



Interoffice Memorandum

AGENDA ITEM

July 30, 2020

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

THRU: Yolanda G. Martinez, EdPhD., PhD., Director
Health Services Department *YGM*

FROM: John Goodrich, Deputy Director
Health Services Department

SUBJECT: 340B Drug Discount Program
Consent Agenda – August 11, 2020

In 1992, the federal government created the 340B Drug Discount Program, which allows eligible covered entities to purchase outpatient pharmaceuticals at significantly reduced prices. The savings allows these covered entities to stretch scarce federal resources as far as possible in order to reach additional eligible patients and provide comprehensive services. Eligible covered entities include Ryan White programs, qualifying hospitals, Federal grantees from the Health Resources and Services Administration, the Centers for Disease Control and Prevention, the Department of Health and Human Services Office of Population Affairs, and the Indian Health Service.

Nemours Children's Hospital qualifies for the 340B Drug Discount Program based on their designation as a children's hospital. Hospital covered entities also required to enter into an agreement with a state or local government to provide healthcare to non-Medicaid/Medicare low-income patients while participating in the 340B program. Nemours has requested to enter into an agreement with Orange County for the 340B program and has committed to providing between \$3 million and \$10 million per year in healthcare services to eligible low-income patients.

We are requesting approval to enter into an agreement with Nemours to ensure their participation in this program and ensure they provide healthcare to eligible low-income patients. We are also requesting authorization for the Mayor or designee to exercise renewal options allowed by the agreement, as needed. There is no cost to the county.

ACTION REQUESTED: Approval and execution of Orange County, Florida and The Nemours Foundation Agreement related to the 340B Drug Discount Program and authorization for the Mayor or designee to exercise renewal options allowed by the agreement, as needed. **(Health Services Department)**

Attachments

ORANGE COUNTY, FLORIDA

and

THE NEMOURS FOUNDATION

AGREEMENT

related to

THE 340B DRUG DISCOUNT PROGRAM

THIS AGREEMENT ("Agreement") is made by and between **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida, whose mailing address is 201 South Rosalind Avenue, Orlando, Florida 32801 (the "County"), and **THE NEMOURS FOUNDATION** a nonprofit corporation organized and existing under the laws of the State of Florida, whose mailing address is 6535 Nemours Parkway, Orlando, Fl. 32827 (the "Hospital"). The Hospital and the County may also be referred to in this Agreement individually as a "party" and collectively as the "parties."

RECITALS:

WHEREAS, the Hospital is a nonprofit hospital that plays a vital role in the health care safety net by supporting programs that benefit the indigent, uninsured, and underinsured population in the State of Florida, specifically central Florida; and

WHEREAS, the Hospital participates and desires continued participation in the drug discount program established under Section 340B of the Public Health Services Act (the "340B Program"); and

WHEREAS, in order to participate in the 340B Program, the Hospital must contract with a unit of state or local government pursuant to which the Hospital commits to provide healthcare services to low-income individuals who are neither entitled to benefits under Medicare (Title XVIII of the Social Security Act ("SSA")) nor eligible for assistance under Medicaid (Title XIX of the SSA); and

WHEREAS, the Hospital desires to make such a formal commitment to the County; and

WHEREAS, the County agrees to accept such commitment on behalf of the citizens of Orange County, Florida.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree to the following terms and conditions:

Section 1. Recitals. The above recitals are true and correct and incorporated as a material part of this Agreement.

Section 2. The Hospital's Responsibilities.

- a) The Hospital agrees to provide healthcare to indigent, uninsured, and underinsured residents of Orange County, Florida and other surrounding counties, including low-income residents who do not qualify for Medicaid or Medicare.
- b) The Hospital commits to provide between \$3,000,000 and \$10,000,000 million dollars in medical care annually for qualified individuals for the term of this Agreement.
- c) The Hospital will assure that all patients presenting to the Hospital's emergency department will receive necessary treatment while in the Hospital's care and custody as required by law.

Section 3. The County's Responsibilities.

- a) The County accepts the Hospital's commitments as set forth above.
- b) The County shall designate an individual to serve as a liaison on behalf of the County for this Agreement ("County Liaison") and shall provide Hospital with the individual's name, title, and complete contact information.
- c) The County Liaison shall certify, on behalf of the County, the status of this Agreement to the Health Resources and Services Administration's Office of Pharmacy Affairs ("OPA") via e-mail. The County Liaison shall provide status certification to OPA within five (5) days of receiving OPA's e-mail request.

Section 4. Representations of the Hospital. The Hospital represents that as of the date hereof:

- a) The Hospital is a corporation duly organized and validly existing in good standing under the laws of the State of Florida with the corporate power and authority to enter into and perform its obligations under this Agreement; and
- b) The Hospital is a tax-exempt corporation under Section 501(c)(3) of the Internal Revenue Code of the United States, as amended, and under applicable laws of the State of Florida.

Section 5. The Hospital's Financial Commitment.

- a) The Hospital shall provide to County with written evidence that demonstrates – to the County's satisfaction – that it has met its financial commitment in accordance with this Agreement.
- b) Such evidence shall be certified by the authorized the Hospital's representative and provided to the County thirty (30) days prior to the end of the Hospital's fiscal year for the term of this Agreement.
- c) Failure by the Hospital to comply with the provisions set forth in this Section shall result in the County not providing the necessary certification to OPA.

Section 6. Notices. Notices to either party provided for herein shall be sufficient if sent by certified or registered mail return receipt requested, post prepaid, addressed to the following addresses or to such other addresses as the parties may designate to each other in writing from time to time.

