

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Roberts</i>	DATE <i>9-4-13</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>000095</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Mr. Heck, Singleton, Hess</i> <i>Cleared 9/26/13, letter attached</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>9-13-13</i> <input type="checkbox"/> FOIA DATE DUE _____ <input type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

Jan Polatty

From: Kinney, Gayla <gkinney@hsblawfirm.com>
Sent: Tuesday, September 03, 2013 5:43 PM
To: Anthony Keck
Cc: shamilton@ecchc.org; Rick Hepfer; Jan Polatty; Brisbin, Andrea
Subject: Eau Claire Cooperative Health Center
Attachments: 09-03-13 Ltr to Keck re ECCHC.pdf

Importance: High

Director Keck:

Please find attached Andrea H. Brisbin's letter dated 9-3-2013 in connection with the above matter.

Best wishes,

/Gayla Kinney

Gayla S. Kinney
Assistant to Andrea H. Brisbin
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SEP 04 2013

Department of Health & Human Services
OFFICE OF THE DIRECTOR

<<09-03-13 Ltr to Keck re ECCHC.pdf>>

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September 3, 2013

Via E-Mail & Federal Express

Anthony Keck, Director
S.C. Department of Health & Human Services
1801 Main Street
Columbia, S.C. 29202

**Re: Eau Claire Cooperative Health Center
Allocation of Funds Pursuant to Proviso 33.31 of the
FY2013-2014 South Carolina Appropriations Act**

Dear Mr. Keck:

I have been retained by Eau Claire Cooperative Health Center ("*Eau Claire*"), a federally qualified health center that receives funding under Section 330 of the federal Public Health Services Act, to represent its interests with respect to the above-referenced matter. I am writing to follow up on Dr. Hamilton's August 29th e-mail correspondence to you and to assist him with outlining for you the relevant legal issues in preparation for your meeting with him this Friday.

It is our understanding that some time during the month of September, the Department intends to disburse \$5,000,000 in appropriated funds, pursuant to Proviso 33.31 of the Department's budget adopted in the FY2013-2014 Appropriations Act ("*Proviso Funds*"), to the Community Health Centers/Federally Qualified Health Centers ("*FQHCs*") located in South Carolina. It further is our understanding that the Department intends to allocate these funds using what can only be described as an illegal methodology developed by the S.C. Primary Health Care Association (the "*Association*"). See **Enclosure A**. However, as explained below, the Department's disbursement of funds using this allocation methodology (the "*Association Methodology*") will be in violation of Proviso 33.31 and South Carolina law because it will be made in violation of applicable constitutional and statutory provisions and of the Department's authority, upon unlawful procedure, is affected by other error of law, is arbitrary or capricious or otherwise characterized by abuse of discretion or clearly unwarranted exercise of discretion.

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Unfortunately, to date, Dr. Hamilton's objections have gone unheeded, and the Association's Board Chair has strongly discouraged Dr. Hamilton from exercising Eau Claire's rights to contact the Department directly, claiming that such contact would serve no useful purpose but will shed a negative light on the FQHCs in this state. We disagree. Eau Claire is the facility receiving the appropriated funds directly, not through the Association, and therefore Eau Claire seeking your intervention to prevent this improper disbursement of appropriated funds, which otherwise will cause irreparable harm to Eau Claire.

The Association Methodology is *fatally* flawed for three primary reasons:

(1) First, the Association applied an arbitrary, strained interpretation of Proviso 33.31. The plain language of Subsections (2) and (3) of the Proviso specifically requires the distribution to facilities to be based on "uninsured patients served" and "the number of patients seen from counties with a population of less than 125,000." The only rational interpretation of this language is to allocate the Proviso Funds based on a simple calculation of the number of uninsured and rural patients served by each facility *relative to the total number of uninsured and rural patients served by all FQHCs*. A revised proposed allocation is contained in **Enclosure B**.

Instead, the Association has devised a convoluted formula to calculate each FQHC's "frequency" of uninsured and rural patients served, using a facility-specific percentage of uninsured and rural patients – *i.e.*, dividing the total number of uninsured patients served by the individual facility to the total number of patients *served by the facility*, and by dividing the total number of rural patients served by the facility to the total number of patients *served by the facility*. That factor then is taken as a percentage of the other FQHCs' aggregate factors to arrive at a percentage applied to the total Proviso Funds allocated in Subsections (2) and (3).

The Association has claimed that it is merely following the letter of the Proviso language. However, nowhere in the Proviso, in the historical practices of the Department, or in the overall purpose of FQHC funding is there an intent to utilize such a complex, convoluted formula to allocate the Proviso Funds. Had the General Assembly intended for the Department to employ such a calculation, it would have expressly spelled it out in the Proviso.

To illustrate how much the Association's Methodology would cause an absurd result at odds with the legislative intent of the Proviso, the Association is proposing that, based on its "frequency" factor, Eau Claire will receive *the least amount* of funds (approximately \$170,000) out of all 20

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FQHCs,¹ even though it is the largest FQHC provider in the state. Consider the following statistics from 2012:

- Of the 20 FQHCs with a total of 130 delivery sites in South Carolina, Eau Claire operates 23 sites, or 18% of the total delivery sites (Rank: 1st)
- Eau Claire served 10.7% of the total number of uninsured patients served by all FQHCs (Rank: 2nd)
- Eau Claire served 6% of the total number of rural patients served by all FQHCs (Rank: 5th (tied))
- Eau Claire provided care through 48 provider FTE's, or 16% of the total FQHC Provider FTE's (Rank: 1st – the next highest provider FTE count is CareSouth Carolina (9%))
- Eau Claire operated through 338 FTE's, or 15% of the total FTE's used by all FQHCs (Rank: 1st)
- Eau Claire received 10% of total revenue received by all FQHCs (Rank: 2nd)

Despite these statistics and rankings relative to the other 19 FQHCs, the Association has chosen to allocate 3.4% of total Proviso Funds to Eau Claire, thus assigning Eau Claire a ranking of 20th in the state.

