

**INDIGENT CARE AFFILIATION AGREEMENT BETWEEN COLLIN COUNTY AND
TEXAS HEALTH RESOURCES**

This Indigent Care Affiliation Agreement (the Agreement) is entered into as of the 1st day of October, 2012 (the "Effective Date"), by and between by and between Collin County ("the County") and Texas Health Resources, a Texas nonprofit corporation, on behalf of Texas Health Presbyterian Hospital Allen, and Texas Health Presbyterian Hospital Plano, each of which is a Texas nonprofit corporation ("Hospitals").

RECITALS:

WHEREAS, annually, the Hospitals and the County collectively provide a significant amount of uncompensated care to the Indigent in the communities they serve:

WHEREAS, reductions in reimbursement under the Medicaid program and the growing uninsured population have created a gap between the costs hospitals incur for treating Medicaid patients and the Indigent and the reimbursement the hospitals actually receive;

WHEREAS, the County and the Hospitals recognize that the state will continue to under-fund the Texas Medicaid Program, that the Indigent numbers in the County will continue to grow, and that the burden of providing health care to the Indigent will continue to shift to the Hospitals, the County, and the local communities;

WHEREAS, the Hospitals and the County desire to collaborate to ensure that the Indigent have access to and receive quality health care services; and

WHEREAS, the County and the Hospitals recognize that it is in their mutual best interest to increase Medicaid funding for the Medicaid population of the County and to access local and federal funding to which the Hospitals are entitled under the Section 1115 Demonstration Waiver for the Texas Healthcare Transformation and Quality Improvement Program (the Waiver Program);

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:

**ARTICLE I
DEFINITIONS**

- 1.1 Health Care Services** means those services necessary to enhance the delivery of health care to the Indigent, as defined in Section 1.2 of this Agreement.
- 1.2 Indigent** means any person eligible to participate in a state Medicaid program, a county program adopted under the Indigent Health Care and Treatment Act, as defined by the eligibility criteria described in Chapter 61 of the Texas Health and Safety Code, or a hospital charity care program.

- 1.3 **Public Funds** means public revenue, generated by the County, which the County agrees to transfer in part to HHSC via IGT to serve as the non-federal share of Waiver Program Payments.
- 1.4 **Waiver Program** means the Section 1115 Demonstration Waiver for the Texas Healthcare Transformation and Quality Improvement Program, under which the County transfers Public Funds via intergovernmental transfer (IGT) to the Texas Health and Human Services Commission (HHSC) to generate the non-federal share of Waiver Program Payments, and the Hospitals receive Waiver Program Payments from HHSC.
- 1.5 **Waiver Program Payments** means any Medicaid payments received by the Hospitals in accordance with the Waiver Program.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

- 2.1 **Hospitals' Representations and Warranties.** The Hospitals represent and warrant that:
- a. They are each a Texas nonprofit corporation duly established and created pursuant to applicable law with all requisite power and authority to enter into this Agreement in all respects;
 - b. The execution, delivery, and performance by the Hospitals of this Agreement are within the Hospitals' powers, and are not in contravention of any other instruments governing the Hospital and have been duly authorized and approved by the Hospital to the extent required by applicable law;
 - c. Neither the Hospitals, nor any of their 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 Hospital, or any of its representatives from participation in Federal health care programs;
 - d. This Agreement has been duly and validly executed and delivered by the Hospitals and constitutes the valid, legal, and binding obligation of the Hospitals, enforceable against the Hospitals in accordance with its terms;
 - e. No funds derived from any Waiver Program Payment received by Hospitals have been or will be returned or reimbursed to the County;
 - f. No other funds have been used to reimburse the County in consideration of any Waiver Program Payments paid to the Hospitals;

