you are keenly aware of your obligation to ensure the charitable mission of BIDMC. We would suggest board members require more information from BIDMC regarding its audits, and request that BIDMC's 2006 and 2005 audits be withdrawn and the disclosure issues corrected.

In closing, we would like to restate our members' commitment to working with healthcare providers to improve our healthcare system. We hope that bringing these issues to your attention is a productive step toward that goal.

Sincerely,

Mike Fadel
Executive Vice President
1199SEIU United Healthcare Workers East

Charity Care Reporting

at Beth Israel Deaconess Medical Center
1199SEIU – United Healthcare Workers East,
July 25, 2007

Summary

1199 SEIU's mission is to ensure that every person in Massachusetts has access to affordable, high-quality healthcare. Provision of quality healthcare to the poor and the uninsured and the cost of that care are central public policy concerns as well as a reflection of our compassion and priorities as a society.

Significant downward revisions of 2005 charity care figures in the 2006 audited financial statements of Beth Israel Deaconess Medical Center (BIDMC) and potentially misleading disclosures about charity care raise serious concerns about the amount and character of charity care provided by BIDMC, specifically:

- BIDMC's audit language appears to provide an incomplete and potentially misleading representation of charity care.
- BIDMC's peer institutions have adopted more extensive and transparent disclosures.
- In their 2006 audits, BIDMC revised 2005 unreimbursed charity care figures down by 30% without explanation, reducing charity care for the CareGroup system overall by 15%.
- BIDMC's 2005 audits may have originally overstated charity care by nearly $11 million by combining income-qualified free care with bad debt on which BIDMC attempted collection, based on their disclosures to other regulators.

The volatility and lack of full and complete disclosure concerning charity should be of concern to any fiduciary, particularly given increased scrutiny of this key indicator in conjunction with growing regulatory attention on non-profit hospitals' tax exemptions. As you well know, in its June 2007 revision of the Form 990, the Internal Revenue Service (IRS) proposed a stricter definition of charity care. There is a serious question as to whether BIDMC's presentation of charity care in their audits meets this new definition.

BIDMC's Audit Charity Care language is incomplete and misleading

BIDMC's characterization of its charity care practices presented in 2005 and 2006 audited financial statements do not clearly distinguish between bad debt and charity care. Such disclosures could lead fiduciaries to conclude that all of BIDMC's charity care was income-qualified and was never pursued for collection. The relevant sections of BIDMC's audited financial statements read as follows:

> *(a) Unreimbursed Charity Care*
>
> The Medical Center provides care without charge or at amounts less than its established rates, to patients who meet certain criteria under its charity care policy.
>
> Because the Medical Center does not pursue collection of amounts determined to qualify as charity care, they are not reported as revenue except to the extent reimbursed by the statewide Uncompensated Care Pool (the Pool).
>
> *(b) Uncompensated Care*
>
> The Medical Center also provides for the delivery of charity care to the indigent statewide through payments to the Pool, which is operated by the Commonwealth of Massachusetts. In addition, the Medical Center provides services which were not paid by patients and, therefore, are recorded as bad debts.[1]

BIDMC defines charity care here as medical services given without charge to screened patients who met certain qualifications under their charity care policy. These statements could be interpreted to mean that patients' accounts were not pursued in collections, as the accounts were written-off as charity care.

However, BIDMC's 2005 audit claims that the medical center provided $ 67,634,000 of charity care in gross charges, an amount which appears to contain bad debt. BIDMC's 2005 submission to the state Uncompensated Care Pool (UCP) contained $ 56,922,269 in free care, much lower than the audit figure.[2] However, BIDMC's total submission to the UCP, which contains bad debt plus charity care, was $ 67,885,381, a near match with the audit charity care figure.[3] BIDMC's submission to the UCP clearly commingled emergency bad debt and charity care, but it cannot be understood from audit disclosures whether BIDMC included bad debt with its charity care presentation.

---

[1] Note 3, "Community Service and Uncompensated Care," Beth Israel Deaconess Audited Financial Statements 2006.

[2] The comparison is based on the 2005 disclosures because it is the most recent year for which the public data is available.

[3] A full discussion of definitions utilized by the UCP follows.

