

Memorandum



Agenda Item No. 9(A)(5)

Date: January 20, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos Alvarez
Mayor

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George M. Burgess
County Manager

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Subject: Recommendations for a Bid Waiver Allowing Ryan White Funds to Transition from Mercy Hospital, Inc. to Miami Beach Community Health Center, Inc.

RECOMMENDATION

It is recommended that the Board approve a bid waiver allowing Miami Beach Community Health Center, Inc. (MBCHC) to be awarded federal Ryan White funds in the approximate amount (pending final award notification from the Department of Health and Human Services) of \$5.167 million dollars previously awarded to Mercy Hospital, Inc. in order to avoid an interruption of service to approximately 3,000 low income persons living with HIV/AIDS in Miami-Dade County due to the sale of the assets of Mercy Hospital, Inc. to Hospital Corporation of America (HCA), a for-profit company. Federal restrictions severely limit the ability to contract Ryan White HIV/AIDS Treatment Extension Act funds with a for profit organization, as stated in The Division of Services Systems (DSS) Program Policy Guidance No. 4, "Clarification of Legislative Language Regarding Contracting with For Profit Entities," (see Attachment A).

SCOPE

The Miami-Dade County Professional Services Agreement (contract) with Mercy Hospital, Inc. requires that a viable transition plan be developed and implemented if the organization can no longer perform contracted services. Mercy's current contract term ends February 28, 2011. The transition of funding, services, and clients to MBCHC would occur March 1, 2011 through February 29, 2012. Approximately 3,000 low-income persons living with HIV/AIDS throughout Miami-Dade County will be affected by this transition.

FISCAL IMPACT/FUNDING SOURCE

If awarded the bid waiver, MBCHC will provide more than 3,000 low-income persons living with HIV or AIDS with HIV-related health and support services, including outpatient medical care, prescription drugs, medical case management, substance abuse residential, mental health therapy, insurance continuation assistance, and transportation vouchers. The funding source is federal Ryan White HIV/AIDS Treatment Extension Act of 2009 funds. No County matching funds are required.

TRACK RECORD/MONITOR

The Office of Grants Coordination (OGC) has been designated by the County Mayor as the entity responsible for entering into contracts with public or not-for-profit community-based organizations that will provide the above mentioned services to persons living with HIV/AIDS. OGC's Ryan White Program staff will be responsible for monitoring Ryan White contracts for compliance with all programmatic, fiscal, and administrative requirements.

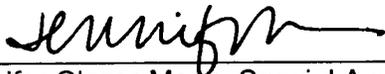
BACKGROUND

On June 24, 2010, HCA, together with Mercy Hospital, announced that they had entered into a letter of intent for the sale of the hospital to HCA. Mercy's Board of Directors voted to sell the facility to HCA, a for profit entity. Federal policy precludes the grantee, Miami-Dade County, from entering into any contract using Ryan White funds with a for profit organization. Mercy Hospital, Inc. is in the final negotiation phase of being purchased by HCA, Mercy's Special Immunology Services (SIS), a network of HIV/AIDS related primary and specialty care physicians, has been deemed an excluded asset by HCA and, as such, will no longer support the program. Mercy Hospital, Inc. has entered into discussions to transition its services, funding, and clients to Miami Beach Community Health Center, Inc., a Federally Qualified Health Center (FQHC), and current recipient of Ryan White funding. The services that Mercy will transfer include outpatient medical care; prescription drug pharmacy; medical case management; mental health, residential substance abuse, health insurance premium, deductible, and co-pay assistance; and transportation services. Both Mercy and MBCHC's Board of Directors have approved this transition as evidenced by the attached formal resolutions (Attachments B and C) signed by the respective Boards.

Both Mercy Hospital, Inc. and Miami Beach Community Health Center, Inc. have been longstanding Ryan White-funded providers since 1993 and 1990, respectively, and have consistently met all contractual and service delivery requirements. Miami Beach CHC has three clinical sites, two on Miami Beach and a site in North Miami on Biscayne Boulevard. Additionally, Miami Beach CHC has committed to retaining the network of primary and specialty care physicians that are located throughout the county, as well as hiring Mercy's SIS direct service staff in order to further the goal of non-interruption of needed, high quality service to a greatly disenfranchised population.

