

COMMISSION AGENDA:

12.11.12 #29

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney

JLB

SUBJECT: Recommendation for Approval of the Mutual Release and Settlement Agreement
Between Pinellas County and HCA Affiliated Hospitals

Date: December 11, 2012

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS APPROVE AND THE CLERK ATTEST TO THE MUTUAL RELEASE AND SETTLEMENT AGREEMENT BETWEEN PINELLAS COUNTY AND HCA AFFILIATED HOSPITALS.

DISCUSSION: In FY 2011-2012, the County and HCA Affiliate Hospitals ("HCA") entered into an Agreement wherein HCA was the beneficiary of County funds sent to the State and returned to local health care facilities with an additional amount of funding included for provision of Medicaid-related health care services. This program was known as the "Buyback" program ("Program") and it allowed for an overall enhancement of health care funding for lower income citizens of Pinellas County. In order to assure that this additional funding was spent for the specific health care concerns of indigent County residents, the parties, HCA and Pinellas County, entered into a separate agreement providing direction for expenditure of the funds received from the State. The County entered into identical agreements with other hospitals located in Pinellas County.

In September 2011, HCA refused to direct funds received under the above Agreement as requested by the County. In response, the County exercised the cancellation clause in the Agreement based on a determination that HCA was in breach of contract. Over the past several months, this office has been in negotiations with HCA demanding the return of funds provided through the Program. The parties reached an agreement in principle, but HCA required that it could only return funds to a County health care provider and not directly to the County general fund. In response, the County determined that the funds subject to the settlement could be used to achieve the same purpose of providing health care to indigent citizens of the County if they are used to supplement general fund monies provided for compensating the Pinellas County Community Health Centers Agreements for FY 2012-2013. To achieve this goal of accepting the settlement proceeds from HCA through funding the Community Health Centers Agreement, this recommendation is being provided in tandem with the Community Health Centers Health Care Agreement as companion items under the County Administrator's agenda. Approval of this Mutual Release and Settlement Agreement with HCA will allow the proceeds of \$1,450,000.00 to be used in place of general fund money for provision of services through the Community Health Centers Agreement.

Based on the above considerations, it is recommended that the Board of County Commissioners approve and the Clerk attest to the Mutual Release and Settlement Agreement between Pinellas County and HCA Affiliate Hospitals.

JLB:CEB:elb

Attachment

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MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (“Agreement”) is made and entered into by the Pinellas County Board of County Commissioners (“County”) and Edward White Hospital, Largo Medical Center, Northside Hospital, St. Petersburg General Hospital, and Suncoast Hospital (together, “HCA Affiliated Hospitals”) this 17 day of September, 2012.

Recitals

WHEREAS, the County and HCA Affiliated Hospitals entered into and executed the following agreements:

- a. Pinellas County Health Plan Provider Agreement dated September 30, 2009 (the “PCHP Agreement”), attached as Exhibit 1 hereto;
- b. Pinellas County Hospital Health Care Services Agreement dated November 16, 2010 (the “PCHCS Agreement”), attached as Exhibit 2 hereto.
- c. Medicaid “Buy Back” Letter of Agreement dated December 2, 2010 (the “Buy Back Agreement”), attached as Exhibit 3 hereto; and

WHEREAS, the County has asserted certain claims against HCA Affiliated Hospitals that are based upon or which relate to HCA Affiliated Hospitals’ obligations or alleged obligations under the PCHP Agreement, PCHCS Agreement and Buy Back Agreement; and

Whereas, the HCA Affiliated Hospitals dispute the County’s claims and deny that they have any obligation to the County under the PCHP Agreement, PCHCS Agreement or Buy Back Agreement; and

WHEREAS, the HCA Affiliated Hospitals have raised certain claims against the County that are based upon or relate to the County’s obligations or alleged obligations under the PCHP Agreement, PCHCS Agreement and Buy Back Agreement. The County disputes HCA Affiliated

Hospitals' claims and denies that it has any obligation to HCA Affiliated Hospitals under the PCHP Agreement, PCHCS Agreement or Buy Back Agreement; and

Whereas, the HCA Affiliated Hospitals wish to make a charitable contribution to a not for profit entity in Pinellas County that will support the County's goal of enhancing the provision of health care services to Medicaid, charity, and other low income residents of Pinellas County; and

Whereas, the County and HCA Affiliated Hospitals wish to resolve and settle their respective claims and disputes regarding the PCHP Agreement, PCHCS Agreement and Buy Back Agreement, and avoid the expense of litigation;

NOW THEREFORE, in consideration of the mutual promises contained herein, it is agreed as follows:

Agreement

1. The County, acting by and through its Board of County Commissioners, hereby fully and finally releases and discharges HCA Affiliated Hospitals (including each individual Hospital and its officers, directors, shareholders, successors and assigns) from all claims, obligations and causes of action which arise from or which the County may or could assert against HCA Affiliated Hospitals (as a group or individually) in connection with the PCHP Agreement, PCHCS Agreement or Buy Back Agreement.

2. HCA Affiliated Hospitals hereby fully and finally release and discharge the County from all claims, obligations and causes of action which arise from or which the HCA Affiliated Hospitals (as a group or individually) may or could assert against the County in connection with the PCHP Agreement, PCHCS Agreement or Buy Back Agreement.

3. The HCA Affiliated Hospitals, or a related entity, shall make a tax-exempt charitable contribution in the amount of \$1,450,000.00 (One Million Four Hundred Fifty Thousand Dollars), to Community Health Centers of Pinellas, Inc. ("Community") in Pinellas County, Florida, for the purpose of enhancing access to health care services to Medicaid, charity, and other low income residents of Pinellas County within 30 (thirty) days of the date of execution of this agreement. This paragraph is contingent upon Community accepting the charitable contribution. If Community does not accept the contribution, the HCA Affiliated Hospitals shall select an alternative not-for-profit entity in Pinellas County Florida that will accept such a contribution.

4. This release and settlement is a compromise of disputed claims and is not an admission of fault or liability by the County or HCA Affiliated Hospitals.

5. This document sets forth the complete, final and exclusive statement of the parties' agreement to release and settle their claims and may not be modified or altered in any respect except by a written instrument signed by all parties. The terms of this Agreement are contractual and not mere recital.

6. If it is necessary for either party to file legal action to enforce or interpret any term or terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

7. The persons executing this Agreement represent and warrant that they have full authority to sign this Agreement on behalf of the parties for which they are acting and that said parties will thereby be fully bound by the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

ATTEST:
Ken R. Burke
Clerk of the Circuit Court

PINELLAS COUNTY, FLORIDA, acting
By and through its Board of County
Commissioners

By: _____
Deputy Clerk

By: _____
Chairman

Date: _____

ATTEST:

HCA AFFILIATED HOSPITALS

By: Dorothy R. Livingston

By: [Signature]

Title: West Florida Division President

Date: 9/17/12

APPROVED AS TO FORM
OFFICE OF THE COUNTY ATTORNEY

By: [Signature]
Attorney