MECKLENBURG COUNTY
Office of the County Manager

MEMORANDUM

TO: Mecklenburg County Board of Commissioners

FROM: Harry L. Jones, Sr., County Manager

DATE: July 7, 2011

RE: Carolinas HealthCare System

On July 5, 2011, Board Chairman Jennifer Roberts received a letter from Attorney Larry Dagenhart of McGuire Woods, on behalf of Carolinas HealthCare System (CHS), in which Mr. Dagenhart proposes that the 2000 Interlocal Agreement be amended for a limited period of time, during which CHS would receive funds from the County for three years and the County would deed without restriction or encumbrance to CHS the Billingsley Road campus of CMC-R by the end of 2011. It appears from the letter that only members of the Mecklenburg County Board of Commissioners were copied. I have attached another copy for your convenience.

It is my recommendation that the County reject this proposal, and that the County give CHS notice of termination of the Interlocal Agreement effective June 30, 2013. It is in the County's best interests to do so. Either party may terminate the Agreement without cause upon a minimum of 14 months notice, as more particularly described in the Agreement.

Ending the Interlocal Agreement on June 30, 2013 ends the County's obligation to fund CHS's deficit for its hospital based psychiatric services ($22.4 million, of which $19.161 million is County funds for FY 2012). The County ended the indigent care subsidy ($17.7 million) with the adoption of the FY 2012 budget. No other county in North Carolina provides these funds. The $40 million funding of these two subsidies has constituted approximately $.04 on the annual tax rate.

Additionally, as a result of termination of the Agreement, on July 1, 2013 the County would resume operations of its Health Department, just like the other counties in North Carolina and like the County did for close to100 years prior to contracting with CHS.

As I have stated previously, there is no legal obligation for the County to provide hospital based psychiatric services, nor is there a legal obligation for the County to appropriate funds to a hospital system to provide medical care for the medically indigent. These are not core services of county government in North Carolina. These are discretionary subsidies given by Mecklenburg County through the Interlocal Agreement. It is your ultimate policy decision whether the County should continue to subsidize a financially strong enterprise that holds $1.8 billion in unrestricted reserves.

The County does have certain legal obligations with respect to providing Health Department services, much of which is covered by State grant money.

Mr. Dagenhart characterizes his letter as a "settlement offer in connection with the ongoing dispute" between the County and his client CHS. One of the apparent disputed issues involves the County's request for utilization data and other information related to CMC-Randolph. CHS does not dispute that it has not provided certain data and information as required by the contract.

Failure to provide the required information has caused the County to give CHS notice of breach of the contract and to withhold payment of funds to CHS. Both the breach and the withholding of funds continue.

In addition to requesting utilization data from CHS, the County has posed questions to CHS with respect to the use of County funds at CMC-R and the use of the County owned building. Some of the questions have yet to be acknowledged or addressed by CHS.

Some of these questions include the excessive use of the County's facility by out-of-county residents and the financial repercussions to the County of CHS's marketing the facility and call center to out-of-county CHS operations and to commercial employee assistance programs sold by CHS. Another question is why CHS now charges the County $7 million annually in indirect or intercompany charges, which has contributed to the deficit charges rising by 124% in the past six years.

These are not unreasonable questions and should be acknowledged and answered by CHS. As a government, CHS should be transparent in its expenditure of government funds and its use of government assets.

The County learned from its recent experience with Mecklenburg Open Door to ask questions and insist upon answers. If the County's compliance efforts are to be effective, the County must hold all contractors accountable. If anything, a contract with another government, such as CHS, should be held to higher scrutiny, not less.

The proposed settlement from Mr. Dagenhart is clearly not in the County's best interests. If the County gives notice of termination of the contract as I have recommended, the County's obligations will end in two years, not three, which renders moot any three-year analysis of hypothetical savings shown by Mr. Dagenhart.

In analyzing Mr. Dagenhart's proposal:

a) Eliminate Indigent Care funding beginning July 1, 2011. The County already did this. It is the County's position, supported by North Carolina law, that the contractual obligation to fund indigent care is an unenforceable obligation. If CHS disputes the County's position, the exclusive remedy available to CHS under the contract is termination.

b) Fund the CMC-R deficit at declining levels for the next three years. The proposal states that CHS believes "the County would want to work with CHS to best protect patients and provide appropriate care." This statement cannot possibly mean that without County subsidy patients are not going to be protected or receive appropriate care. If so, the subsidy exists under a contract that can be terminated with as little as 14 months notice, which is a thin thread on which to hang protection of patients and appropriate care. What would the County's role in "protecting patients" or "appropriate care" even be? The County has no such role, and the County believes CHS does a fine job in protecting its patients and delivering the appropriate level of care.