In order to seamlessly continue the services to the affected community until a competitive Request for Proposal (RFP) can be conducted, a bid waiver is requested. The authority to release a competitive Ryan White RFP in the spring of 2011 will be prepared for Board of County Commissioner's approval in the coming months.

Attachments



Jennifer Glazer-Moon, Special Assistant/Director
Office of Strategic Business Management

Cmo00811a



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: January 20, 2011

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 9(A)(5)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's , 3/5's , unanimous) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 9(A)(5)
1-20-11

RESOLUTION NO. _____

RESOLUTION WAIVING FORMAL BID PROCEDURES PURSUANT TO SECTION 5.03(D) OF THE MIAMI-DADE COUNTY HOME RULE CHARTER AND THE NON-COMPETITIVE BID WAIVER PROVISIONS OF SECTION 2-8.1(B) OF THE CODE OF MIAMI-DADE COUNTY; AUTHORIZING EXECUTION OF AGREEMENTS IN THE AMOUNT OF \$5.167 MILLION WITH MIAMI BEACH COMMUNITY HEALTH CENTER TO PROVIDE SERVICES TO APPROXIMATELY 3000 PERSONS LIVING WITH HIV/AIDS; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENTS FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board finds it in the best interest of Miami-Dade County to waive formal bid procedures pursuant to Section 5.03(D) of the Miami-Dade County Home Rule Charter and the noncompetitive bid waiver provisions of Section 2-8.1(b) of the Code of Miami-Dade County, upon written recommendation of the County Manager, by a two-thirds (2/3) vote of the Board members present, and approves the selection of Miami Beach Community Health Center, in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-

Dade County and to exercise any cancellation and renewal provisions and any other rights contained therein.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 20th January, 2011. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Terrence A. Smith

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Law & Policy: DSS Program Policy Guidance No. 4

Clarification of Legislative Language Regarding Contracting with For Profit Entities

Formerly a "Dear Colleague Letter" First Issued March 6, 1997 to

All Title I and II CARE Act Grantees

June 1, 2000

The CARE Act Amendments of 1996 provide for contracting with for-profit entities under certain limited circumstances. Specifically, the Amendments allow Title I and Title II funds to be used to "provide direct financial assistance" through contracts with "private for-profit entities if such entities are the only available provider of quality HIV care in the area." [SEC 2604(b)(2)(A); SEC 2631(a)(1)]

This constitutes a formal clarification of legislative language by the Division of Service Systems, HIV/AIDS Bureau in consultation with the Grants Management Officer within the Bureau and with the Office of General Counsel of the Department of Health and Human Services, and is effective immediately.

Based on limitations contained in the CARE Act Amendments, grantees and other contracting agents must observe the following conditions in developing and implementing Requests for Proposals (RFP) and other local procurement procedures.

- a. Only available provider means that there are no nonprofit organizations able and willing to provide quality HIV service and that the grantee or other contracting agent is able to document this fact.
- b. Quality HIV care must be defined in a reasonable manner. Quality care **may not** be defined exclusively as a numerical score in an RFP process (i.e., all funds go to the highest scored proposal regardless of corporate status). An entity should only be deemed incapable of providing quality HIV care if written documentation of substantive quality of care deficiencies exists.
- c. Cost of service **may not** be the sole determinant in vendor selection processes whether internal or external (i.e., all funds go to the lowest bidder regardless of corporate status). However, grantees should not overlook cost considerations in developing and implementing RFP processes and are in fact expected to seek maximum productivity for each CARE Act dollar within the contracting limits of the legislation.
- d. Grantees must prohibit nonprofit contractors from serving as conduits who pass on their awards to for-profit corporations and **may** find it necessary to monitor membership of corporate boards in enforcing this prohibition. Federal Grants Management Policy is clear that the eligibility requirements that apply to first-level entities cannot be evaded by passing awards through to second- or subsequent-level entities that could not have received awards in the original competition.
- e. Proof of nonprofit status (local and/or State registration and approved articles of incorporation) should be required of all applicants claiming such status. Grantees are also strongly advised to require copies of letters of determination from the Internal Revenue Service.

