

DENTON COUNTY INDIGENT CARE AFFILIATION AGREEMENT

This Denton County Indigent Care Affiliation Agreement (the “Agreement”) is entered into as of the ____ day of October, 2012 (“Effective Date”), between Denton County, Texas, a local government entity established under the laws of the State of Texas (the “Government Entity”) and Denton Regional Medical Center and Medical Center of Lewisville with North Texas Division, Inc., individually and serving as their agent, each of which is a limited partnership organized under the laws of the State of Texas (together, the “Affiliated Hospitals”).

RECITALS:

WHEREAS, the State’s under-funding of, and reductions in eligibility for, Medicaid increases the volumes of indigent patients who rely on hospital emergency room services as the source of primary healthcare and shifts the burden for indigent care to the Affiliated Hospitals, the Government Entity, and local community;

WHEREAS, the Government Entity and the Affiliated Hospitals recognize that the State will continue to under-fund the Texas Medicaid program and that the indigent numbers in their community will continue to grow;

WHEREAS, the Government Entity and the Affiliated Hospitals desire to ensure that the indigent have access to and receive quality hospital services;

WHEREAS, the Government Entity and the Affiliated Hospitals recognize that it is in their best interest to increase funding for the Medicaid population and to access federal funding for the indigent to which the Affiliated Hospitals will be entitled under the State’s Medicaid program; and

WHEREAS, the Government Entity and the Affiliated Hospitals recognize that they need to cooperate to ensure their ability to deliver cost efficient healthcare services to indigent patients in their community;

NOW, THEREFORE, in consideration of the promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and agreed, the parties agree as follows:

1.0 INDIGENT CARE COLLABORATION

- 1.1 Improving Access to Healthcare for Indigent.** The Government Entity and the Affiliated Hospitals will assess the opportunities to improve access to healthcare for indigent persons residing in the community through participation in the Medicaid program including the Medicaid supplemental payment program implemented by a Section 1115 Waiver.

2.0 REPRESENTATIONS AND WARRANTIES

2.1 **Affiliated Hospitals Representations and Warranties.** The Affiliated Hospitals represents and warrants that:

- a. It is a Texas corporation or partnership, duly established and created pursuant to applicable law with all requisite power and authority to enter into this Agreement in all respects;
- b. There is no agreement to condition the amount transferred by the Government Entity nor the amount of Medicaid supplemental payments on the amount of indigent care the Affiliated Hospitals have provided or will provide;
- c. There is no agreement to condition the amount of the Affiliated Hospitals' indigent care obligation on the amount transferred by the Government Entity nor the amount of any Medicaid supplemental payment the Affiliated Hospitals might receive;
- d. No escrow, trust, or other funding mechanism exists, the amount of which is conditioned or contingent on the amount of indigent care services provided or to be provided by the Affiliated Hospitals; and that any escrow, trust or other funding mechanism utilized in connection with an anticipated intergovernmental transfer ("IGT") from the Government Entity has been disclosed to HHSC and is not used to effect a quid pro quo for the provision of indigent care services by or on behalf of the Affiliated Hospitals;
- e. The Government Entity has not received and will not receive refunds of payments the Government Entity made or makes to the Affiliated Hospitals for any purpose in consideration for an IGT by the Government Entity to fund Medicaid supplemental payments;
- f. The execution, delivery, and performance by the Affiliated Hospitals of this Agreement are within the Affiliated Hospitals' powers, are not in contravention of any other instruments governing the Affiliated Hospitals and have been duly authorized and approved by the Board of Directors of the Affiliated Hospitals as and to the extent required by applicable law;
- g. Neither the Affiliated Hospitals, nor any of its representatives are (i) currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (the "Federal health care programs"); (ii) convicted of a criminal offense related to the provision of health care items or services but not yet excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) under investigation or otherwise aware of any circumstances which may result in the exclusion of the

Affiliated Hospitals, or any of its representatives, from participation in Federal health care programs; and

- h. This Agreement has been duly and validly executed and delivered by the Affiliated Hospitals.