- g. Hospitals will not use any of the Waiver Program Payments to fund any contingent fee arrangement or agreement or to pay for third-party consultant or legal services;
- h. Hospitals have not entered and will not enter into any agreement with the County to condition either the amount of the Public Funds transferred to the HHSC via IGT by the County or the amount of Waiver Program Payments the Hospitals receive on the amount of indigent care Hospitals have provided or will provide;
- i. Hospitals have not entered and will not enter into any agreement with the County to condition the amount of Hospitals' indigent care obligation on either the amount of Public Funds transferred by the County to the HHSC or the amount of Waiver Program Payments Hospital may be eligible to receive;
- j. Neither Hospitals nor any other entity acting on behalf of the Hospitals has made or agreed to make cash or in-kind transfers to the County other than transfers and transactions that:
 - (1) Are unrelated to the administration of the Waiver Program Payment Program and/or the delivery of indigent care services under this Agreement;
 - (2) Constitute fair market value for goods and/or services rendered or provided by the County to the Hospitals; and
 - (3) Represent independent, bona fide transactions negotiated at arms-length and in the ordinary course of business between Hospitals and County; and
- k. Neither Hospitals nor any other entity acting on behalf of Hospitals has:
 - (1) Taken assignment or agreed to take an assignment of a contractual or statutory obligation of the County; or
 - (2) Authorized or consented to the assumption of a statutory or contractual obligation of the County by the Hospitals or any other entity acting on behalf of Hospitals.

2.2 County Representations and Warranties. The County represents and warrants that:

- a. It is a political subdivision 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. The execution, delivery, and performance by the County of this Agreement are within the County's powers, are not in contravention of any other instruments governing the County and have been duly authorized and approved by the County Commissioners Court as and to the extent required by applicable law;

- c. Neither the County, nor any of its representatives are (i) currently excluded, debarred, or otherwise ineligible to participate in 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 County, or any of its representatives, from participation in Federal health care programs;
- d. This Agreement has been duly and validly executed and delivered by the County and constitutes the valid, legal, and binding obligation of the County, enforceable against the County in accordance with its terms;
- e. The County is legally authorized to and does receive ad valorem tax revenues from property owners in the County and will fund its obligations hereunder with such tax revenues;
- f. The County has entered into this Agreement after a public meeting held in compliance with the Texas Open Meetings Act in Chapter 551 of the Texas Government Code at which a majority of the County Commissioners Court voted to execute this Agreement;
- g. The County has transferred or has agreed to transfer Public Funds to the HHSC via IGT for use as the non-federal share of Waiver Program Payments to the Hospital in accordance with the Waiver Program;
- h. All transfers of Public Funds by the County to HHSC to support the Waiver Program Payments to the Hospitals under the Waiver Program comply with:
 - (1) The applicable regulations that govern provider-related donations codified at section 1903(w) of the Social Security Act (42 U.S.C. § 1396b(w)), and Title 42, Code of Federal Regulations, Part 433, subpart B, sections 433.52 and 433.54;
 - (2) The conditions approved by the federal Centers for Medicare and Medicaid Services for governmental entities' and private hospitals' participation in the Waiver Program; and
 - (3) Such regulations established by HHSC pursuant to the Waiver Program;
- i. The County does not and will not at any time receive any part of the Waiver Program Payments that are made by HHSC to the Hospital under the Waiver Program;
- j. The County has not entered into a contingent fee arrangement related to the County's participation in the Waiver Program;

- k. The County has not entered and will not enter into any agreement to condition either the amount of the Public Funds transferred by the County or the amount of the Waiver Program Payments the Hospitals receive on the amount of indigent care the Hospitals have provided or will provide;
- l. The County has not entered and will not enter into any agreement to condition the amount of the Hospitals' indigent care obligation on either the amount of Public Funds transferred by the County to HHSC or the amount of Waiver Program Payments the Hospital may be eligible to receive;
- m. With regard to any escrow, trust or other financial mechanism (an Account) utilized in connection with this Agreement or an IGT issued for a payment period that occurs after the Effective Date of this Agreement, the following representations are true and correct:
 - (1) The amount of any Account is not conditioned or contingent on the amount of indigent care services that the Hospitals provided or will provide;
 - (2) The County has disclosed the existence of any Account to HHSC; and
 - (3) Any such Account will not be used to effect a *quid pro quo* for the provision of indigent care services by or on behalf of the Hospitals;
- n. The County has not received and will not receive refunds of payment the County made or makes to the Hospital for any purpose in consideration for an IGT of Public Funds by the County to HHSC to support the Waiver Program Payments;
- o. The County has not received and will not receive any cash or in-kind transfers from the Hospitals or any other entity acting on behalf of the Hospitals other than transfers and transactions that:
 - (1) Following the date this Agreement is executed, are unrelated to the administration of the Waiver Program or the delivery of indigent care services under this Agreement;
 - (2) Constitute fair market value for goods or services rendered or provided by the County to the Hospitals; and
 - (3) Represent independent, bona fide transactions negotiated at arms-length and in the ordinary course of business between the Hospitals and the County; and
- p. The County has not:
 - (1) Assigned or agreed to assign a contractual or statutory obligation of the County to a Hospital or any other entity acting on behalf of the Hospitals;
or

- (2) Authorized or consented to the assumption of a statutory or contractual obligation of the County by the Hospitals or any other entity acting on behalf of the Hospitals.