- f. A grantee or other contracting agent **may not** contract with both nonprofit and for profit entities for the same service in the same geographic area unless qualified nonprofit providers do not have the capacity to meet identified need. Any nonprofit provider able to provide quality HIV care is given legislative preference over for-profit entities seeking to serve the same area.

No new contracts may be executed after the date of issuing this notice (3/7/97) that violate these conditions on contracts with private for-profit organizations. Any contracts in place using funds awarded in fiscal year 1997 or later are in violation of this program policy guidance notice. Failure to comply with this requirement may result in required return of funds to the Federal government, suspension of grant awards, or other remedies deemed necessary.

Grantees and other contracting agents are encouraged to include in all RFP materials disclaimers which advise private for-profit organizations of the significant legislative barriers to their receiving contracts. Alternatively, and if local/State regulations and laws allow it, grantees may seek to define "qualified applicants" at the beginning of the process in a way which would save private for-profit organizations the time and effort needed to develop applications which could not be considered for funding.

Any questions about this program policy should be directed to the grantee's Project Officer.

RESOLUTION

RESOLVED by the Board of Trustees (the "Board") of MERCY HOSPITAL, INC., a Florida not-for-profit corporation (the "Hospital") as follows:

WHEREAS, the Hospital presently operates a general acute care hospital providing the full continuum of care, including a Special Immunology Services Program ("SIS"); and

WHEREAS, SIS provides direct and indirect services to people living with HIV, including but not limited to direct services such as medical case management and financial assistance programs including assistance with paying for insurance premiums, deductibles, co-pays, and pharmaceuticals; and indirect services such as outpatient medical care, residential substance abuse, and mental health, via a network of contracted providers; and

WHEREAS, Hospital is a Medicaid provider for SIS clients through the Project AIDS Care ("PAC") waiver; and

WHEREAS, the Hospital has contracts with Miami-Dade County to provide Ryan White Part A and Minority AIDS Initiative ("MAI") funded services (the "Professional Services Agreements"), which Professional Services Agreements this Board has previously approved be entered into on June 2, 2010 and July 23, 2009, respectively; and

WHEREAS, the Professional Services Agreements are due to expire on February 28, 2011; and

WHEREAS, the Hospital has a contract with the Health Council of South Florida, Inc., to provide the AIDS Insurance Continuation Program ("AICP"); and

WHEREAS, this Board has previously resolved and authorized, on October 14, 2010, to sell the majority of the assets of the Hospital to Hospital Corporation of America, East Florida

Division ("HCA"), pursuant to an Asset Purchase Agreement ("HCA Transaction"), which, as of this date has not yet been executed; and

WHEREAS, SIS is deemed an excluded asset of the HCA Transaction, due to the fact that as a for-profit entity, HCA is both ineligible to be the recipient of Ryan White grant funding, as well as is ineligible to operate a 340B drug discount program; and

WHEREAS, the Hospital is desirous, if at all possible, to transition its SIS clientele to a single program that will serve the SIS clientele in the same manner as SIS presently; that will offer employment to the majority of the SIS employees; that will contract with Mercy network providers; and that is acceptable to Miami-Dade County; and

WHEREAS, Miami Beach Community Health Center ("MBCHC") is a Florida not-for-profit corporation; a Federally Qualified Health Center; is currently a Ryan White Part A provider under contract with Miami-Dade County; is presently applying to become a Medicaid PAC Waiver case management provider; represents that they have the financial, operational and clinical capabilities to provide SIS services; has agreed to develop a primary and specialty care network including offering contracts to existing Hospital SIS providers; has agreed to offer employment to SIS direct care personnel with insurance benefits almost equivalent in the aggregate to that offered by SIS on their first date of employment; has agreed to assume responsibility for the maintenance of the SIS case management records; has agreed to contract with the Health Council of South Florida, Inc., for the AIDS Insurance Continuation Program, subject to Health Council approval; has applied to become a Medicaid case management provider through the PAC Waiver; and has agreed to contract with Mercy Hospital to obtain SIS services for so long as the Hospital operates both the Hospital and the SIS; and

WHEREAS, subject to the approval of the Board of Commissioners of Miami-Dade County, the Ryan White grants County Program Director is agreeable to the transition of SIS to MBCHC;

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED BY THE BOARD AS FOLLOWS:

1. That the Board conceptually agrees to the termination of the SIS services by the Hospital effective as of February 28, 2011.

