

MEMO

To: [REDACTED]
From: Celeste Boyd
Re: [REDACTED]'s Obligations Under the Lease & Asset Purchase Agreement
Date: April 15, 2008

Question Presented:

What, if any, obligations arise from the Lease & Asset Purchase Agreement for [REDACTED] [REDACTED] ([REDACTED]) to provide care (both emergency and non-emergency) for indigent patients?

Short Answer:

[REDACTED] clearly has an obligation to provide indigent care under the Lease, but the exact scope of that obligation is not well-defined, either in general or with respect to whether [REDACTED] is required to ensure that non-employee physicians provide services to indigent patients.

Lease / Asset Purchase Agreement Provisions:

Section 6.5 of the Asset Purchase Agreement (hereinafter "APA") provides that "[c]ontinuously throughout the Term and any Extended Term, Lessee will provide Expanded Care Services [...] for the sick and injured in [REDACTED] County who seek treatment at the Hospital, regardless of the cost of that care, even if it exceeds Sole Community Provider Funds."¹

The APA clearly constitutes an enforceable agreement; § 4.2 states that the APA "will, upon execution by the Lessee, constitute the valid, legal and binding obligation of Lessee." In addition, the obligation to provide *some* sort of indigent care not only appears in § 6.5, but is echoed in a number of other provisions, including Lease § 4.10, in which the City/County agree to reimburse [REDACTED] for the first three years of Expanded Care Services, but which explicitly states that nothing in that section "shall be interpreted to affect Lessee's obligations to provide Expanded Care Services continuously throughout the Term and any Extended Term." In addition, failure to provide the indigent care services required in APA § 6.5 constitutes an "event of default" on [REDACTED]'s behalf, triggering the City/County's right to pursue specific performance of those terms, and ultimately, if the default remains uncured, to terminate the lease. Since it seems clear that [REDACTED] has *some* obligation, the extent of that obligation seems to hinge on the definition of "Expanded Care Services."

¹ APA § 6.5 also requires [REDACTED] to "post a written statement of such policies in English and Spanish in an appropriate location in the main lobby and in a prominent location in the emergency room of the Hospital," something that the hospital doesn't seem to be doing. This requirement seems fairly cut-and-dry, and one that we could push to have enforced fairly easily.

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hospital's obligation to ensure that non-employee physicians provide those services is unclear. It seems at least arguable that an agreement to provide certain services (i.e., those covered by Medicaid) is simply an empty promise if [REDACTED] doesn't *also* have the obligation to ensure that the services *actually* get provided, by whatever means necessary, including reimbursing physicians for services at a rate that gives the physicians an actual incentive to provide the services. On the other hand, the language defining Expanded Care Services as those "provided at the hospital" could arguably limit the hospital's obligation to services that the hospital provides *itself*.

Ultimately, the Lease seems a useful source of leverage for a generalized argument that the hospital ought to provide care to indigent patients, but it may not prove very useful in arguing that [REDACTED] obligated itself to ensure that non-employee physicians provide that care.