These inconsistent disclosures may deny the Board necessary information to make fiduciary decisions both about the adequacy of BIDMC's financial controls as well as the charitable mission of the institution.

<u>Other Providers in Boston Have Adopted a Higher Standard of Disclosure</u>

A comparison of BIDMC's incomplete disclosure with the more vigorous disclosure of peer institutions reveals the weaknesses of BIDMC's disclosures.

Partners HealthCare System Inc.'s [Partners]' 2006 audited financial statements contain the following definition of charity care:

> Partners provides either full or partial charity care to patients who cannot afford to pay for their medical services based on income and family size. Charity care is generally available to qualifying patients for medically necessary services. Partners reports certain bad debts related to emergency services as charity care. Charity care is reported gross charges with an offsetting allowance, as there is no expectation of collection. Accordingly, there is no net patient service revenue related to charity care.

Partners' definition of charity care is specific and complete. A board member would understand clearly that Partners' charity care is income-qualified, but that some bad debt is included in their presentation.

Further, Partners' disclosure regarding the UCP contains extensive disclosure regarding the upcoming transitions in reimbursement via the Health Safety Net Trust Fund as part of Chapter 58 reforms. Please see the attached three-paragraph description presented by Partners in their audit. Also, Partners discloses to board members that 53% of its charity care costs were reimbursed by the UCP in 2006, excluding its annual assessment.

A comparison of the 2006 audit disclosures of BIDMC and Caritas Christi, which includes a description of the Commonwealth's mandatory provider tax paid to the Pool, demonstrates just how problematic BIDMC's disclosure language may be. In its 2006 audit, Caritas Christi disclosures in its *Charity Care and Community Benefits* note the following:

> The Commonwealth operates an Uncompensated Care Pool ("The Pool") to reimburse acute care hospitals for a portion of the cost of uncompensated care. Hospitals have been assessed a uniform allowance based on estimates of the statewide cost of uncompensated care and have been reimbursed for their estimated levels of uncompensated care, subject to certain limits. Reimbursed uncompensated care *includes net charity care and bad debt* relating to emergency services. [Emphasis added].

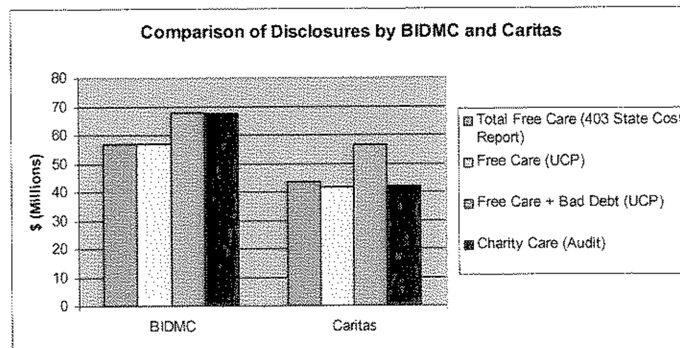
BIDMC's corresponding note in its 2006 audit contains a potentially misleading statement about the nature of the UCP:

> The Medical Center [BIDMC] also provides for the delivery of charity care to the *indigent statewide* through payments to the Pool (Uncompensated Care Pool), which is operated by the Commonwealth of Massachusetts. In addition, the Medical Center provides services which were not paid by patients and, therefore, are recorded as bad debt. [Emphasis added].

Unlike Caritas Christi, BIDMC's language does not fully apprise CareGroup about the nature of the Pool. The Pool covers both the indigent and certain bad debts. It is fair to conclude that the primary purpose of the Uncompensated Care Pool is to subsidize the cost of indigent care. However, roughly 16% of BIDMC submissions to the Pool were for bad debt that was not income-qualified. BIDMC's language may lead to the incorrect perception that only income-qualified "indigent" individuals benefit from the Pool.

Further, Caritas Christi, like Partners, discloses that net charity care *and* bad debt are billed to the Pool, but BIDMC does not make such a disclosure. BIDMC's note goes far enough to disclose the presence of "bad debt" as a cost to BIDMC but does not inform the reader—as do these disclosures—that a portion of such bad debt will ultimately be commingled with the charity care number.