2.2 Government Entity Representations and Warranties. The Government Entity represents and warrants that:

- a. It is a unit of local government created under the laws of the State of Texas, duly established and created pursuant to the Texas Constitution with all requisite power and authority to enter into this Agreement in all respects;
- b. There is no agreement to condition the amount transferred by the Government Entity nor the amount of Medicaid supplemental payments on the amount of indigent care the Affiliated Hospitals has provided or will provide;
- c. There is no agreement to condition the amount of the Affiliated Hospitals' indigent care obligation on the amount transferred by the Government Entity nor the amount of any Medicaid supplemental payment the Affiliated Hospitals might receive;
- d. No escrow, trust, or other funding mechanism exists, the amount of which is conditioned or contingent on the amount of indigent care services provided or to be provided by the Affiliated Hospitals; and that any escrow, trust or other funding mechanism utilized in connection with an anticipated IGT from the Government Entity has been disclosed to HHSC and is not used to effect a quid pro quo for the provision of indigent care services by or on behalf of the Affiliated Hospitals;
- e. The Government Entity has not received and will not receive refunds of payments the Government Entity made or makes to the Affiliated Hospitals for any purpose in consideration for an IGT by the Government Entity to fund Medicaid supplemental payments;
- f. The execution, delivery, and performance by the Government Entity of this Agreement are within the Government Entity's powers, are not in contravention of any other instruments governing the Government Entity, and have been duly authorized and approved by the Government Entity as and to the extent required by applicable law;
- g. This Agreement has been duly and validly executed by the Government Entity; and
- h. The Government Entity has public funds available to contribute to the non-federal share of Medicaid payments.

3.0 OBLIGATIONS OF THE AFFILIATED HOSPITALS

- 3.1 **Agreement to Collaborate with the Government Entity.** The Affiliated Hospitals agree to work cooperatively with the Government Entity to improve access to health care for indigent persons.
- 3.2 **Documentation.** The Affiliated Hospitals agree to provide the Government Entity documentation that demonstrates the amount and types of health care (including indigent health care and Medicaid services historically provided in its community) as requested by the Government Entity, but no more frequently than quarterly.
- 3.3 **Compliance with State and Federal Law.** The Affiliated Hospitals agree to retain qualified professionals to ensure health care is provided in compliance with state and federal charity care laws, anti-trust laws, and any other applicable laws, and the Medicare and Medicaid programs.
- 3.4 **Indigent Care Program Participation.** At all times during the term of this Agreement, the Affiliated Hospitals shall use their best efforts to maintain its qualifications for participation in the Medicaid and Medicare programs.
- 3.5 **Compliance with HIPAA.** To the extent applicable to this Agreement, the Affiliated Hospitals agree to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Section 1320d, *et seq.* (“HIPAA”), and any current and future regulations promulgated thereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the “Federal Privacy Regulations”), the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164 (the “Federal Security Regulations”), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162 (the “Federal Electronic Transaction Regulations”), all as amended from time to time, and all collectively referred to herein as “HIPAA Requirements.” The Affiliated Hospitals agree not to use or further disclose any Protected Health Information (as defined in the Federal Privacy Regulations) or EPHI (as defined in the Federal Security Regulations), other than as permitted by the HIPAA Requirements and the terms of this Agreement. In addition, the Affiliated Hospitals agree to comply with any state laws and regulations that govern or pertain to the confidentiality, privacy, security of, and electronic transactions pertaining to, health care information.

As and to the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, the Affiliated Hospitals shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. The Affiliated Hospitals will also indemnify and hold the Government Entity harmless if any amount of reimbursement is denied or disallowed because of the Affiliated Hospitals’ failure to comply with the obligations set forth in this section. Such

indemnity shall include, but not be limited to, the amount of reimbursement denied, plus any interest, penalties and legal costs. If the Affiliated Hospitals carry out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization, the Affiliated Hospitals agree to include this requirement in any such subcontract. This section is included pursuant to, and is governed by the requirements of, 42 U.S.C. § 1395x(v)(1) and the regulations thereto.

