

Report for Jackson Health System

**Recommendations Regarding
Structure and Governance**

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***Prepared by the National Association of Public
Hospitals & Health Systems***

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PART ONE: INTRODUCTION

The National Association of Public Hospitals and Health Systems (“NAPH”) has prepared this report to recommend a range of potential changes to the structure and governance of Jackson Health System (“JHS”) that will enable JHS to continue to fulfill its mission of providing high-quality care to all members of the Miami-Dade County (the “County”) community without regard to ability to pay.

As a hospital system governed by the Miami-Dade County Public Health Trust (“PHT”), an agency of the County, the challenges facing JHS are similar to those of many other safety net hospitals. JHS operates as the County’s primary safety net system and has come under increasing financial pressure in recent years, due in large part to the County’s increasing indigent population, new service mandates imposed by the County, and stagnant public support. PHT, which governs and administers JHS, is also subject to significant County oversight. This oversight limits PHT’s autonomy in developing operating and capital budgets and making decisions that affect JHS’s organized workforce (including negotiating collective bargaining agreements with labor unions). It also constrains PHT’s flexibility in structuring its affiliation with the University of Miami (“University”).

Many of JHS’s peer hospital systems have restructured to enable their governing bodies to confront and resolve similar challenges. Elements of these restructurings are available for reforming PHT’s corporate and governance structure. Depending upon PHT’s objectives (as well as any political obstacles or other influences likely to affect reform efforts), restructuring may occur contractually or through changes to governing law. As such, this report offers recommendations available through three general approaches:

- (1) Reforms PHT could achieve through negotiating agreements with the County’s Board of County Commissioners (the “Commission”);
- (2) Reforms PHT could achieve through changes to County law; and
- (3) Reforms PHT could achieve only through changes to State law.

Of course, any such undertaking will require a large degree of support from the community, local government, and potentially state government, so building consensus for reform will be a critical step on the path to restructuring.

Part Two of this report provides a Summary of Recommendations. Part Three - Background on Jackson Health System - describes JHS’s current structure and financial situation. Part Four - Key Structure and Governance Issues - analyzes specific areas of challenge for JHS. Part Five provides a detailed summary of our recommendations.

This report also includes four appendices: (A) Case Studies of Model Public Health Systems; (B) Analysis of the Legal Framework and Implementation of Public Health Trust Structure and Governance; (C) Analysis of Structure and Governance of Independent Public Hospital Systems; and (D) Redacted Memorandum of Agreement Between Hospital Corporation and City.

PART TWO: SUMMARY OF RECOMMENDATIONS

I. Increasing Autonomy Through Negotiations and Agreements

PHT could meaningfully enhance its autonomy and operational control in several key areas by negotiating Memoranda of Agreement (“MOAs”) or other similar agreements with the Commission. These actions would not require any changes to State or County law. Because most of PHT’s goals could be achieved through such agreements, we recommend this as the principal, or at least initial, course of action.

A. Budgeting and Planning: Negotiate greater budget autonomy to gain enhanced control over developing and implementing PHT’s short, medium, and long-term financial strategy.

B. Unfunded Mandates: Negotiate a commitment from the Commission not to impose new mandates or services obligations that are not adequately funded by the County.

C. Access to Operating Funds: Negotiate pre-determined County support, tied to JHS’ indigent care costs and the service obligations imposed by the Commission.

D. Access to Capital: Obtain commitments from the County to provide greater support for capital improvements, through County general obligation bond issuances or other means.

E. Personnel Issues: Develop a process through which Commission approval of personnel policies and labor negotiations could be obtained prospectively.

F. Relationship with the University of Miami: Obtain Commission approval to amend the bylaws to acknowledge PHT and the University as equal parties, and establish exclusive parameters under which the Commission would reject the annual PHT-University operating agreement.

G. Board of Trustees and Governance: Achieve a commitment from the Commission not to appoint to the Board of Trustees anyone not on the slate of candidates presented by the Nominating Council.

II. Increasing Autonomy Through Changes in the County Code

PHT could achieve more significant and lasting autonomy through changes to the County Code. In fact, in certain key areas, greater power and flexibility could not be achieved without such amendments. Further, each of the recommendations that can be implemented through a MOA or other agreement could be codified in the County Code—making such grants of authority to PHT harder to reverse.

A. Budgeting and Planning: Exempt PHT from the review process generally applicable to County departments, or no longer require advance approval of PHT budgets except with regard to the use of County support.

B. Access to Operating Funds: Obtain increased tax support, to the extent unachievable solely under a MOA.

C. Access to Capital: Amend the County Code to provide PHT with ownership or sufficient control (through long-term lease) over JHS facilities to enable JHS to participate in programs such as the Federal Housing Administration's Section 242 hospital mortgage insurance program.

D. Personnel Issues: Fully delegate to PHT the County's authority to approve PHT personnel policies, and eliminate Commission authority to participate in PHT's labor negotiations.

E. Relationship with the University of Miami: Limit or eliminate the Commission's oversight of PHT's relationship with the University.

F. Board of Trustees and Governance: Increase Board of Trustee autonomy by expanding PHT representation on the Nominating Council. To the extent necessary, also reduce the Board size.

III. Increasing Autonomy Through Changes in State Statutes

Through statutory changes, PHT could expand its autonomy dramatically. Statutory changes could transform PHT's relationship with the County, and could even remove PHT from Commission control entirely. For example, PHT could be converted into an independent hospital district (with or without taxing authority) or be authorized to convert to (or merge with) a non-profit corporation. Because many of PHT's objectives could be obtained through less drastic measures, statutory changes may not be required at this time. Nevertheless, this option may be important if PHT determines that dramatic changes are needed. Moreover, statutory amendments could codify additional powers obtained through other means.

A. Budgeting and Planning: Obtain almost complete budget autonomy by amending or eliminating statutory provisions that establish Commission control.

B. Access to Operating Funds: Receive authority to restructure as an independent taxing hospital district and to levy taxes, or alternatively, authorize the Commission to increase the County's sales tax, or another tax, and dedicate the proceeds to PHT.