Comparison of BIDMC and Caritas Disclosures, 2005 (in Millions)	BIDMC	Caritas
Total Free Care (403 State Cost Report)	$ 57	$ 44
Free Care (UCP)	$ 57	$ 42
Free Care + Bad Debt (UCP)	$ 68	$ 57
Charity Care (Audit)	$ 68	$ 42



As illustrated by a comparison between Caritas and BIDMC's disclosures, Caritas also billed significant ER bad debt to the pool, but did not report it as charity care.

Finally, in comparing New England Medical Center, Inc. and Affiliates' (NEMC) disclosure in 2006 to BIDMC's disclosures above:

> (Referring to Pool) Reimbursable uncompensated care includes *net charity care and bad debts* resulting from emergency services. The Organization has recorded its gross obligation to the Pool, net of reimbursement from the Pool for *charity care and bad debt*, as a component of net service revenue in the accompanying combined financial statements. [Emphasis added.]

Again, BIDMC's disclosure falls short of that provided by other institutions with respect to the inclusion of charity care and emergency bad debt.

BIDMC leadership should be aware of the more extensive disclosure concerning charity care presented in other leading health care institutions' audited financial statements. In today's environment, Board members should be concerned that BIDMC's audited financial statement does not provide the kind of thorough information regarding charity care to which Board members are entitled—in terms of the public expectations of BIDMC's charitable mission as well as Board members' fiduciary responsibilities.

In 2006 audits, BIDMC revised 2005 charity care figures down by 30% without explanation

In BIDMC's 2005 financial statements, audited by KPMG, management stated that it provided $67.6 million in charity care at established [gross] charges. In their 2006 audits, however, BIDMC revised the figure to $60.2 million. Unreimbursed charity care at cost was revised downward from $9.4 million to $6.7 million. This 30% reduction in charity care reduced charity care for the CareGroup system overall by 15%. While management disclosed that "Certain amounts in the 2005 consolidated financial statements have been reclassified to conform to the 2006 presentation," they provided no further explanation of the revision.[4]

This reclassification masked a drastic change – a reduction of 28% in BIDMC's level of unreimbursed charity care between 2004 and 2005. Such volatility demands explanation and is particularly problematic given that charity care is a key indicator of community benefits and an area that is currently under scrutiny by the IRS.

BIDMC's 2005 audits may have overstated income-qualified charity care by nearly $11 million

[4] Note (v) Reclassifications, Beth Israel Deaconess Medical Center 2006 Audited Financial Statements, p.12.

BIDMC may have overstated income-qualified charity care in their 2005 audits, likely by including non income-qualified bad debt in the figure, as discussed above. In BIDMC's 2005 audits, management stated that it provided $67.6 million in charity care at established [gross] charges. A comparison of these statements with BIDMC's disclosures to other regulators suggests that the actual amount of income-qualified charity care may have been up to $11 million (16%) lower than reported.

Charity care, free care, and emergency bad debt are defined in BIDMC's audited financial statements, the state Uncompensated Care Pool (UCP, soon to become the Health Safety Net Trust Fund), and the state (403) cost report as follows:

Term and Source	Definition
Charity Care (BIDMC Audited Financial Statements)	Care delivered "without charge or at amounts less than its established rates, to patients who meet certain criteria under its charity care policy."
Free Care (State 403 Cost Report)	A broad category that includes charity care to financially indigent patients (at gross charges) and other discounts [5]
Emergency Bad Debt (Uncompensated Care Pool)	The amount of uncollectible debt for emergency services that is regarded as uncollectible, following reasonable collection efforts; and is not a low-income patient (up to 200% of FPL). [6]

In 2005, BIDMC disclosed the following concerning charity care, free care, and emergency bad debt:

- In BIDMC's 2005 audit, management stated that it provided $67.6 million in charity care at gross charges. [7]
- In its 2005 state cost report (403), BIDMC reported only $56.9 million in "total free care," or income qualified charity care. [8]

[5] "Total Free care includes charity services which represent the uncollectible amount of the hospital's full established rates for services rendered to financially indigent patients and policy discounts which represent adjustments for items such as courtesy allowances and employee discounts from the hospital's full established rates for services. Charity services and policy discounts may range up to 100% of regular charges."