4.0 OBLIGATIONS OF THE GOVERNMENT ENTITY

- 4.1 Agreement to Cooperate with the Affiliated Hospitals.** The Government Entity agrees to work cooperatively with the Affiliated Hospitals to improve access to health care for indigent persons.
- 4.2 No Condition on Medicaid Funding.** The Government Entity agrees that it will not condition the amount to which it funds the non-federal share of Medicaid supplemental payments on a specified or required minimum amount of prospective indigent care.
- 4.3 Retrospective Evaluation of Services.** The Government Entity may retrospectively evaluate the amount and impact of the Affiliated Hospitals' indigent care delivery and can rely on such historical information in determining whether and to what degree it will provide an IGT in the future.
- 4.4 Documents Publicly Available.** The Government Entity agrees to make publicly available any documentation utilized in connection with intergovernmental transfers of funds.
- 4.5 Use of Public Revenue.** To the extent the Government Entity decides to provide funding for Medicaid supplemental payments, the Government Entity agrees to use public revenue for such funding.
- 4.6 Compliance with HIPAA.** The Government Entity agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Section 1320d, *et seq.* ("HIPAA"), and any current and future regulations promulgated thereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162 (the "Federal Electronic Transaction Regulations"), all as amended from time to time, and all collectively referred to herein as "HIPAA Requirements." The Government Entity agrees not to use or further disclose any Protected Health Information (as defined in the Federal Privacy Regulations) or EPHI (as defined in the Federal Security Regulations), other than as permitted by the HIPAA Requirements and the terms of this Agreement. In addition, the Government Entity agrees to comply with any

state laws and regulations that govern or pertain to the confidentiality, privacy, security of, and electronic transactions pertaining to, health care information.

As and to the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, the Government Entity shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. The Government Entity will also indemnify and hold the Affiliated Hospitals harmless if any amount of reimbursement is denied or disallowed because of the Government Entity's failure to comply with the obligations set forth in this section. Such indemnity shall include, but not be limited to, the amount of reimbursement denied, plus any interest, penalties and legal costs. If the Government Entity carries out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization, the Government Entity agrees to include this requirement in any such subcontract. This section is included pursuant to, and is governed by the requirements of, 42 U.S.C. § 1395.

5.0 GENERAL PROVISIONS

- 5.1 Term and Termination.** The term of this Agreement shall be one year from the Effective Date and shall automatically continue thereafter for additional terms for one year unless the parties agree otherwise; provided however, that this Agreement shall terminate immediately upon written notice by either the Government Entity or the Affiliated Hospitals to the other party.
- 5.2 Notices.** All notices required or permitted hereunder shall be in writing and shall be sufficiently given and deemed to have been received upon personal delivery, by overnight carrier, by email, or by United States mail, postage prepaid, registered or certified mail, addressed to the parties as follows:

Government Entity: Denton County, Texas
110 W. Hickory Street, Denton, TX 76201-4116
ATTN: Commissioners' Court / County Judge

Affiliated Hospitals: North Texas Division, Inc.
6565 N. MacArthur Blvd. Suite 350
Irving TX 75039
ATTN: Administration

With a Copy to: Gjerset & Lorenz, LLP
2801 Via Fortuna, Suite 500
Austin, Texas 78746
ATTN: Jeff Brinker

- 5.3 Relationships between the Parties.** The relationship between the Government Entity and the Affiliated Hospitals is solely a contractual relationship between independent contractors. No party hereto is an agent or employee of any other party. Nothing in this Agreement shall prevent any affiliation or contracting by any party with any third party, with the exception that no party may contract or affiliate with another party to gain entitlement to Medicaid supplemental payments pursuant to this Agreement.
- 5.4 Governing Law.** This Agreement shall be governed by the laws of the State of Texas. The Affiliated Hospitals understand that the Government Entity is a political subdivision of the State of Texas and governed by certain statutes applicable thereto.
- 5.5 Assignment.** No party may assign any right, obligation, or responsibility under this Agreement except to a successor in interest.
- 5.6 No Third Party Beneficiary.** The parties to this Agreement do not intend to establish any third party beneficiary relationships by virtue of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hand as of the date set forth above.

GOVERNMENT ENTITY: **DENTON COUNTY**

By _____

Printed Name: _____

Title: _____

AFFILIATED HOSPITALS: **NORTH TEXAS DIVISION, INC.,
as Authorized Agent for:
DENTON REGIONAL MEDICAL CENTER AND
MEDICAL CENTER OF LEWISVILLE**

By _____

Thomas O. Corley, Vice President
North Texas Division, Inc. as Authorized Agent for:
Columbia Medical Center of Lewisville Subsidiary, L.P.
and
Columbia Medical Center of Denton Subsidiary, L.P.

COLUMBIA NORTH TEXAS SUBSIDIARY GP, LLC

By _____

Thomas O. Corley, Vice President

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