2. That the Board agrees to the transition of SIS to MBCHC, to be effective as of March 1, 2011, and to provide appropriate notice, consisting of not less than sixty (60) days, to SIS clientele, to the SIS providers, and to the SIS employees, of the proposed transition.

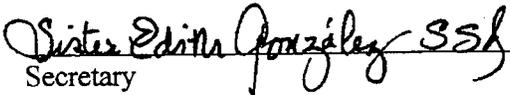
3. That the herein transition to MBCHC is contingent upon MBCHC offering employment to all SIS program direct employees; MBCHC contracting with current SIS network providers; and to MBCHC agreeing to assume responsibility for, as records owner, the maintenance of all SIS case management records.

4. That this approval is further contingent upon MBCHC agreeing that in the event of the closing of the HCA Transaction prior to February 28, 2011, MBCHC agrees to employ those SIS direct program employees who have agreed to accept employment with MBCHC concurrent with the date of the HCA closing; and to purchase grant-funded services from the Hospital, excluding pharmaceuticals, through and including February 28, 2011; and in the event the HCA Transaction does not close as of February 28, 2011, notwithstanding the transition of the SIS program to MBCHC, MBCHC agrees to procure all program services from the Hospital, through and including the date of the closing of the HCA Transaction.

5. That Manuel P. Anton, III, M.D., President and Chief Executive Officer of the Hospital, is authorized to negotiate and execute a definitive agreement with MBCHC on behalf of the Hospital, contingent upon the review and approval of Sister Edith Gonzalez, SSJ, Board Secretary and Vice President, Mission Services, and to report back to the Board as to the details of the definitive agreement.

6. That the Resolution shall only become effective upon the passage of a like Resolution by the Board of Directors of MBCHC; and upon approval of the Board of Commissioners of Miami-Dade County, of the award of the Continuation Contracts for Ryan White Part A and MAI professional services for the March 1, 2011 – February 28, 2012 grant year to MBCHC and the allocation of the funding approved for the Hospital be transferred to MBCHC.

PASSED AND ADOPTED by vote of the Board of Trustees of Mercy Hospital, Inc., at a meeting at which a quorum was present, on the 10th day of November, 2010.


Secretary



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LOCATIONS

STANLEY C. MYERS HEALTH CENTER
710 Alton Road
Miami Beach, FL 33139

BEVERLY PRESS HEALTH Center
1221 - 71 Street
Miami Beach, FL 33141

NORTH MIAMI HEALTH CENTER
11645 Biscayne Blvd, Suite 103-104
North Miami, FL 33181

CERTIFIED RESOLUTION OF THE BOARD OF DIRECTORS

OF

MIAMI BEACH COMMUNITY HEALTH CENTER, INC.

RESOLVED by the Board of Directors of Miami Beach Community Health Center, Inc., a Florida not-for-Profit Corporation as follows:

WHEREAS, Mercy Hospital (Mercy):

1. - Operates a Special Immunology Services (SIS) to provide direct and indirect services to people living with HIV; and
2. - Direct Services include medical case management and financial assistance programs including help to pay for insurance premiums, deductibles, co-pays, and pharmacy; outpatient medical services: primary care and specialty medical care, medical case management, prescription drugs, health insurance services, prescription co-pays, deductible; and
3. - Indirect Services include residential substance abuse, and mental health all provided via a network of contracted providers; and
4. - Is also a Medicaid provider for SIS clients through the Project AIDS Care ("PAC") waiver; and
5. - Has a contract with the Health Council of South Florida, Inc., to provide the AIDS Insurance Continuation Program ("AICP"); and
6. - Has a current contract with Miami-Dade County to provide Ryan White Part A and Minority AIDS Initiative (MAI) funded services scheduled to end on February 28, 2011; and
7. - Has been authorized by their Board of Directors to pursue the transition of all SIS clients to MBCHC offering them a single program that will contract with Mercy's current network of providers; and acceptable to Miami-Dade County; and

WHEREAS, Miami Beach Community Health Center (MBCHC):