**ARTICLE III
OBLIGATIONS OF THE HOSPITALS**

- 3.1 **Agreement to Cooperate.** The Hospitals agree to work cooperatively with the County to improve access, availability, efficiency, delivery, and funding for Health Care Services provided to the Indigent.
- 3.2 **Provision of Care.** The Hospitals agree to provide the Health Care Services and meet all requirements for treating the Indigent.

**ARTICLE IV
OBLIGATIONS OF THE COUNTY**

- 4.1 **Agreement to Cooperate with the Hospitals.** The County agrees to work cooperatively with the Hospitals to improve access, availability, efficiency, delivery, and funding for Health Care Services.

**ARTICLE V
MISCELLANEOUS**

- 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 of one year each, unless terminated in accordance with this Section 5.1. Either party may terminate this Agreement with thirty (30) days advance written notice of termination.
- 5.2 **Compliance with HIPAA.** To the extent applicable to this Agreement, the Hospital and the County 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 Hospital and the County 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 Hospital and the County 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.

5.3 **Access to Records.** 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 Hospital or the County 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. If the Hospital or the County 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 Hospital or the County 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. § 1395x(v)(1) and the regulations thereto.

5.4 **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, or by United States mail, postage prepaid, registered or certified mail, addressed to the parties as follows:

If to County: Collin County
2300 Bloomdale Road
2300 Bloomdale Road
Attn: Keith Self, County Judge

If to Hospitals: Texas Health Resources
612 Lamar Boulevard, Suite 900
Arlington, Texas 76011-4127
Attn: Chief Executive Officer

With a copy to: Texas Health Resources
612 Lamar Boulevard, Suite 900
Arlington, Texas 76011-4127
Attn: General Counsel

5.5 **Relationship between the Parties.** The relationship between the County and the Hospitals are solely contractual relationships between independent contractors. Neither party hereto is an agent or employee of the other party.

5.7 **Governing Law.** This Agreement shall be governed by the laws of the State of Texas.

5.8 **Venue.** Venue for any action involving the County arising out of this Agreement shall exclusively lie in State District Court in Collin County, Texas.

5.9 **Assignment.** No party may assign any right, obligation, or responsibility under this Agreement.

- 5.10 No Third Party Beneficiary.** The parties to this Agreement do not intend to establish any third party beneficiary relationships by virtue of this Agreement.
- 5.11 Entire Agreement.** This Agreement represents the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof, and all prior and concurrent agreements, understandings, representations and warranties with respect to such subject matter, whether written or oral, are and have been merged herein and superseded hereby.
- 5.12 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on all of the parties hereto. A facsimile copy or scanned image of an executed, original counterpart shall be deemed for all purposes to be, and may be relied upon as, an original, in which case each party shall immediately provide fully executed originals to the others.

(Signature Page Follows)

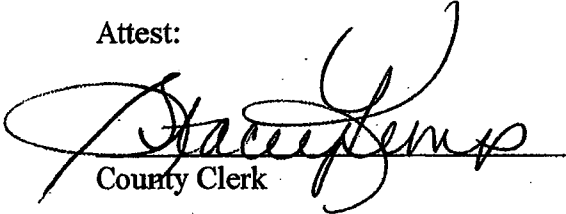
IN WITNESS WHEREOF, the parties have executed this Indigent Care Affiliation Agreement as of the date and year set forth above.

COLLIN COUNTY

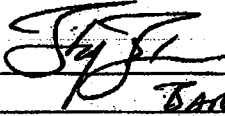
By: _____

Keith Self, County Judge

Attest:


County Clerk

**TEXAS HEALTH RESOURCES
ON BEHALF OF TEXAS HEALTH PRESBYTERIAN HOSPITAL ALLEN
AND TEXAS HEALTH PRESBYTERIAN HOSPITAL PLANO**

By: 
Barry BERDAN
Chief Operating Officer
Texas Health Resources