

**INDIGENT CARE AFFILIATION AGREEMENT
TOM GREEN COUNTY AND SAN ANGELO COMMUNITY MEDICAL CENTER**

This Indigent Care Affiliation Agreement (the "Agreement") is entered into as of March 31, 2009, to be effective as of March 31, 2009 ("Effective Date"), by and between Tom Green County ("County") and San Angelo Hospital, L.P. d/b/a San Angelo Community Medical Center, a Delaware limited partnership ("Affiliated Hospital") whose addresses are listed at the end of this document.

RECITALS

- A. Affiliated Hospital and the County collectively provide a significant amount of uncompensated care to the Indigent annually in the communities they serve.
- B. Reductions in Medicaid spending and a growing Medicaid and uninsured population have created a gap between the costs hospitals incur for treating Medicaid and indigent patients and the reimbursement they actually receive.
- C. The County and Affiliated Hospital 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 for providing health care to the Indigent in the County will continue to shift to Affiliated Hospital, the County, and the local community.
- D. The County is within the Affiliated Hospital's service area.
- E. The County and Affiliated Hospital desire to ensure that the Indigent have access to and receive Health Care Services.
- F. The County and Affiliated Hospital recognize that it is in their best interest to increase funding for the Medicaid population and to access local and federal funding to which Affiliated Hospital is entitled under Medicaid supplemental payment principles pursuant to Medicaid State Plan Amendment TX-05-011.
- G. The County and Affiliated Hospital recognize that they need to collaborate to ensure their ability to deliver health services to the Indigent in the County and to ensure the continued viability of the county's Medicaid providers.
- H. The County and Affiliated Hospital intend this Agreement to satisfy the legal and administrative requirements for participation in the Medicaid supplemental program authorized under Medicaid State Plan Amendment TX-05-011.
- I. There is no agreement between the County and Affiliated Hospital that conditions any amounts transferred by the County to fund Supplemental Payments on the amount of Indigent Care Affiliated Hospital has provided or will provide.
- J. There is no agreement between the County and Affiliated Hospital that conditions the amount of Affiliated Hospital's indigent care obligation on the amount transferred by the

County to fund Supplemental Payments or on the amount of the Supplemental Payment Affiliated Hospital might receive.

- K. No escrow, trust, or other funding mechanism exists, the amount of which is conditioned on the amount of Indigent Care provided by Affiliated Hospital, and any escrow, trust, or other funding mechanism used in connection with an intergovernmental transfer by the County has been disclosed to the state and is not used to effect a quid pro quo for the provision of Indigent Care by Affiliated Hospital.

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

1.0 DEFINITIONS

- 1.1 “State Fiscal Year” means the twelve month period beginning September 1 and ending August 31.
- 1.2 “Health Care Services” means primary and preventive services designed to meet the needs of the community, including, without limitation: immunizations; medical screening services and annual physical examinations; inpatient and outpatient hospital services; rural health clinics; laboratory and x-ray services; family planning services; physician services; payment for prescription drugs; skilled nursing facility services, regardless of a person’s age; and services that meet the County’s criteria for indigent care provided under Sections 61.028 and 61.0285 of Chapter 61 of the Texas Health and Safety Code.
- 1.3 “Affiliated Hospital” includes San Angelo Community Medical Center and its affiliated entities.
- 1.4 “Indigent” means any person eligible to participate in a state Medicaid program, Children’s Health Insurance Program (“CHIP”), a county indigent care program or hospital district indigent care program as described in Chapter 61 of the Texas Health and Safety Code, or a hospital charity care program.
- 1.5 “Indigent Care” means treatment and services for the Indigent, including inpatient and outpatient hospital and medical professional services.
- 1.6 “Public Funds” means ad valorem tax revenues the County has received from property owners in the County.
- 1.7 “Supplemental Payments” means any Medicaid payments received by Affiliated Hospital under a Supplemental Payment Program.
- 1.8 “Supplemental Payment Program” means a Medicaid supplemental payment program pursuant to either or both Section (t) of Attachment 4.19-A and Section (8) of Attachment 4.19-B of the Texas Medicaid State Plan and pursuant to the regulations at 1 Tex. Admin. Code §§ 355.8061 and 355.8063.