C. Access to Capital: Grant PHT specific statutory authority to issue revenue and general obligation bonds. In addition, authorize PHT to own or sufficiently control JHS facilities to enable participation in the FHA Section 242 hospital mortgage insurance program.

D. Personnel Issues: Preclude the Commission from subjecting PHT's labor contracts to prior approval.

E. Relationship with the University of Miami: Preclude the County from participating or intervening in PHT's annual negotiations with the University.

F. Board of Trustees and Governance: Limit or eliminate the County's role in selecting Trustees, and grant PHT a greater role in the selection process.

PART THREE: BACKGROUND ON JACKSON HEALTH SYSTEM

Jackson Health System (“JHS”) has been governed by the Miami-Dade County Public Health Trust (the “PHT”) since PHT’s creation in 1973. PHT is an agency of Miami-Dade County (the “County”) government, established by the County’s Board of County Commissioners (the “Commission”).¹ Through multiple provisions of the Code of Miami-Dade County (the “County Code”), including PHT’s enabling ordinance, the Commission has granted PHT various powers over the management and strategic development of JHS. Yet PHT is not an independent legal entity and is, therefore, accountable to or controlled by the County in many respects. The Commission retains significant control and veto power over PHT’s decision-making in several key areas. The Commission also has implicit legal authority to transfer County obligations to PHT without PHT’s consent – a power it has exercised frequently in recent years. Finally, PHT is a revocable trust, meaning that the Commission may dissolve PHT and reassume direct control of JHS, or any of its facilities, at any time. The case studies included in [Appendix A](#) and the comparison chart in [Appendix B](#) illustrate how PHT’s structure and legal authority compare to peer hospitals in Florida and nationwide. A detailed analysis of statutes and regulations governing PHT is included in [Appendix C](#).

According to the County Code, PHT was established to operate, maintain, and govern Jackson Memorial Hospital and other inpatient and outpatient facilities designated by the County.² These facilities collectively constitute JHS. JHS is a valuable County asset, serving many purposes. It is the County’s primary safety net system, providing significant levels of care to the indigent and low-income populations. It is a major teaching and research facility, serving as the primary clinical partner to the University of Miami (the “University”). It is a critical tertiary care provider, operating the County’s only adult and pediatric Level 1 trauma center along with burn and Level III neonatal intensive care units. And it is a nationally-renowned medical system, with a center of excellence in urology and consistent rankings in *U.S. News & World Report* as one of the “Best Hospitals in America.”

I. Governance

The PHT Board of Trustees (the “PHT Board”) is relatively sizable, with 17 voting members, including a member of the University of Miami Board of Trustees and two County Commissioners. The PHT Board also has nine ex-officio, non-voting members. Voting members are appointed by the Commission from a slate of nominees selected by a five-person Nominating Council, of which only one voting member represents PHT – the current Chair of PHT. The PHT Board is intended to represent the County’s diverse citizenry; the County Code states that the PHT Board must be “representative of the community at large [and reflect] the racial, gender, ethnic and disabled make-up of the community.” Trustees serve staggered terms

¹ PHT’s enabling ordinance is County Ordinance 73-69, codified in Ch. 25A of the Code of Miami-Dade County (the “County Code”). Florida statute authorizes the governing bodies of Florida counties to establish a public health trust and to transfer to it responsibility for operating and maintaining county health facilities.

² In addition to Jackson Memorial Hospital, JHS now includes: Jackson South Community Hospital; Jackson North Outpatient Diagnostic Center; 12 primary care clinics (two of which are operated under governance of an independent board); Jackson Memorial/Perdue Medical Center and Jackson Memorial Long Term Care Facility (nursing homes); Jackson North Community Mental Health Center; and Southside Dental Medical Center.

of three years with a term limit of two full and consecutive terms (although this term limit may be waived by the Commission).

The Board operates through a committee structure. Through ordinance and bylaws, the PHT has established the following ten committees: (1) the Compensation and Evaluation Committee; (2) the Trust/University of Miami Annual Operating Agreement Negotiating Committee; (3) the Trust/Miami-Dade County Annual Operating Agreement Committee; (4) the Executive Committee; (5) the Fiscal Affairs, Purchasing and Budget Committee; (6) the Quality Improvement and Joint Conference Committee; (7) the Strategic Planning and Program Planning Committee; (8) the Facilities Development Committee; (9) the Information System Committee; and (10) the Officers Nominating Committee.

II. Transparency

As a unit of government, PHT must remain publicly transparent, in contrast to its private competitors. PHT is subject to Florida's "sunshine laws"; it holds open meetings and must allow public access to its records. PHT Board members, as public officers, are subject to the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance.

The Commission has imposed several reporting requirements. PHT's internal auditor must provide monthly reports on its activities, which include performing internal audits and accounting for transactions between PHT and private entities. PHT must prepare quarterly operational reports. It also must deliver annual financial statements and reports of its external auditor. Finally, the County may request additional operating or financial reports at any time during the year. If reports show that PHT is operating with a surplus, the County may appropriate this income. The Commission may also direct the County's external auditor to audit PHT records or direct the County Manager to conduct an administrative audit of one or more of JHS's facilities.

III. Budget and Appropriations

The County retains significant control over PHT's finances, both during the budget development process and in monitoring PHT's operations. Fundamentally, the County considers PHT operations to be a "business-type activity," intended to be financed in whole or in part by fees charged to the purchasers of JHS's services. For County purposes, business-type activities are distinguishable from "governmental activities" such as law enforcement; the latter are fully supported by general revenue and grants.

PHT management prepares the budget during the summer prior to the start of the County's fiscal year ("FY") (which runs from October 1 to September 30). Management delivers the budget to the PHT Fiscal Affairs Committee for approval, which subsequently transfers it to the full PHT Board. Once approved by the PHT Board, the budget is presented to the Commission to be incorporated into the County budget. Before PHT's budget is incorporated into the County budget, however, Commission approval is required. (The need for Commission approval has significant ramifications, described further in Section I of Part Four.) The final, approved budget reflects the anticipated revenue and costs for operating and maintaining all JHS's facilities as

well as the costs of operating two nursing homes, which have not been identified as designated facilities and are not officially part of JHS.