The beds and the patients at CMC-R do not belong to Mecklenburg County; they belong to CHS, along with all aspects of comprehensive hospital based psychiatric services. The County has only one role under the Interlocal Agreement, which is to provide deficit funding for what CHS considers as "comprehensive hospital based psychiatric services." This funding does not go for individual patient care, but instead goes to the bottom line of CHS.

Currently, CHS is the exclusive determiner of what constitutes "comprehensive hospital based psychiatric services" under the existing contract. We should all assume that CHS has made this determination based upon patient and community needs, and has staffed the programs accordingly.

We should assume that CHS has "right sized" these programs and not overstaffed them, meaning the County's deficit funding is not inflated. Also, we should assume that CHS will not experience layoffs of employees if the County subsidy ends. CHS has ample reserves to cover any deficit at CMC-R formerly paid by the County.

However, it should be noted that the County has questioned why it is paying deficit charges for 525 positions (including 99 support positions) at CMC-R, which is a 66 bed facility, as contrasted to the proposed Huntersville facility which will have 44 beds and 102 employees.

If CHS should reduce the CMC-R staffing upon termination of the County subsidy, then it would seem that the County has been paying more than it should have been. And further, if CHS reduces its services, it would seem that CHS has redefined what

constitutes "comprehensive hospital based psychiatric services" based more toward their own bottom line and less on community needs.

With respect to the financial ramifications to the County under Mr. Dagenhart's proposal, CHS is offering a fixed cost to the County, which is approximately $7.5 million more than what the County would pay if it terminated the contract effective June 30, 2013 as I am recommending.

c) Deed CMC-R without encumbrances or restrictions to CHS by December 31, 2011. The County should not consider deeding this campus to CHS. The County anticipates a need for office space in this area. Also, the County is currently paying debt service on $8 million of improvements made to the facility. This debt obligation continues regardless of ownership of the facility. The County's future space needs should be fully examined, especially in light of the State's Medicaid waiver requirements, which will cause the County's need for additional office space.

When I suggested that I could support deeding the CMC-R building to CHS, the support was contingent upon CHS immediately assuming full financial responsibility for hospital based psychiatric services deficits, thus ending the County subsidy. CHS flatly rejected the offer. Now, CHS wants not only the building, but also three years of County subsidy for these hospital based services.

Deeding the Billingsley Road property without restriction would allow CHS to dispose of the property and keep the proceeds of the sale, rental or lease. This property was purchased with taxpayer funds for use as a behavioral health facility. The County would be unable to stop the disposition of the property.

d) CHS would transition Health Department service to the County by July 1, 2012. The concept of termination of any aspect of the contract by July 1, 2012 would make sense if all aspects of the Interlocal Agreement were terminated by that date by agreement of the parties.

RECOMMENDATIONS

I propose that we discuss the Interlocal Agreement issues in more detail on July 12. Based upon the facts as I know them and what is now before us, my recommendations are:

- Provide written notice of termination of the existing Interlocal Agreement to the Charlotte Mecklenburg Hospital Authority, which would end the Agreement by June 30, 2013. This would not preclude an earlier termination of the Agreement for breach. The termination would dissolve all components of the current Agreement, including the deficit funding of CMC-Randolph and all obligations with respect to public health.

Ending the existing Interlocal Agreement means that the County would reconstitute the

operations of the Health Department and operate it just like the other counties in North Carolina, and like the County did for close to 100 years before the first contract with the Hospital Authority in 1995.

In addition, with termination of the Interlocal Agreement, the County must determine its future role, if any, in subsidizing comprehensive hospital based psychiatric services. Being a direct provider of hospital based psychiatric services is not a core business of county government in North Carolina. As mentioned previously, county subsidies elsewhere in this State are significantly less than what Mecklenburg County pays and are provided by annual appropriations versus long-term contractual commitments.

- Create a Blue Ribbon Committee to make recommendations to the Board of County Commissioners within 90 days as to what the future role of Mecklenburg County government should be, if any, in directly providing medical services or funding medical services in the form of subsidies to individuals or institutions, including comprehensive hospital based psychiatric services. The Committee would take into consideration historical practices of Mecklenburg County, community needs and expectations, Statewide practices, the County's fiscal strength and the Hospital Authority's fiscal strength, and projected implications of implementation of the Affordable Care Act in 2014 and the State requirement that LME's obtain 1915 waivers. (The consequences of the last two items will be very difficult to predict.) If you would like to pursue this approach, I can present to you my recommendations regarding such a committee's composition and charge within 30 days.

If you have questions, please let me know.

Cc: Michelle Lancaster
John McGillicuddy
Bobbie Shields
Marvin Bethune
Sandra Bisanar
Carlos Hernandez
Wynn Mabry