2.0 COMMUNITY INDIGENT HEALTH CARE NEEDS ASSESSMENT.

2.1 Methodology. Affiliated Hospital shall develop a process that solicits participation from the County, the community, and other sources for assessing health care needs of the Indigent in the County and identifying options to increase access to health care in the most cost efficient environment. The process shall address at a minimum the following issues:

- (1) Expenses incurred by Affiliated Hospital and the County in providing care for the Indigent;
- (2) Community, state, and federal resources and assets available for the provision of Indigent Care; and
- (3) Opportunities for improving access to health care for the Indigent through participation in the Supplemental Payment Program.

2.2 Assessment. On at least an annual basis prior to the beginning of each State Fiscal Year, Affiliated Hospital shall develop an Indigent Health Care Needs Report that identifies both existing Health Care Services that Affiliated Hospital and the County have provided and additional Health Care Services that Affiliated Hospital and the County can provide.

3.0 REPRESENTATIONS

3.1 Affiliated Hospital Representations. Affiliated Hospital represents and warrants the following:

- (1) It is a Delaware limited liability company, duly established and created pursuant to applicable law with all requisite power and authority to enter into this Agreement.
- (2) The execution, delivery, and performance of this Agreement by Affiliated Hospital are within Affiliated Hospital's powers, are not in contravention of any other instruments governing Affiliated Hospital, and have been duly authorized and approved by its governance as and to the extent required by applicable law.
- (3) Neither Affiliated Hospital, 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. Section 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 circumstance which may result in the exclusion of Affiliated Hospital or any of its representatives from participating in federal health care programs.
- (4) This Agreement has been duly and validly executed and delivered by Affiliated Hospital or its authorized agent and constitutes the valid, legal, and binding obligation of Affiliated Hospital, enforceable against Affiliated Hospital in accordance with its terms.

3.2 County Representations. The County represents and warrants the following:

- (1) 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.
- (2) 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 Commissioners Court of the County as and to the extent required by applicable law.
- (3) The County receives *ad valorem* tax revenues from property owners in the County.
- (4) Neither the County 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. Section 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 County or any of its representatives from participation in federal health care programs.
- (5) 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.

4.0 OBLIGATIONS OF AFFILIATED HOSPITAL

- 4.1 Agreement to Cooperate. Affiliated Hospital agrees to work cooperatively with the County to improve access, availability, efficiency, delivery, and funding for Health Care Services provided to the Indigent in the County.
- 4.2 Compliance with State and Federal Law. Affiliated Hospital agrees to ensure that the Health Care Services it provides under this Agreement are provided in compliance with applicable state and federal laws.
- 4.3 Documentation of Health Care Services Provided. Affiliated Hospital agrees to provide to the County on a quarterly basis documentation of the amounts and types of Indigent Care it has provided in the community.
- 4.4 Development of Community Indigent Care Assessment. Affiliated Hospital shall develop the Community Indigent Health Care Assessment and provide any administrative support needed for that purpose.
- 4.5 Compliance with HIPAA. To the extent applicable to this Agreement, Affiliated Hospital 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.” Affiliated Hospital 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 HIPAA Requirements and the terms of this Agreement. In addition, Affiliated Hospital agrees to comply with any state laws and regulations that govern or pertain to the confidentiality, privacy, security of, and to electronic transactions pertaining to, health care information.

- 4.6 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 representative, Affiliated Hospital 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. Affiliated Hospital shall also indemnify and hold the County harmless if any amount of reimbursement is denied or disallowed because of Affiliated Hospital’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 Affiliated Hospital 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, Affiliated Hospital 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. Section 1395x(v)(1) and the regulations thereto.
- 4.7 Support for Increased Medicaid Funding. Affiliated Hospital agrees to work collaboratively with the County to expand opportunities for Medicaid funding to which the community is entitled.
- 4.8 Program Compliance.
- (1) No part of any Supplemental Payments received by Affiliated Hospital will be returned or reimbursed to the County.
 - (2) No funds have been or will be used to reimburse the County in consideration of any Supplemental Payments paid to Affiliated Hospital.
 - (3) Affiliated Hospital will not use any of the Supplemental Payments to fund any contingent fee arrangement or agreement or to pay for third-party consultant or legal services.