As to the County:

Orange County Health Services Department
Attn: John Goodrich
2002A East Michigan Street
Orlando, Florida 32806

AND

Orange County Administrator
Administration Building, 5th Floor
201 South Rosalind Avenue
Orlando, Florida 32801

As to the Hospital:

THE NEMOURS FOUNDATION
6535 Nemours Parkway
Orlando, Florida 32827

Section 7. Right to Audit Records. The County has the right to review and audit the Hospital records relating to the Hospital's performance under this Agreement for the entire term of this Agreement.

Section 8. Term and Termination.

- a) This Agreement shall become effective on September 1, 2020, and remain in effect for one (1) year from the effective date and may be renewed for up to four (4) one-year renewals by mutual written consent of the parties.
- b) Either party may cancel this Agreement at any time, either with or without cause. The terminating party shall give the other party thirty (30) days written notice of its intention to terminate this Agreement, with or without cause. If such notice is given, this Agreement shall terminate at the end of the thirty (30) days' notice. Should the Hospital exercise its termination right under this section, the County is relieved of any and all obligation to provide certification to OPA.

Section 9 Assignments and Successors. Each party binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of the other party, in respect to all covenants of this Agreement. Neither party shall assign, sublet, convey, or transfer its interest in this Agreement without the written consent of the other, which consent shall be in the sole determination of the party with the right to consent.

Section 10. Public Records.

- a) All books, records, and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. All records or documents created by the Hospital or provided to the Hospital under the terms of this Agreement are public records and the Hospital agrees to comply with any request for such public records or documents made in accordance with Section 119.07, Florida Statutes.
- b) If the Hospital has questions regarding the application of Chapter 119, Florida Statutes, to the Hospital's duty to provide Public Records relating to this Agreement, contact the Procurement Public Records Liaison, 400 E. South Street, 2nd Floor, Orlando, FL 32801, ProcurementRecords@ocfl.net; 407-836-5897.

Section 11. Independent Contractor. The parties agree that the relationship between the County and the Hospital that is established by this Agreement is that of an independent contractor. Nothing in this Agreement shall be construed to create any agency or employment relationship between the County or any of its employees and the Hospital or any of its employees. Neither party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation – express or implied – on behalf of the other.

Section 12. Indemnification. To the fullest extent permitted by law, the Hospital shall defend, indemnify, and hold harmless the County, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, costs, and expenses (including attorneys' fees) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or in part by any act or omission of the Hospital or its subcontractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable. Nothing contained herein shall constitute a waiver by the County of sovereign immunity or

the provisions of Section 768.28, Florida Statutes. It is agreed by the parties that specific condition has been paid under this Agreement for this provision.

Section 13. Waiver. No delay or failure on the part of any party hereto to exercise its right or remedy accruing to such party upon the occurrence of an event of violation shall affect any such right or remedy, be held to an abandonment thereof, or preclude such party from the exercise thereof at any time during the continuance of any event of violation. No waiver of a single event of violation shall be deemed to be a waiver of any subsequent event of violation.

Section 14. Litigation, Laws and Venue. The obligations of the Hospital under this Agreement are subject to all applicable federal, state, and local laws, rules, and regulations, as amended, and this Agreement shall be deemed to have been negotiated and entered into in the State of Florida, and all matters or issued collateral thereto shall be governed by the laws of the State of Florida. Venue for any litigation involving this Agreement shall be in Orange County, Florida. All rights to a trial by jury are hereby waived by both parties. Notwithstanding any indemnifications discussed herein, each party shall otherwise be responsible for their own costs and attorneys' fees.

Section 15. Remedies. No remedy herein conveyed upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any rights, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 16. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to, or shall confer, upon any person other than the parties and their respective successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

Section 17. No Representations. Each party represents that they have had the opportunity to consult with an attorney, and have carefully read and understand the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

Section 18. Construction of Agreement. The Parties hereby agree that they have reviewed this Agreement, have consulted with legal counsel of their choice, have participated in the drafting of this Agreement, and that this Agreement is not to be construed against any party as if it were the drafter of this Agreement.

Section 19. Signatory. Each signatory below represents and warrants that he or she has full power and is duly authorized by their respective party to enter into and perform this Agreement. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this Agreement as stated:

Section 20. Counterparts and Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement. Any counterpart may be delivered by any party by transmission of signature pages to the other parties at the addresses set forth herein, and delivery shall be effective and complete upon completion of such transmission of manually signed copies of signature pages shall nonetheless be delivered promptly after such facsimile delivery.

Section 21. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

Section 22. Conflicts. The terms of this Agreement shall control over any conflicting terms in any referenced agreement or document.

Section 23. Written Modification. No modification to this Agreement shall be binding upon any party to this Agreement unless reduced to writing and signed by a duly authorized representative of each party to this Agreement.

Section 24. Entire Agreement. This Agreement, and any documents incorporated herein, sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. This Agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this Agreement.

Section 25. Headings. The headings or captions of articles, sections, or subsection used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

ORANGE COUNTY, FLORIDA

By: Orange County Board of County Commissioners

By: Jerry L. Demings

Jerry L. Demings

for Orange County Mayor

AUG 11 2020

Date: _____

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: Katie Smith

Deputy Clerk

THE NEMOURS FOUNDATION

By: Harold A. Williams

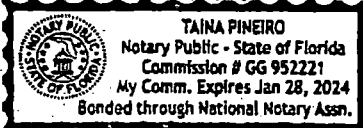
Harold A. Williams

Operational Vice President Finance

Date: 7/17/20

STATE OF Florida)
COUNTY OF Orange)

The foregoing instrument was acknowledged before me this 17th day of July 2020,
by Harold A. Williams of Nemours Childrens Hospital., a Florida not-for-profit corporation.



Taina Pineiro
Signature Notary Public

Print, Type/Stamp Name of Notary

Personally Known [] or Produced Identification []

Type of Identification Produced: _____