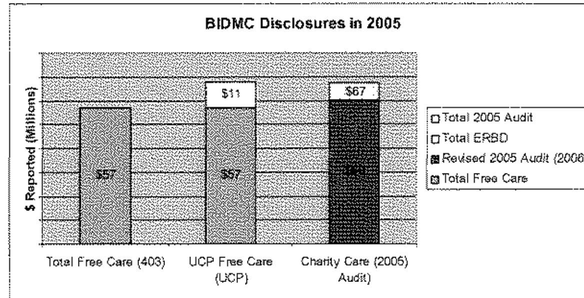
[6] 114.6 CMR 11, http://www.mass.gov/Eeohhs2/docs/dhcfp/g/regs/114_6_11.pdf, 114.6 CMR 12, accessed online at http://www.mass.gov/Eeohhs2/docs/dhcfp/g/regs/114_6_12.pdf.

[7] In its 2005 and 2006 Audits, BIDMC defines Charity Care as care delivered "without charge or at amounts less than its established rates, to patients who meet certain criteria under its charity care policy."

[8] Free Care is defined for the State 403 Cost Report as "Total Free care includes charity services which represent the uncollectible amount of the hospital's full established rates for services rendered to financially indigent patients and policy discounts which represent adjustments for items such as courtesy allowances and employee discounts from the hospital's full established rates for services. Charity services and policy discounts may range up to 100% of regular charges.

- In its 2005 submission to the UCP, BIDMC reported $56.9 million in income-qualified "free care"—again short of the $67.6 million reported in the audit.
- However, BIDMC's total 2005 submission to the UCP —which included both "free care" and "emergency bad debt" [9]—was $67.9 million.

It therefore appears that BIDMC's declared charity care in 2005 included approximately $11 million in emergency bad debt, which was not income-qualified based on poverty, and which was referred for collection, as illustrated in the chart below.



According to their Credit and Collection Policy, BIDMC provides financial assistance to patients according to the same requirements as free care under the state Uncompensated Care Pool (UCP). BIDMC therefore did not offer any charity care that would not have been captured by the free care reported to the UCP.[10] Further, emergency bad debt billed to the UCP has very strict requirements on collection action that must occur. Current regulations stipulate that it must be the same as for all other patients and include, at minimum:

- an initial bill;
- subsequent billings, telephone calls, collection letters, personal contact notices, electronic notices;
- attempts at collection must continue for at least 4 months;
- a final notice by certified mail for balances over $1,000.[11]

It is unlikely a patient receiving this level of collection effort would consider themselves a recipient of charity care. July 2007 proposed revisions to the regulations additionally require that collections action be undertaken on a "regular, frequent basis."[12]

In summary, BIDMC's charity care, as reported in the 2005 audit, appears to have contained bad debt that was pursued for collection. [In addition, the $67.6 million charity

[9] Emergency Bad Debt is defined in 114.6 CMR 11 and 114.6 CMR 12 as "The amount of uncollectible debt for emergency services that … (a) is regarded as uncollectible, following reasonable collection efforts, and the Provider's established Credit and Collection policy; (b) is charged as a credit loss; (c) is not the obligation of any federal or state governmental unit; and (d) is not a Low Income Patient.
[10] Beth Israel Deaconess Medical Center, Inc. Credit and Collections Policy, April 1, 2006. On file with MA Division of Health Care Finance and Policy. (Check for more recent).
[11] 114.6 CMR 10.05 (4) Reasonable Collections Efforts
[12] 114.6 CMR 13.05 (3) Proposed July 12, 2007. http://mass.gov/Eeohhs2/docs/dhcfp/g/regs/114_6_13_p.pdf

care figure reported as "established charges," actually represented only $24.9 million at cost, of which all but $9.4 million was ultimately reimbursed by the UCP.] This could in part explain the downward revision of BIDMC's 2006 financial statements regarding charity care, though this is not possible to ascertain from the financial statements. If the revision was made for this reason, it does not fully capture all of the bad debt that was reported as charity care. And moreover, there remain clear problems between what BIDMC reports as charity care and what is in fact contained in that figure.