- (4) Affiliated Hospital has not entered and will not enter into any agreement with the County to condition either the amount of the Public Funds transferred by the County or the amount of Supplemental Payments Affiliated Hospital receives on the amount of Indigent Care Affiliated Hospital has provided or will provide;
- (5) Affiliated Hospital has not entered and will not enter into any agreement with the County to condition the amount of Affiliated Hospital's Indigent Care obligation on either the amount of Public Funds transferred by the County to HHSC or the amount of Supplemental Payments Hospital may be eligible to receive;
- (6) Affiliated Hospital has not made or agreed to make cash or in-kind transfers to the County other than transfers and transactions that:
 - (a) Are unrelated to the administration of the Supplemental Payment Program and/or the delivery of Indigent Care under an affiliation agreement;
 - (b) Constitute fair market value for goods and/or services rendered or provided by the County to Affiliated Hospital; and
 - (c) Represent independent, bona fide transactions negotiated at arms-length and in the ordinary course of business between Affiliated Hospital and the County.
- (7) Neither Affiliated Hospital nor any other entity acting on behalf of an Affiliated Hospital or group of Affiliated Hospitals will:
 - (a) Take assignment or agreed to take an assignment of a contractual or statutory obligation of the County; or
 - (b) Authorize or consent to the assumption of a statutory or contractual obligation of the County by Affiliated Hospital or any other entity acting on behalf of Affiliated Hospital.

5.0 OBLIGATIONS OF THE COUNTY

- 5.1 Agreement to Cooperate. The County agrees to work cooperatively with Affiliated Hospital to improve access, availability, efficiency, delivery, and funding for Health Care Services provided to the Indigent in the County.
- 5.2 Funding Non-Federal Share of Private Hospital Medicaid UPL. The County agrees that if it chooses to provide funding for the Supplemental Payment Program, any funds it submits to the state for such funding will be tax revenues of the county and that the amount funded will not be conditioned on a required amount of Indigent Care from Affiliated Hospital.
- 5.3 Development of Community Indigent Health Care Assessment. The County shall participate in the development of the Community Indigent Health Care Assessment and provide documentation for the assessment of the amounts and types of indigent health care it has provided.

- 5.4 Support for Increased Medicaid Funding. The County agrees to work collaboratively with Affiliated Hospital to expand opportunities for Medicaid funding to which the community is entitled.
- 5.5 Compliance with HIPAA. To the extent applicable to this Agreement, the County agrees to comply with the HIPAA Requirements. The County 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 HIPAA Requirements and the terms of this Agreement. In addition, the County agrees to comply with any state laws and regulations that govern or pertain to the confidentiality, privacy, security of, and to electronic transactions pertaining to, health care information.
- 5.6 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 representative, 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. The County shall also indemnify and hold Affiliated Hospital harmless if any amount of reimbursement is denied or disallowed because of the County'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 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 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. Section 1395x(v)(1) and the regulations thereto.
- 5.7 Program Compliance. All transfers of Public Funds by the County to HHSC to support the Supplemental Payments to Affiliated Hospital under the Supplemental Payment Program will 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 CMS for governmental entities' and private hospitals' participation in the Supplemental Payment Program;
 - (3) HHSC administrative rules codified at Title 1, Texas Administrative Code, chapter 355, Subchapter J, Division 4, section 355.8063(t)(4);
 - (4) The County does not and will not at any time receive any part of the Supplemental Payments that are made by HHSC to Affiliated Hospital under the Supplemental Payment Program;

- (5) No part of the Public Funds generated for use as the intergovernmental transfer (“IGT”) have been or will be used to fund any contingent fee arrangement or agreement or to pay for the services of any third-party consultant or legal services;
- (6) 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 Supplemental Payments Affiliated Hospital receives on the amount of Indigent Care Affiliated Hospital has provided or will provide;
- (7) The County has not entered and will not enter into any agreement to condition the amount of Affiliated Hospital’s Indigent Care obligation on either the amount of Public Funds transferred by the County to HHSC or the amount of Supplemental Payment Affiliated Hospital may be eligible to receive;
- (8) The County has not received and will not receive refunds of payments the County made or makes to Affiliated Hospital for any purpose in consideration for an IGT of Public Funds by the County to HHSC to support the Supplemental Payments;
- (9) The County has not received and will not receive any cash or in-kind transfers from Affiliated Hospital other than transfers and transactions that:
 - (a) Are unrelated to the administration of the Supplemental Payment Program or the delivery of Indigent Care under an affiliation agreement;
 - (b) Constitute fair market value for goods or services rendered or provided by the County to an Affiliated Hospital; and
 - (c) Represent independent, bona fide transactions negotiated at arms-length and in the ordinary course of business between the Affiliated Hospital and the County; and
- (10) The County has not and will not:
 - (a) Assign or agree to assign a contractual or statutory obligation of the County to Affiliated Hospital or any other entity acting on behalf of Affiliated Hospital; or
 - (b) Authorize or consent to the assumption of a statutory or contractual obligation of the County by Affiliated Hospital or any other entity acting on behalf of Affiliated Hospital.