The County Code does not specify that PHT must present a balanced budget. Yet because the County must approve a budget that is balanced in the aggregate, PHT in practice also must produce a balanced budget. To balance its budget for FY 2008/2009, PHT currently is implementing a financial stability plan. This plan calls for identifying and realizing efficiencies in administration and patient care and reducing expenditures, such as expenditures for pharmaceuticals and personnel overtime. These efforts are intended to avoid having to pare back access to care for indigent patients or instituting layoffs, and total approximately \$155 million in savings over FY 2007/2008. Past efforts to balance the budget have included a voluntary early retirement program and an initiative to improve the operation of the emergency department, make changes to labor management, revise revenue cycle processes, and streamline the movement of goods along the supply chain.

PHT relies on County support for its operating and capital expenses, because it is prohibited by law from independently levying taxes or issuing bonds. JHS operations are partially supported through its operating revenue and disproportionate share hospital payments (from Florida's Low Income Pool). The County also supports JHS's operating costs through a dedicated half-penny sales tax and a "maintenance of effort" ("MOE") contribution.³ The annual revenue from the half-penny tax reflect local sales activity and do not correlate to PHT's needs. Similarly, the MOE, set in 1991, has been stagnant and has not been raised from its 1991 level.

Without County support, PHT would have recorded annual operating losses of between \$300 and \$440 million in each of the past five fiscal years. Yet even with County subsidies, PHT has operated at a loss. For example, in FY 2006/2007, PHT absorbed a \$48 million operational loss. PHT's FY 2007/2008 operating budget was approximately \$1.9 billion, of which total County funding comprised only \$178,060,000. Moreover, in FY 2008/2009, PHT will need to absorb a reduction of \$17 million in the sales surtax and a reduction of \$200,000 in the MOE payment from the County.

The County has no obligation to issue debt for PHT's benefit, although it has done so on several occasions over the past two decades. In 2005, the County issued \$300 million worth of bonds backed by PHT's revenue. JHS used these bond proceeds in part to refund outstanding revenue bonds issued in 1993 and 1998, and in part to fund new capital improvements at Jackson Memorial Hospital and Jackson South Community Hospital.⁴ The County also has allocated to PHT a portion of proceeds from general obligation bonds repayable through the County's tax receipts. For example, proceeds from multiple series of general obligation bonds issued as part of the County's Building Better Communities program have been or will be used to fund capital expenditures for JHS.

³ The half-penny tax, which was instituted by County ordinance (No. 91-64) and approved by voter referendum, and the "maintenance of effort" obligation, mandated by statute (Fl. Stat. §212.055(5)), were both introduced in 1991.

⁴ Proceeds from the 1993 and 1998 issuances were used for multiple projects, including the construction and expansion of a diagnostic imaging center, renovation of a pediatric intensive care unit and enhancement of information systems.

PHT has access to several other sources of capital support, although none are as significant as the County's bond-issuing authority. The private, non-profit Jackson Memorial Foundation has provided nominal support for PHT's capital projects.⁵ PHT also has received support through the Sunshine State Governmental Financing Commission, a public body whose members include various Florida cities and counties, including Miami-Dade County.

PHT budgeted \$89 million in capital expenditures for FY 2007/2008. Management estimates that PHT's unfunded capital needs for FY 2008/2009 will total \$150 million, including money for critical infrastructure projects such as replacement of emergency generators and renovation of elevators. PHT also has identified approximately \$1 billion in major capital projects needed over the next decade. The County currently has no plans to meet these needs.

IV. PHT Operations

PHT generally has authority to act independently. For example, it may contract for services, hire and manage PHT personnel, set rates for health care services, and oversee patient care. In certain key areas, however, the County retains the authority to approve, and intervene in, PHT's activities. PHT must seek County approval before: (1) entering into/amending contracts with labor unions; (2) entering into or amending contracts that require funds in excess of the amounts included in the relevant section of the County budget; (3) entering into or amending an agreement that would alter the County's relationship with the University; and (4) purchasing real property.⁶ PHT also may not sell or encumber (*e.g.*, through mortgage or otherwise) any of the JHS facilities or other real property used in PHT's operations. Finally, the County may designate new facilities as part of JHS, thereby expanding PHT's responsibilities.

A large part of PHT's operations is governed by two agreements that are renewed annually, one between PHT and the County and the other between PHT and the University. The Annual Operating Agreement with the County establishes the scope and compensation for services provided by JHS to the County (*e.g.*, medical care for County prison inmates) and services provided by the County to JHS (*e.g.*, security). Similarly, the Annual Operating Agreement with the University establishes the scope and compensation for services provided by JHS to the University (*e.g.*, medical services to University medical students, University physician faculty recruitment) and services provided by the University to PHT (*e.g.*, education and supervision of PHT residents).

As of September 30, 2007, PHT had over 12,000 employees including part-time, temporary, and on-call employees. Approximately 10,800 of these employees are unionized.⁷ PHT maintains its own defined-benefit pension plan for eligible employees hired on or after January 1, 1996, but

⁵ For example, the JMH Foundation donated a portion of the funds used to construct a radiology recovery unit at Jackson Memorial Hospital.

⁶ The Commission also has the right to disapprove PHT personnel policies.

⁷ The employees are represented by four unions— the American Federation of State, County and Municipal Employees, Service Employees International Union, Committee of Interns and Residents and the Government Supervisors Association of Florida, Office of Professional Employees International Union.

also makes contributions to the Florida Retirement System to fund pension obligations for eligible PHT employees hired prior to that date.

