University and UNM Hospital Performance under Federal Contract, Amendments, and Consents

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Key Dates, Documents, and Definitions

- **June, 1952** – Federal Contract between the United States and Bernalillo Board of County Commissioners, Board of Trustees of Bernalillo County Hospital, and the State of New Mexico. This is referred to in this presentation as the “Federal Contract.”

- **June 1952** – Amendment No. 1 to Federal Contract. This is referred to in this presentation as “Amendment 1.”

- **Jan. 1957** – Amendment No. 2 to Federal Contract. This is referred to in this presentation as “Amendment 2.”

- **July 1957** – Amendment No. 3 to Federal Contract. This is referred to in this presentation as “Amendment 3.”

- **July 1999** – Agreement Regarding Consent to Lease Agreement. This is referred to in this presentation as the “1999 Consent.”

- **Nov. 2004** – First Amendment to Agreement Regarding Consent to Lease Agreement. This is referred to in this presentation as the “2004 Consent.”

- **Key Definition**: The term “Indian” is a defined term in the Federal Contract, which “means a person qualified, as determined by the Secretary, to receive medical, surgical, and hospital care and service through or from the Bureau of Indian Affairs, under the laws of the United States and the regulations of the Secretary.”
This presentation will focus on key terms and provisions of the Federal Contract, the amendments to the Federal Contract, the 1999 Consent, and the 2004 Consent, and will not go into every provision of these lengthy documents.
Analysis

- **Federal Contract ¶ 2:**

  The County and the Trustees agree that the equipment and operation and maintenance of the hospital and the standard of care and treatment furnished will be in accordance with the best medical and surgical practices and will meet the requirements other American medical association for registration as a hospital and the requirements of the Joint Commission on Accreditation of Hospitals for unconditional approval so that the hospital will at all times be approved and accredited by said organization. The hospital shall also meet the requirement so the State of New Mexico for license to operate as a hospital.

- **Status:**

  Hospital has 580 Beds accredited by The Joint Commission; is certified to participate in Medicare and Medicaid and is providing services and supplies to Indians. Additionally, Hospital is fully licensed by NMDOH.
Analysis

- **Federal Contract ¶ 3:**
The County and the Trustees shall furnish all personnel including medical and surgical staff and facilities thereof to carry out this agreement.

- **Status:**
Currently, UNMH employs 5,400 employees and UNM SOM furnishes approximately 880 medical staff members. As to the latter, IHS pays UNM Medical Group separately for professional services provided by such physicians.
Analysis

Federal Contract ¶ 4:
The county and the Trustees agree to have and make available at all times when required not less than one hundred (100) beds for Indians; provided that Pueblo Indians of New Mexico shall have first call on and priority to the use of said 100 beds so reserved for Indian use.

Status:
- Applies to “Qualified Indians”
- Not a set aside of 100 beds waiting for patients or available exclusively for Indians.
  - Since 1957, IHS has not paid for a set aside of 100 beds; rather for care actually provided to Native Americans. See Amendment 3.
- Subject to EMTALA, Medicare Conditions of Participation, JCAHO standards, NM DOH licensure rules
- Average daily Native American Census = 34 to 35
- Per 2004 Consent, if a Native American presents and UNMH is unable to admit, and that person is treated at a non-UNM facility, then IHS has the right to seek a credit from UNMH for the cost of those services.
  - To date, IHS has never made a request for a credit under this provision.
- Per 1999 Consent and 2004 Consent, UNMH has established the Office of Native American Health Services and since 8/31/2008 that Office has been located at 2211 Lomas Blvd N.E., Albuquerque, New Mexico, 87106, 1st floor, West.
  - The office offers a single toll-free point of contact for appointment and prior auth/referral coordination for patients and contract health offices.
  - The office also offers assistance navigating the UNMH system, answers questions, problem-solves, and provides community or internal resource referrals as appropriate.
- UNMH does not discriminate in any way against Native American patients.

* See Key Definitions, at Slide 2.
Analysis

- **Federal Contract ¶ 8:** This Paragraph of the Federal Contract consists of 10 subparagraphs, dealing primarily with compensation by the IHS to UNM Hospital and the set aside of 100 beds.