Using the IRS methodology from the proposed Form 990 guidelines[13] (which, at the recommendation of the Catholic Health Association[14] do not include bad debt in charity care) and using BIDMC's submission for free care to the UCP, BIDMC provided $5.5 million and $5.1 million in unreimbursed charity care in 2005 and 2004, respectively, a mere 0.7% of reported Net Patient Service Revenue. This further raises the question of whether BIDMC's revised reporting of charity care in their 2006 audits would also change 2004 numbers as reported in 2004 and 2005 audits.

Board members require an understanding of BIDMC's level of actual charity care in order to assess BIDMC's commitment to its charitable mission

Today, non-profit hospitals are experiencing increased scrutiny concerning provision of charitable care and tax-exempt status, including widely publicized examinations at the federal level. The June 2007 proposed redesign of the IRS Form 990 distinguishes bad debt from charity care, as do guidance from voices as varied as PriceWaterhouseCoopers and the Catholic Healthcare Association of America.[15]

Recent litigation has also addressed issues of relevance to the provision of charity care by tax-exempt hospitals. In February 2004, Provena Convenant Medical Center in Urbana, Illinois had its tax exemption revoked on a number of grounds, including minimal examples of charity care provided to patients. In March 2004, Sturdy Memorial Associates, a Massachusetts physician practice, had its property tax exemption revoked, in part based on lack of community benefit.[16] Given this complex and uncertain regulatory environment,

[13] Internal Revenue Service Tax-Exempt & Government Entities Division, Draft Form 990 Redesign Project – Schedule H, June 14, 2007. Accessed online June 18, 2007 at: http://www.irs.gov/pub/irs-tege/draftform990redesign_schh_instr.pdf.

[14] Catholic Health Association Of The United States, Instructions for Hospital Community Benefit Report IRS Form 990, Supplement to Part III. Accessed online June 18, 2007, at: http://www.chausa.org/NR/rdonlyres/14B61011-00FE-41DD-81AE-EE15ED538B48/0/LJG990revised.doc. See also: http://www.chausa.org/NR/rdonlyres/7E5CFBD9-F741-4BA6-A74C-E8F14EC9DF82/0/ReferenceI.pdf

[15] http://pwchealth.com/cgi-local/hregister.cgi?link=reg/brotherskeeper.pdf; http://www.chausa.org/NR/rdonlyres/14B61011-00FE-41DD-81AE-EE15ED538B48/0/LJG990revised.doc http://www.chausa.org/NR/rdonlyres/7E5CFBD9-F741-4BA6-A74C-E8F14EC9DF82/0/ReferenceI.pdf

[16] *Sturdy Memorial Foundation, Inc. v. Board of Assessors of North Attleborough* 60 Mass. App. Ct. 573 (2004).

CareGroup needs clear and accurate statements about charity care in order to fulfill its obligations as a fiduciary.[17]

The Board is being impaired in its fiduciary responsibility for the audits and monitoring of the internal controls of BIDMC by BIDMC's withholding or distortion of key information about the nature of what it calls "charity care." The Board should inform itself about the actual level of charity care being provided by BIDMC, and should implement curative steps to ensure BIDMC's provision of both an acceptable level of charity care and accurate information about it.

It should be cautionary that the leadership of other health care institutions provide better disclosure to their respective boards than BIDMC provides to this board in their audited financial statements. Further, the charitable nature of CareGroup's affiliates is one of their defining corporate elements. The risk to the CareGroup Board is that BIDMC could be cause for an investigation, which the Board should have been able to avert with proper disclosure and response. We suggest that the Board:

- Request more information from BIDMC's leadership, in light of the possibility that BIDMC's leadership has withheld or distorted key information in its annual audits. This is information that the Board should require to enable the minimally acceptable performance of its own fiduciary obligations; and

- Request the withdrawal of BIDMC's 2005 and 2006 audits and their restatement with accurate and informative details concerning charity care.

[17] *See* 68 MGL § 33. Such obligations include, more specifically, a duty of *loyalty* to the charity (here a nonprofit hospital) as well as a duty of *due care* in properly assuring that the nonprofit hospital carries out its charitable mission.