PART FOUR: KEY STRUCTURE AND GOVERNANCE ISSUES

I. Budgeting and Planning

On paper, PHT's budget-development process seems straightforward. As described in Section III of Part Three, PHT develops its own budget, which is then reviewed and approved by the Commission and incorporated into the County budget. In practice, however, PHT's autonomy is strictly curtailed. In particular, the County has leveraged its veto power to substitute its judgment for that of the PHT Board and management. On multiple occasions, the County has insisted on changes to individual budgetary line items. In addition, the County has required PHT to assume certain responsibilities and to provide certain services. These unfunded (or under-funded) mandates cost PHT approximately \$100 million annually. They include clinical services for correctional facilities (~\$22 million annually) and operating three struggling nursing homes (~\$15 million annually). County scrutiny of PHT's budget and its additions or other revisions to the budget interfere with PHT's short, medium, and long-term financial planning, as well as impose on PHT unmanageable obligations inconsistent with PHT's strategic plans for JHS. In addition, this scrutiny runs somewhat counter to the County's underlying position, described in Section II of this Part, that PHT is intended to be financially autonomous.

Florida law only establishes a basic framework for the financial relationship between the County and PHT. The County must (1) develop a process for PHT to request and for the County to approve appropriation of County funds to support PHT; and (2) ensure that PHT is accountable for all receipts and expenditures of revenue. The language of the County Code similarly is not too restrictive. It merely requires PHT to develop an annual budget for both operating and capital expenditures and directs the Commission to review PHT's budget as it does other departmental budgets. The financial planning difficulties experienced by PHT stem almost entirely from the manner in which the Commission approves the PHT budget.

A final barrier to PHT's planning process is its limited control over JHS facilities. By statute, the County must retain the authority to reassert ownership of facilities identified as designated facilities and incorporated into JHS. In implementing this requirement, the County has specified that PHT may not sell or encumber (*e.g.*, through mortgage or otherwise) any of the JHS facilities or other real property used in PHT's operations.

II. Access to Operating Funds

PHT is dependent on the County for operating support. Until 1991, PHT received reimbursement from the County on a cost-basis for indigent care delivered at JHS. Since that time, PHT's costs have increased substantially, in large part due to the expansion of the local indigent population and County-imposed service mandates. These costs are outside PHT's control and reflect benefits that accrue to the County. Despite these recent increases in PHT's costs, County operational support has remained stagnant since the County's 1991 MOE contribution was mandated under State law.

The County considers PHT activities to be business-type activities, intended to be entirely or predominantly self-supporting through collections of charges from payers.⁸ Reflecting this categorization, the County Code states that funding for the PHT's operating expenses is to derive from PHT's general operating revenue. Nevertheless, PHT may apply for supplemental appropriations from the County during the year and also may seek loans from the County to cover shortfalls in revenue or increases in costs not provided for in the budget.

The County provides two main forms of support to PHT. The first is a half-penny sales tax dedicated to PHT.⁹ The second is the County's MOE contribution\ The State statute mandating the MOE contribution requires the County to annually provide funds to PHT equivalent to at least 80 percent of the portion of the total County budget that had been appropriated in FY 1990/1991 for the operation of JHS. In practice, the MOE contribution obligates the County to allocate approximately 11 percent of its budget general fund expenditures to PHT.

When the County shifted its support from direct reimbursement for billed indigent care services to limited lump-sum payments (as part of the implementation of the sales tax and MOE payments), the new funding mechanism provided a much-needed infusion of new revenue. The sales tax initially provided more than PHT had been receiving in direct County support. Since that time, however, County support has not risen along with PHT's costs. The support no longer covers PHT's indigent costs, in large part because the MOE contribution remains at 1991 levels. Nevertheless, the MOE contribution and the half-penny sales tax represent operating revenue sources that are crucial to JHS survival.

III. Access to Capital

Similar to funding for operations, PHT does not have access to adequate capital support; unlike operations, however, PHT has no statutory guarantee of dedicated capital support from the County.

Florida law provides that public health trusts, including PHT, may not issue bonds or require the Commission to do so on its behalf. Capital funding, therefore, primarily comes from funds specifically set aside by PHT or voluntary County bond issuances. The County Code specifies that funding for PHT's capital expenditures must be allocated from PHT's Funded Depreciation Account, which is funded with reserves collected from operating revenue. County ordinances limit the amount of additional debt that PHT can incur. Furthermore, PHT must meet certain minimum long-term debt service coverage ratios, maintain insurance on PHT facilities, and make scheduled monthly debt service payments.¹⁰

⁸ Technically, PHT is considered a County enterprise fund, as are the Miami-Dade Aviation Department and the Miami-Dade Water and Sewer Department.

⁹ A portion of the half-penny sales tax is never transferred to PHT, but goes directly to paying debt services on revenue bonds issued on PHT's behalf in 2005.

¹⁰ These covenants are similar to the requirements that an insurer or backstop credit facility would expect of a borrower.

The County Code also permits the PHT Board to submit a resolution to the Commission requesting to borrow money or for the County to issue bonds on PHT's behalf. The County Code also requires, however, express approval from the Commission for all expenditures by PHT of bond proceeds.

A 1983 County ordinance authorizes the Commission to issue tax-exempt revenue bonds for the purpose of funding capital improvements for JHS, with repayment derived solely from PHT revenue. As described above, such bonds most recently were issued in 2005. In addition, the Commission has contributed to PHT's debt service payments. The Commission retains the authority to allocate to PHT a portion of proceeds from general obligation bonds repayable through the County's tax receipts, and has done so before. Proceeds from multiple series of general obligation bonds issued as part of the County's Building Better Communities also are available to fund capital expenditures for JHS.

IV. Personnel Issues

PHT lacks control over its personnel system because all personnel policies and labor contracts must be approved by the Commission. In particular, PHT is constrained in reaching compromises in labor negotiations because of the real prospect of disapproval or unilateral renegotiation by the Commission. The Commission otherwise has not intervened in the development of personnel policies.

PHT's enabling act specifies that the Commission must include a procedure through which the Commission may "approve or disapprove" of contracts between PHT and labor unions. The County ordinance is drafted similarly, stating that PHT may not enter into a contract with labor without Commission approval. Although PHT and its management are authorized to assume the primary role in labor negotiations, the County Labor Relations Office and Personnel Department are authorized to participate in the negotiations.