- **Status:**
  - First 4 paragraphs of Paragraph 8 of the Federal Contract were deleted pursuant to Amendment 3.
  - As to 8th subparagraph, IHS has from time to time indicated some level of non-performance. Matters resolved to mutual satisfaction.
  - Pursuant to the 2004 Consent, the IHS and UNMH developed and implemented alternative reimbursement methodologies, at IHS’ election.
Analysis

- **Federal Contract ¶ 12:**
  - Requires UNM to have sufficient medical staff to treat patients and requires certain levels of specialization
  - Requires UNM Hospital to have a Director of Nursing Services
  - Requires UNM Hospital to have graduate dieticians for supervision of food services

- **Status:**
  - Currently, UNMH employs 5,400 employees and UNM SOM furnishes approximately 880 medical staff members. As to medical staff members, each must either be Board Certified or Board Eligible to receive clinical privileges at UNMH.
  - UNMH has a Chief Nursing Officer, Ms. Sheena Ferguson, RN
  - This provision was modified by Amendment 2 to accommodate physicians who are not on the Medical Staff providing services.
  - This provision was modified by Amendment 2 to allow for treatment by residents and fellows.
  - UNMH employs licensed dieticians for the supervision of food services at UNMH.
Federal Contract ¶ 14
The County and the Trustees shall equip and maintain an Out-Patient Department at said hospital, rendering dispensary and diagnostic clinic service to eligible Indian patients, where ambulatory patients can be treated and also screened for hospital admission.

- **Status:**
  - UNMH offers 65 specialty clinics at 30 different sites both at the main hospital location and in the community at large.
  - Additionally, UNMH operates an outpatient pharmacy located at 1209 University Blvd., N.E.
Analysis

Federal Contract ¶ 16:
Provides that the hospital will not discriminate on the basis of race, religion, color, language or non-medical grounds, but makes it clear that this prohibition does not apply in the context of providing priority access to Native Americans. In other words, UNM Hospital will not violate the non-discrimination provisions of Section 16 of the Federal Contract, if it provides priority access to Native Americans.

Status:
- This enhanced standing to seek injunctive relief appears to be limited to violation of the priority and non-discrimination provisions of this Section 16.
  - Other remedies such as termination of the Federal Contract are held only by the Commissioner.
- Does not waive UNM’s sovereign immunity under Eleventh Amendment to the United States Constitution, as it relates to a damage claim.
Analysis

- **Amendment 1:**
  Amends Paragraph 9 of the Federal Contract to establish the formula for the “annual average per diem cost of operation and maintenance” of the Hospital

- **Status:**
  - UNMH utilizes this formula in determining the annual average per diem cost per bed of operation and maintenance of the Hospital
Amendment 2:
- Amends Paragraph 8 of the Federal Contract to allow the Hospital to
  - have non-employed physicians treat patients at the Hospital
  - Allow residents and fellows to treat patients at the Hospital
    - No separate compensation is payable for the residents and fellows but can be included in cost

Status:
- This is the provision that modifies Section 8 of the Federal Contract to accommodate physicians who are not on the Medical Staff providing services.
- This is the provision that allows for treatment by residents and fellows.
Amendment 3:
- Deletes first 4 paragraphs of Paragraph 8 of the Federal Contract
- IHS ceased at this point paying for a set aside of 100 beds but rather started paying for care actually provided to Native Americans

Status:
- This is the base from which UNM Hospital operates today.
Analysis

1999 Consent:
- One member of Board of Trustees is person recommended by AIPC
- Requires Bernalillo County and UNM to coordinate with AIPC and IHS in fulfilling terms of 1999 Lease Agreement

Status
- The University has fully complied with this requirement.
- Current member of the UNM Hospital Board of Trustees is Dr. Raymond Loretto, DVM.
Analysis

- **1999 Consent:**
  UNM and the HSC Clinical Operations Board will establish mechanisms to provide periodic discussions between the Regents or the Board and the AIPC at least semi-annually regarding Hospitals operations and quality of care.

- **Status:**
  UNMH has been holding such meetings. Since 2006, management of UNMH/UNM HSC has attended and/or hosted these meetings both at the AIPC and at UNMH.
1999 Consent:
Work with IHS to develop a master contract for the University to conduct outreach specialty clinics in IHS medical facilities or medical facilities operated by Native American tribal governments, to the extent that the University has the staffing capacity to provide such services.