1. - Currently has a contract with Miami Dade County, Office of Grant Coordination to provide Ryan White Part A Services scheduled to end on February 29, 2012; and
2. - Is interested in expanding outpatient medical care, medical case management and financial assistance programs to HIV+ individuals; and
3. - Has the financial, operational and clinical capabilities to provide additional services to HIV+ individuals including the ability to fully operate a 340B Drug Discount Program; and
4. - Has applied on October 28, 2010 to become a Medicaid PAC Waiver case management provider; and



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5. - Has applied on November 10, 2010 to be a contractor with the Health Council of South Florida to become a provider for the AIDS Insurance Continuation Program; and

6. - Is willing to hire four (4) eligible PAC Waiver Case Managers, One (1) PAC Waiver Case Manager Supervisor on February 1, 2011, six (6) eligible Medical Case Managers under Ryan White Part A Program on or March 1, 2011 and One (1) AICP Coordinator on March 1, 2011; and

7. - Is willing to extend sub-contracts to medical providers to maintain the integrated service delivery network operated by SIS and funded by Ryan White Part A; and

8. - Has the ability to retain client eligibility records for Mercy for a period of at least five (5) years in paper or electronic formats; and

WHEREAS, Miami Beach Community Health Center (MBCHC) and Mercy Hospital:

9. - Will work collaboratively to offer freedom of choice to clients as well as transfer of patients and records with sixty (60) days notice; and

10. - Will work collaboratively to facilitate an integration and consolidation of services transitioning these responsibilities from Mercy to MBCHC; and

WHEREAS, Miami-Dade County:

1. - Has the ability to consider adding the services provided by Mercy to the continuation contract of MBCHC in successive one year increments ending February 29, 2012; and

2. - Is planning to announce a competitive RFP in the spring of 2011 and MBCHC is planning to apply for a new contract starting on March 1, 2012 to continue providing all eligible services under Ryan White Part A; and

WHEREAS, the Ryan White HIV Treatment Extension Act expires in September 2012 and modifications to the program are anticipated and additional opportunities not yet identified; and

WHEREAS, this Board of Directors has been advised regarding the proposed consolidation of the Mercy program into the existing MBCHC/Immune Support Programs (ISP) and believes and is of the judgment that under all the circumstances, the proposed transaction is in the best interest of the organization and those living with HIV in Miami-Dade County.

NOW, THEREFORE, the Board hereby resolves as follows:

(1). - Approves and authorizes MBCHC to pursue consolidation of the Mercy program with MBCHC's ISP Department; and

(2). - Approves and authorizes MBCHC to pursue becoming a Project AIDS Care Medicaid Waiver provider with the State of Florida, and to transition Mercy clients on or prior to March 1, 2011; and

(3). - Approves and authorizes MBCHC to pursue entering into a contract with the Health Council of South Florida (HCSF) for the AIDS Insurance Continuation Program (AICP) and to transition Mercy clients on or prior to March 1, 2011; and

(4). - Approves and authorizes MBCHC to open financial accounts to segregate and manage funds for payments related to each program as needed; and

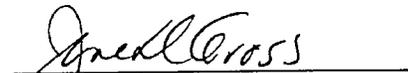
(5). - Approves and authorizes MBCHC to work closely with Mercy to transition patients and providers to create a consolidated program to better serve those living with HIV in our community on or prior to March 1, 2011; and

(6). - Approves and authorizes MBCHC to work with Miami-Dade County to receive a continuation award including services and funding resulting from the merging with Mercy for the period starting on March 1, 2011 and ending on February 28, 2012 to facilitate continuity of care and program expansion;

(7). - Approves and authorizes MBCHC to pursue this program integration and to start preparation for the competitive Request For Proposal (RFP) process to be held in 2011 and for the modified initiatives expected to occur when the Ryan White HIV Treatment Extension Act expires in September 2012 and new requirements and structures are in place.

(8). - Authorizes Kathryn Abbate, MHA, Chief Executive Officer, and Orlando Taquechel, MBA/HCM, Senior Executive Vice President of Project Management to execute same and on behalf of MBCHC.

Passed and adopted by vote of the Board of Directors of Miami Beach Community Health Center, Inc. (MBCHC) at the Board Meeting at which quorum was present on the 17th day of November 2010.



Janel D. Gross
Chairman of the Board of Directors
Miami Beach Community Health Center, Inc.