PHT is authorized to develop its own personnel policies, including those relating to hiring, firing, and compensation, although all such policies must first be approved by the Commission. The Board's Executive Committee's Human Resources Subcommittee, appointed annually, is delegated primary responsibility for developing these personnel policies.

V. Relationship with the University of Miami

PHT's relationship with the University is largely governed by the operating agreement between the two, which is renegotiated annually. The County must approve any agreement that would substantively change PHT's relationship with the University (although it generally has not directly intervened in these negotiations). Nevertheless, PHT is placed at a disadvantage because it is not viewed as autonomous by the University. PHT is perceived to suffer from the same internal inefficiencies as the County itself, as failing to make necessary infrastructure investment, and as operating primarily to serve the indigent population. Because PHT is not seen as an equal, its effectiveness in negotiating may be substantially reduced.

PHT's enabling act is silent as to PHT's relationship with the University. County ordinances do establish certain parameters for the relationship, however. One member of the University's

Board of Trustees always serves as a voting member of the PHT Board. Two University representatives, the Deans of the Schools of Medicine and Nursing, are non-voting, ex-officio members. PHT's CEO and Chairperson have responsibility for negotiating the annual operating agreement, which is subject to review and approval by PHT's Trust/University of Miami Annual Operating Agreement Negotiating Committee.¹¹ Notwithstanding this Committee, PHT cannot enter into or alter any contract without Commission approval that would change the contractual relationship between the University and the County as set forth in a contract between the two dating back to 1952.

PHT's bylaws further define PHT's relationship with the University. One of PHT's specified purposes is "providing major clinical facilities which support the University of Miami School of Medicine, University of Miami School of Nursing and other educational institutions, which train future health care professionals."

The PHT-University Annual Operating Agreement must cover four general areas: (1) the names of all physician the University will permit to act as agents or employees of PHT; (2) services provided by the University and associated compensation; (3) identification of University resources to be used by PHT and associated compensation; and (4) identification of PHT resources to be used by the University and association compensation. The Agreement specifically provides for the following:

- University permission for its physicians to act as agents or employees of PHT and a statement that, in providing direct care, resident training, or administrative services to PHT or PHT patients or employees, these physicians are under PHT's exclusive control.
- The respective roles of PHT and the University in administering, directing, and funding graduate medical education programs.
- PHT payments to the University, including:
 - Payments for professional services, including direct patient care, educational services, and administrative support.
 - Support payments, including for the University's recruitment activities and for developing centers of excellence in cardiovascular, neuroscience, orthopedics, trauma, transplant, and women's/children's hospital.
 - Payments for purchased services, including transplant services, ophthalmologic services, and other specialty services.
- University payments to PHT, all of which are relatively minor.

VI. Board of Trustees and Governance

In practice, the PHT Board has been fiercely independent and supportive of JHS. The Commission's dominance on the Nominating Council, however, creates at least the impression

¹¹ This Committee is comprised of seven voting PHT members, including PHT's Chairperson, PHT's CEO, three appointees of PHT's Chairperson, the Mayor, and the Commission Chairperson.

that all PHT Board members are hand-picked by the Commission. Further, the Commission at times has ignored the Nominating Council's slate of candidates entirely, demonstrating the inherent vulnerability of the PHT Board selection process.

PHT's enabling act creates broad requirements regarding the composition of PHT's Board. It must have between seven and 21 members, each appointed by the County Commission for staggered terms of up to four years. The Commission is given the authority to determine the appointment process. The Commission also is authorized to remove a member during his or her term for cause. The Board, however, selects its own Chair and Vice Chair.

Under County ordinance, the Board must have 17 voting members, none of whom may be PHT employees. Of these 17, one is a member of the University of Miami Board of Trustees and two are County Commissioners. The remaining voting members are selected by the Commission from a slate of candidates prepared by the Nominating Council.

The Nominating Council has five members: the Chairperson of the Commission committee with jurisdiction over PHT (or a designated Commissioner); the Board's Chairperson; the Chairperson of the Commission (or a designated Commissioner); the Mayor (or a designated Commissioner); and the Chairperson of the Miami-Dade Legislative Delegation (or a designated member of the delegation).

Each voting PHT Board member must be a County resident and elector,¹² and must be "of an outstanding reputation of integrity, responsibility, and commitment to serving the community." In addition, the Nominating Council is directed to select members so that the Board is "representative of the community at large [and reflecting] the racial, gender, ethnic and disabled make-up of the community." The Nominating Council recommends three candidates for each open Board position, and the Commission must choose voting members from this slate. (PHT's bylaws, however, specify that the Nominating Council only will recommend one candidate for each open position.)

In addition to these voting members, the Board has nine non-voting, ex-officio members. These include: the Mayor or a designee; the County Manager or a designee; PHT's CEO; the Director of the County Office of Countywide Healthcare Planning; the Senior Vice President of Medical Affairs; the Dean of the University of Miami School of Medicine; the Senior Vice President of Patient Care Services; the Dean of the University of Miami School of Nursing; and the President of PHT's Medical Staff.

¹² The Commission may waive the residency requirement by a two-thirds vote.

PART FIVE: RECOMMENDATIONS

Many of PHT's key concerns stem from two root causes. First, the Commission exercises its authority over PHT in a manner that drastically limits PHT's ability to plan strategically for the short, medium, or long-term. Commission control over PHT extends to all areas of the organization, but is most pronounced in its impact on PHT's finances and its labor agreements. The Commission micromanages PHT's budgeting and financial planning process and imposes unfunded mandates on JHS. The Commission's oversight may also diminish PHT's negotiating power, as potential partners, including the University, may not identify PHT as an independent, autonomous negotiating party and a valued partner. Second, PHT lacks adequate and stable financial support for JHS's core purposes, including indigent care, and other County-imposed mandates. Thus, these recommendations aim to increase PHT's autonomy and control and to stabilize JHS's financing.