Status:
- Unable to reach agreement with IHS on master contract for UNM to conduct outreach specialty clinics in IHS clinics
- UNMH and IHS reached agreement on the SCI program
- UNMH continues to explore the financial feasibility for both UNM and IHS of reaching such a master contract.
Analysis

- **1999 Consent:**
  - University, AIPC and IHS will explore adequacy of reimbursement to the University for provision of medical care to Native Americans under the Federal Contract and will work toward achieving equitable compensation arrangements.

- **Status:**
  - As a part of the 2004 Consent, the parties agreed to a different alternate approach to reimbursement to UNMH.
Analysis

- **2004 Consent:**
  - UNM shall maintain the appointment of a Pueblo Indian, recommended by the AIPC on the COB.

- **Status**
  - The University has fully complied with this requirement. Dr. Raymond Loretto, DVM, is the current AIPC representative on the UNMH Board of Trustees.
Analysis

2004 Consent:
The University will convene an annual meeting in September of each year to discuss the University’s and the Hospital’s performance as they relate to the Federal Contract, the Lease Amendment, the Amended Consent, and applicable federal law. Participants shall be representatives of the University, the County, the IHS, the AIPC, Albuquerque Area IHS, Navajo Area IHS and any interested tribe or Pueblo located within those two areas.

Status:
- UNM HSC has held two such annual meetings, one in 2006 and one in 2007.
- 2008 Meeting was deferred at the request of the IHS and will be held April 17, 2009.
Analysis

- **2004 Consent:**
  The Hospital will maintain the employment of a contract specialist dedicated to the negotiation of healthcare provider contracts between the University and the IHS and between the University and 638 Contractors.

- **Status:**
  UNM HSC has employed Gregory Ortiz in this position.
Analysis

- **2004 Consent:**
  The Hospital will maintain the employment of a patient scheduling coordinator whose position is dedicated to facilitating Hospital admissions and outpatient clinic appointments for eligible Native Americans, by means of prioritizing those patients’ access to those services over that of all other patients; however, such prioritized access shall take into consideration the medical necessity of non-Native American patients.

- **Status:**
  - UNMH maintains the employment of more than one patient scheduling coordinator, headed by Karen Atkinson-Smith, dedicated to facilitating Hospital admissions and outpatient clinic appointments for eligible Native Americans.
Analysis

2004 Consent:
- Establishes the alternate reimbursement methodologies, limiting the total amount to not greater than amount allowable under Federal Contract
- Provides that if the Hospital cannot admit or treat a Native American referred for admission by IHS and 638 Contractors in a reasonably timely manner, then Hospital will give a supplemental discount
- Amount will be negotiated quarterly based upon the divert costs incurred by IHS or the 638 Contractors

Status:
- Parties are working under this system currently
- IHS has not sought any supplemental discount
2004 Consent:
- Provides for Annual and Quarterly reports to be furnished to IHS regarding:
  - Patients served
  - Detailed itemization of expenses incurred by Hospital
  - Source of referral
  - Date of referral
  - Date of appointment or admission
  - No. of days elapsing between date of referral and appointment or admission
  - No. of referred Native Americans who failed to be admitted due to lack of bed space

Status:
- UNMH provides each of the required reports to the IHS.
- Significantly, no Native American referred by IHS failed to be admitted due to lack of bed space
Analysis

- **2004 Consent:**
  - The Hospital will provide to Bernalillo County indigent Native American residents financial assistance in accordance with the same policies and procedures applicable to any other Bernalillo County indigent resident, prior to requesting payment from IHS.

- **Status:**
  - Under UNM Hospital policy, UNM Care is primary to IHS coverage.
  - UNM HSC is not requiring a co-pay payment for Native Americans that applies to all other UNM Care-eligible patients.
Analysis

- **2004 Consent:**
  - The Hospital shall provide to any Native Americans who are Hospital outpatients, in accordance with the same policies and procedures applicable to all other Hospital outpatients, those pharmaceuticals available in the Hospital outpatient pharmacy, if and as prescribed by HSC providers.

- **Status:**
  - UNM Hospital is complying with this requirement.
  - UNM HSC is not requiring a co-pay payment for Native Americans that applies to all other pharmacy patients.