6.0 EVALUATION. Consistent with its constitutional, statutory, and fiduciary obligations, the County may evaluate the Affiliated Hospital’s historical experience in providing Indigent Care in the community or performance under this Agreement.

6.1 The evaluation under this Section 6.0 will be for the following purposes:

- (1) To determine whether the County will enter into or continue an affiliation agreement with a private hospital;

(2) To determine whether an Affiliated Hospital's participation benefited the community and whether its continued participation in the Indigent Care program is likely to continue to benefit the community; and/or

(3) To provide accountability to local taxpayers;

6.2 The County's evaluation under this Section 6.0 will:

(1) Occur on a schedule determined by the County, but not more often than once each calendar quarter;

(2) Be documented in a manner sufficient to confirm achievement of the County's mission and provide an appropriate and constitutional basis on which to transfer the Public Funds to HHSC; and

(3) Not include consideration of matters prohibited under paragraph 5.6 of this Agreement.

7.0 GENERAL PROVISIONS.

7.1 Term and Termination. The term of this Agreement shall be two years from effective date and shall automatically continue thereafter for additional terms of one year unless terminated in accordance with this Section 7.1.

The Affiliated Hospital may terminate this Agreement at any time by providing sixty (60) days prior written notice to the County. The County may terminate this Agreement effective immediately at any time upon providing written notice to the Affiliated Hospital.

7.2 Change in Law. If any provision of this Agreement or the plan to deliver health care services pursuant to this Agreement is determined by the federal or state government or by a court of law to be in violation of a federal or state law or regulation, or there is a change in any state or federal law or regulation that adversely affects this Agreement, then any party may propose by written notice a new basis for continuation of the Agreement. If notice proposing a new basis for continuation of the Agreement is given and the parties are unable to agree within thirty (30) days on a new basis for continuation of the Agreement, any party may withdraw from the Agreement immediately upon providing prior written notice to the other parties.

7.3 Notices. All notices to be given under this Agreement shall be in writing and shall be personally delivered or may be given by overnight carrier, by e-mail, or by United States mail, postage prepaid, registered or certified mail, addressed to the parties as follows:

Affiliated Hospital:

County:

San Angelo Community Medical Center
3501 Knickerbocker Road
San Angelo, TX 76904
Attn: Chief Executive Officer

Tom Green County
112 W. Beauregard
San Angelo, Texas 76903
Attn: Mike Brown, County Judge

and to such other address or person as may be designated by written notice given from time to time during the term of this Agreement by one party to the other.

- 7.4 Relationship Between the Parties. No party to this Agreement is an agent or employee of any other party. The relationship between the County and Affiliated Hospital is solely a contractual relationship between independent contractors.
- 7.5 Governing Law. This Agreement shall be governed by the laws of the State of Texas.
- 7.6 Assignment. No party may assign any right, obligation, or responsibility under this Agreement except to a successor in interest.
- 7.7 Third Party Beneficiaries. The parties to this Agreement do not intend to establish any third party beneficiary relationship by virtue of this Agreement.

(signature page follows)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date(s) set forth below.

AFFILIATED HOSPITAL: San Angelo Hospital, L.P. d/b/a San Angelo Community Medical Center, by San Angelo Community Medical Center, LLC, the General Partner

By: Martin G. Schweinhart 3-25-09
Martin G. Schweinhart, President Date

COUNTY: Tom Green County Commissioners Court

By: Ralph Hoelscher 3-31-09
Commissioner Precinct 1 Date

By: Aubrey deLoraine 3/31/09
Commissioner Precinct 2 Date

By: Steve Floyd 3-31-09
Commissioner Precinct 3 Date

By: Richard Kingwood 03/31/09
Commissioner Precinct 4 Date

By: Mark Brown 3-31-09
County Judge Date