I. Increasing Autonomy Through Negotiations and Agreements

Many of the key issues confronting PHT can be addressed, if not fully resolved, by negotiating Memoranda of Agreement ("MOAs") or other similar agreements with the Commission. These actions would not require any changes to State law or County ordinance. The Commission, however, would voluntarily and publicly agree to curtail its powers, granting actual autonomy to PHT and strengthening the public perception of PHT as an independent, albeit not a legally separate, entity. The Commission may view such agreements as an abdication of its powers and/or responsibilities. By strengthening PHT, however, the Commission will further County goals of protecting the local safety net and ensuring that all residents, including the indigent and low income, have continued access to high-quality health care.

Because most of PHT's goals could be achieved through these types of agreements, we recommend this as the principal, or at least initial, course of action.

A. Budgeting and Planning: PHT could negotiate greater budget autonomy from the County, memorialized in a multi-year MOA with the Commission. This agreement could be similar to the one developed in the early 1990s between New York City and the New York City Health and Hospital Corporation, included at Appendix D. The MOA could provide for PHT autonomy in multiple ways, any of which, individually or collectively, would give PHT greater control in developing and implementing its short, medium, and long-term financial strategy.

- PHT could seek a more streamlined process for Commission approval of the annual budget. For example, rather than reviewing each budgetary line item, the Commission could agree to a "yea-or-nay" vote on the budget as a whole. The goal of streamlining should be that the Commission does not question or alter PHT's strategic decisions, but solely determines whether PHT needs, and appropriately uses, County tax support.
- The Commission could approve PHT's budget on a "bottom-line" basis, rather than as an absolute dollar amount, with a specific bottom-line target that would permit the generation of reserves. This arrangement would allow PHT to achieve a positive margin at a certain level and to keep the surplus within the system. Similarly, the Commission could commit not to invoke its powers to appropriate PHT surplus.

B. Unfunded Mandates: The imposition of unfunded mandates is closely related to PHT's lack of autonomy in budgeting and planning and its limited access to operating funds. To address this specific issue, PHT could negotiate a County commitment not to impose new mandates or services that are not adequately funded by the Commission. The parties also could agree to reexamine existing County mandates. The Palm Beach County Health Care District negotiated a similar agreement in 1993; the district assumed certain Palm Beach County responsibilities and the county agreed, going forward, not to shift additional costs onto the district. The district has successfully used this agreement to avoid new unfunded mandates.

C. Access to Operating Funds: PHT could negotiate stable and/or increasing County support for its operating expenses over a multi-year period. County support currently is tied to two elements; its MOE support (set at 80 percent of 1991 support) and the proceeds of the half-penny sales tax. This support does not meet PHT's costs or needs, increases only as do County sales, and can fluctuate on an annual basis. Further, these payments are not stable enough for long-term planning.

- County support can be tied directly to PHT's indigent care costs or the service obligations imposed by the County, potentially capped at a pre-determined amount. County dollars would be tied more closely to the activities they are intended to support, and also would enable PHT and the County to analyze more closely the actual costs of mandates imposed by the County.
- The Commission could agree to support PHT at a specified level each year. PHT would be responsible for any remaining shortfall and would benefit from any surplus. In establishing a pre-determined amount, PHT would have financial certainty for its planning processes. Hennepin County Medical Center ("HCMC") receives this type of County support. By agreement, Hennepin County provides \$20 million annually to support indigent care. In addition, to support HCMC (established in 2007) in its early years, the County also is providing an additional \$100 million over the course of HCMC's first five years.

D. Access to Capital: PHT could obtain separate commitments from the Commission to provide greater support for capital improvements. Currently, PHT receives no annual, dedicated County support for JHS infrastructure and capital improvements.

- The Commission could allocate to PHT a greater share of funds from the County's existing general obligation bonds. Nearly \$165 million of the County's Building Better Communities Bonds set aside for funding emergency and health care facilities have not been issued. There likely would be significant popular support for this action, because the emergency and health care facilities component of the County's bond issuance received a 71 percent approval rating. (No other component received a higher rating.)
- The Commission could agree to issue general obligations bonds to fund PHT's capital projects, or to develop a "fast-track" process through which PHT could request such a bond issuance when the PHT Board determines that one is necessary.

E. Personnel Issues: PHT could obtain greater control over the development of personnel policies and labor negotiations. By statute and ordinance, the Commission must approve PHT's labor contracts. The laws do not govern, however, the approval process.

- PHT could develop a labor negotiation strategy and present it to the Commission. In approving this strategy, the Commission would also agree to approve any labor agreement that does not deviate substantially from the agreed-upon strategy.
- The Commission could pre-approve certain criteria relating to personnel policies or labor agreements. To the extent that policies and agreements developed/negotiated by PHT meet these criteria, the Commission would guarantee its approval. For example, the New York City Health and Hospital Corporation is authorized to develop its own personnel policies so long as the policies do not conflict with existing civil service laws.

F. Relationship with the University of Miami: By ordinance, the Commission retains the authority to approve any agreement that changes the County's (or PHT's) relationship with the University, as set forth in an agreement dating from 1952. PHT's primary concern with respect to its relationship with the University, however, is not direct Commission intervention, but the perception of PHT as not autonomous from County government. In other jurisdictions, local universities have supported strengthening the autonomy of their partner safety net systems, recognizing the importance of a strong system to high-quality health profession training. Emory and Morehouse Universities' Schools of Medicine have been highly supportive of the restructuring of Grady Health System, a major clinical partner for each program.. Similarly, Shands HealthCare took over the University Medical Center in Jacksonville (now operating as Shands Jacksonville) and infused \$130 million into the hospital to prevent the hospital's collapse and the disruption of the University of Florida's School of Medicine training programs.

- An incremental step to reframing the relationship between PHT and the University would be to amend PHT's bylaws. Article III(g) of the bylaws currently states that PHT's role is to provide clinical facilities which *support* the University and other institutions engaged in health profession training. PHT could amend this language to emphasize that JHS and the University are partners in health profession training. For example, the bylaws could state that one of PHT's purposes is "providing major clinical facilities which, *in partnership* with the University of Miami School of Medicine, University of Miami School of Nursing and other educational institutions, train future health care professionals."
- Similar to previous recommendations, PHT and the County could agree to more narrowly defined criteria under which changes to the relationship between the University and the County/PHT will be approved or disapproved. This certainty will strengthen PHT's role as an autonomous negotiator.

G. Board of Trustees and Governance: The structure of the Board of Trustees is largely determined by ordinance. Accordingly, to the extent that the PHT Board's authority and independence are concerns, changes to the County Code likely would be required. On at least one occasion, however, the Commission appointed a voting member not nominated by the Nominating Council. Through agreement, the Commission could agree to comply with the

County Code and only appoint voting members from the slate of candidates presented by the Nominating Council.

II. Increasing Autonomy Through Changes in the County Code

PHT could achieve more significant and lasting autonomy through changes to the County Code. In many respects, changing the County Code would lead to outcomes similar to those obtainable through negotiations. Either changing the Code or reaching agreements would require buy-in by the Commission, as both will require the Commission to act voluntarily. Changing the County Code has the potential, however, to give PHT additional autonomy in key areas, such as governance, that cannot be obtained through negotiation alone. Further, each of the recommendations that can be pursued under a MOA or other agreement could be codified in the County Code—making such grants of authority to PHT harder to reverse, and could be implemented consistent with State laws.

A. Budgeting and Planning: The Commission could eliminate procedural requirements relating to the budget approval process that are currently specified in the County Code.

- As described in Part Four, Section I, County ordinances currently require the Commission to review PHT’s budget as it does the budgets of other County departments. This ordinance language could be amended or eliminated to the extent that it limits the Commission’s flexibility in developing a MOA.
- County ordinances could be revised to eliminate the requirement that PHT obtain advance approval of its budget, except with respect to the use of County support. In other words, the County would not need to approve PHT’s budget as it relates to services not reimbursed by the County. This change should be accompanied by modifications to PHT’s budget process, which would more accurately align County support with specific services provided at JHS.

B. Access to Operating Funds: The opportunities to increase tax support for PHT’s operating expenses by changing the County Code are largely the same as opportunities available through a MOA between the two. PHT may want to explore with the County whether there are existing tax revenue that can be redirected to PHT, or whether there are any existing taxes that could be increased, with the new revenue dedicated to supporting PHT.

C. Access to Capital: As described above, the County could agree to provide additional capital to PHT, without necessarily amending the County Code. The County could also transfer ownership or sufficient control of the facilities to PHT, such as through a long-term lease, to enable PHT to participate in borrowing programs such as the Section 242 hospital mortgage insurance program administered by the Federal Housing Administration (“FHA”).

The Section 242 program provides mortgage insurance to qualifying hospitals, thereby reducing the cost of borrowing; it also provides a 25-year repayment period. To qualify, a hospital must meet several criteria relating to its operating margin and debt service coverage ratio, and must generally show that 50 percent of its patient days are attributable to acute care services.

Moreover, the hospital must be able to provide a first mortgage lien on its real estate—essentially requiring an ownership interest. In some cases, however, the FHA has developed alternative arrangements where a publicly owned hospital was restricted from granting mortgages. Thus, PHT would need to work closely with the County if it sought an ownership or other controlling interest for the purposes of raising capital funds under the Section 242 program or other means. An ownership transfer or long-term lease likely would require changes to the County Code.

D. Personnel Issues: By statute, the Commission must approve PHT’s labor agreements. By revising the County Code, however, the Commission could eliminate its authority to participate in labor negotiations, retaining the sole role of approving final agreements (potentially under a streamlined process, described above). In addition, the Commission could fully delegate to PHT the authority to develop personnel policies (assuming such delegation would be useful). Many other successful systems, including the South Broward Hospital District (d/b/a/ Memorial Health System) and the Denver Health and Hospital Authority, have been authorized by local government to develop new personnel policies autonomously and have done so successfully. Moreover, we know of no prominent restructured hospitals system (other than those subject to the affiliated local government’s labor agreements) that is required to negotiate its labor agreements in concert with local government or contingent upon local government approval.

E. Relationship with the University of Miami: Through ordinance, the Commission could grant PHT complete autonomy over its negotiations with the University. Alternatively, the Commission could create a new, more limited role for itself that acknowledges PHT’s independence from the County. For example, the Commission could eliminate its authority to approve changes to PHT’s relationship with the University but retain the authority to observe the annual negotiations. As previously described, this change is not required to prevent the Commission from intervening in the negotiation process – rather, it would establish PHT as a fully-autonomous negotiating partner.

F. Board of Trustees and Governance: The size and composition of the PHT Board is established by ordinance. Although the PHT Board is generally effective, amending the ordinance could strengthen its actual and perceived autonomy and address any other potential inefficiencies. For example, PHT only has a single representative on the five-person Nominating Council, the sole body through which voting members of the PHT Board are identified. Through ordinance, the size and/or composition of the Nominating Council could be modified to give JHS a greater role. The PHT Board, with 17 members, is larger than the boards of many other public hospital systems. To the extent that this size is cumbersome, it could be reduced through ordinance.

III. Increasing Autonomy Through Changes in State Statutes

PHT could expand its autonomy more dramatically through statutory changes. By amending State law, the Commission's oversight over PHT could be diminished, or PHT could be removed entirely from Commission control. The only restriction on a statutory restructuring would be the State Constitution or State common law principles. Rather than operating as a subunit of County government, State law could establish PHT as a new independent hospital district in Miami-Dade County, one with or without taxing authority. JHS would then resemble the South Broward Hospital District or Lee Memorial Health System. This type of conversion likely would need to be accompanied by legislation authorizing the Commission to transfer ownership of JHS facilities to the new entity. Alternatively, the Commission could be authorized or directed to convert JHS into (or merge with) an independent non-profit, similar to Tampa General Hospital or Shands HealthCare/Shands Jacksonville. In a less extreme restructuring, P would remain a unit of County government, but with substantially enhanced autonomy and access to new sources of County support. Finally, statutory amendments could codify additional powers obtained through other means and insulate PHT/JHS from subsequent changes of policy or preference at the County level in the future.

Because many of PHT's objectives could be obtained through less drastic measures, statutory changes may not be required at this time. This set of recommendations may be useful, however, if the recommendations set forth above fail to address PHT's key concerns.

A. Budgeting and Planning: PHT should be able to achieve necessary budgeting and planning autonomy through a MOA with the County or changes to the County Code. Nevertheless, statutory changes could ensure PHT virtually complete budget autonomy. State law currently provides that the Commission must approve all of PHT's receipts and expenditures. It also provides that PHT must obtain Commission approval for all appropriation and payment of County funds. To the extent that either of these provisions is interpreted as limiting the Commission's ability to streamline PHT's budget development process, they could be removed from State law. A statutory change also may be necessary if the Commission refuses to grant PHT the necessary budget autonomy. Independent Florida systems such as the South Broward Hospital District and Lee Memorial Health System have complete autonomy in developing their budget, as do privatized systems such as Tampa General Hospital and Shands Jacksonville. Any residual powers could be tied solely to the County's direct taxpayer support.

B. Access to Operating Funds: Through a MOA or a change to the County Code, PHT could maximize the amount of taxpayer support that the County could provide. Through statutory amendment, these amounts could be increased further or placed under PHT's direct control. For example, a statutory change could establish PHT as an independent taxing hospital district. PHT then would have the authority to independently levy a tax to support JHS operations. Alternatively, the County could be authorized to increase its sales tax, or another tax, and dedicate the proceeds to JHS.

C. Access to Capital: Statutory changes could give PHT new methods through which to raise new capital support. In particular, statutory changes could give PHT new tools with which to raise capital independent of the County.

- Through statute, PHT could be granted specific statutory authority to issue bonds. Current law prohibits public health trusts, including PHT, from issuing bonds. Similar authority could be obtained through a restructuring. As a non-profit, PHT should have the authority to issue revenue bonds.¹³ Similarly, if restructured as an independent district, PHT likely would have bond issuance authority similar to that of other Florida districts. Both the South Broward Hospital District and Lee Memorial Health System are authorized to issue revenue and general obligation bonds.
- To the extent that County law cannot sufficiently transfer ownership or control of the facilities to PHT, thereby enabling it to participate in the Section 242 program or other borrowing programs, the enabling statute could be amended.

D. Personnel Issues: Currently, PHT must seek Commission approval for personnel policies and labor agreements and the County may participate in PHT's labor negotiations. Of these requirements, only Commission approval of labor agreements is required by statute. Although in many restructurings the new system has been obligated to recognize then-existing labor agreements, PHT's situation is unusual because the County retains the right to review and approve these agreements on an ongoing basis. Significant autonomy could be obtained through less drastic measures. Nevertheless, to the extent that PHT's concerns cannot be addressed through a MOA or ordinance, or if the Commission is unwilling to refrain from intervening in PHT's labor negotiations, a statutory amendment could restrict the Commission from reviewing PHT's labor agreements.

E. Relationship with the University of Miami: A statutory change could restrict the County from participating or intervening in PHT's annual negotiations with the University. Such a change likely would not be necessary. The County rarely, if ever, intervenes in these negotiations and PHT could be given complete autonomy through less-drastic measures.

F. Board of Trustees and Governance: The composition of the Board of Trustees largely is determined by ordinance, meaning a statutory change would not be required to significantly revise the PHT Board-appointment process. The statute does, however, direct the Commission to appoint PHT Board members. Through statutory changes, the Commission's role in selecting Trustees could be limited, or even eliminated.

- PHT could be given a greater role in the selection process. The Nominating Council could be codified in statute, and PHT Board members could constitute a majority.
- A variety of public officials, such as the Mayor, the Governor, or the local legislative delegation, could be given a greater role in the selection process, thereby diluting the County's influence. For example, eight members of the Westchester County Health Care Corporation's board (in Westchester County, NY) are appointed by the governor (from various slates of candidates) and the remaining seven are appointed by the county legislature.

¹³ A grant of authority to independently issue revenue bonds may be of limited value to PHT in its current form because it cannot use its facilities as collateral and likely would not achieve a favorable credit rating (due to relatively few days' cash on hand, existing debt, etc.).

- If a more dramatic restructuring is considered, Board appointment may be taken out of the Commission's hands entirely. For example, the Governor alone appoints all the members of the South Broward Hospital District's Board of Commissioners. Lee Memorial Health System's Board of Directors is elected.

REFERENCES

In preparing this report, NAPH staff interviewed a number of PHT/JHS officials, other stakeholders familiar with the Florida hospital industry, and officials from similarly situated safety net hospitals nationwide. In addition, NAPH staff analyzed a variety of source material relating to PHT/JHS and to Florida and Miami-Dade County law, including but not limited to:

The Code of Miami-Dade County and County Ordinances

Florida Statutes

PHT Bylaws

Comprehensive Annual Financial Report of Miami-Dade County, 2007.

Miami-Dade County Adopted Budget and Multi-Year Capital Plan – fiscal year 2007/2008

Proposed Resource Allocation and Multi-Year Capital Plan for the PHT in 2008/2009 County Budget

Notes to Financial Statements for Fiscal Year 2004

County Manager's Final Message, Final Budget and Multi-Year Capital Plan – Fiscal Year 2007/2008

Official Statement for the 2008 A Building Better Communities General Obligation Bonds

2007 Annual Report of Miami-Dade County to Bondholders

Official Statement for 2005 Jackson Health System Revenue Bonds

Governance for Whom and For What-Principles to Guide Health Policy in Miami-Dade County, RAND Health (2003)

Federal Housing and Urban Development Act of 1968

FHA 242 Hospital Mortgage Insurance: An Affordable Source of Construction Capital in a Turbulent Market, Bloomberg Law Reports, vol. 1, no. 7

APPENDICES

- A. Case Studies of Model Public Health Systems
- B. Analysis of the Legal Framework and Implementation of Public Health Trust Structure and Governance
- C. Analysis of Structure and Governance of Independent Public Hospital Systems
- D. Redacted Memorandum of Agreement Between Hospital Corporation and City