Moreover, use of the Association Methodology results in a distribution of over \$238,000 to Heritage Essential Medical Services, which did not begin serving *any* patients until the second quarter of 2013.² By contrast, the Association would have Eau Claire, which served almost 50,000 total patients in 2012, receive \$170,000 -- \$67,000 *less* than Heritage, which served 0 patients in 2012. It is worth noting here that Heritage recently received an unfavorable site inspection by the U.S. Bureau of Primary Health Care, and it is Eau Claire's understanding that the Bureau intends to return to Heritage for a follow-on inspection with the next ninety (90) days. Thus, the Department would disburse over \$238,000 to a facility whose certification appears to be in jeopardy.

It is clear that the Association has provided the Department with an indefensible, arbitrary, capricious and utterly irrational method to distribute the Proviso Funds among the FQHCs. **The Department must reject the Association Methodology and utilize a rational basis that is commensurate with the service provided by each FQHC as a safety net provider. Eau Claire urges the Department to consider and adopt the proposed allocation methodology set forth in Enclosure B.**

¹ Enclosure A reflects 21 FQHCs, but Black River should now be merged into HopeHealth.

² This allocation apparently is based on Proviso 33.31 language stating that any "new established [FQHC] shall receive an amount equivalent to the average disbursement made to all Centers/FQHCs."

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(2) Second, the methodology fails to include the uninsured and rural patients served by the now-defunct Richland Community Healthcare Association ("**RCHCA**"), whose operations were assumed by Eau Claire in the second quarter of 2012. A review of Enclosure A reveals that the Association failed to even recognize RCHCA as a center that served uninsured and rural patients during 2012. By contrast, the Association allocated over \$270,000 to the now-defunct Black River facility, whose operations were transferred to HopeHealth Community Health Center in the first quarter of 2013. Accordingly, based on the Association Methodology, HopeHealth will receive Proviso Funds based on patients served by both HopeHealth and Black River during 2012, but Eau Claire will receive Proviso Funds based solely on patients served by Eau Claire but not RCHCA. **This is a clear and blatant error that can easily be corrected, and must be corrected, by using RCHCA 2012 data.**

(3) Finally, there is no directive or other requirement in Proviso 33.31 for the Department to consult with or otherwise rely on the Association to develop the allocation methodology for Proviso 33.31 Funds. By contrast, the Department clearly is required to consult with the Association to identify facilities with capital needs pursuant to Proviso 33.34(D). Thus, if the General Assembly had intended for the Department to consult with the Association regarding allocation of Proviso 33.31 Funds, it would have done so. The Department's blanket reliance on the Association Methodology to allocate funds entrusted to it by the General Assembly would be an abuse of discretion and potentially an illegal delegation of Department authority.

I think you will agree that once the disbursement of Proviso 33.31 Funds is made to the FQHCs based on the Association Methodology, it will be virtually impossible to recoup and reallocate those funds without the expenditure of significant efforts and resources by Department staff. We therefore urge the Department to:

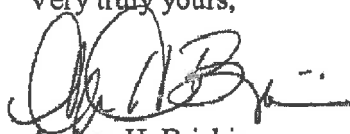
- immediately advise the Association as well as the FQHC Community in writing that it does not intend to use the Association Methodology; and
- consider and adopt the proposed allocation methodology set forth in **Enclosure B** and disburse the Proviso 33.31 Funds accordingly.

We look forward to receiving the Department's response to Eau Claire's position and demand and a swift resolution of this dispute. Should a mutually acceptable resolution not be reached, Eau Claire will have no choice but to pursue legal action.

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With best regards, I am

Very truly yours,



Andrea H. Brisbin

Enclosures (2)

cc: Richard P. Hepfer, Esquire (via e-mail @ hepfer@scdhhs.gov) (w/ encls.)
Stuart A. Hamilton, M.D. (via e-mail) (w/ encls.)

Enclosure A

Total Appropriation	\$	5,000,000.00
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Community Health Center	30%			40%			30%			Total % of Appropriation	Total \$ Appropriation
	Base Distribution			Uninsured Frequency within CHC			Frequency of Patients Served in Rural Counties				
	Value	%	\$\$	Value	%	\$\$	Value	%	\$\$		
Beaufort-Jasper-Hampton	1	4.76%	\$ 71,428.57	0.43	6.17%	\$ 123,474.75	0.39	3.06%	\$ 45,937.99	4.8%	\$ 240,841.31
Black River	1	4.76%	\$ 71,428.57	0.31	4.41%	\$ 88,234.35	0.95	7.38%	\$ 110,671.72	5.4%	\$ 270,334.64
CareNet	1	4.76%	\$ 71,428.57	0.00	0.00%	\$ -	0.93	7.19%	\$ 107,836.53	3.6%	\$ 179,265.10
CareSouth	1	4.76%	\$ 71,428.57	0.43	6.15%	\$ 122,965.33	0.97	7.54%	\$ 113,039.45	6.1%	\$ 307,433.35
Carolina Health	1	4.76%	\$ 71,428.57	0.24	3.41%	\$ 68,196.47	0.97	7.52%	\$ 112,772.17	5.0%	\$ 252,397.22
Edwards	1	4.76%	\$ 71,428.57	0.25	3.52%	\$ 70,487.24	0.25	1.90%	\$ 29,061.49	3.4%	\$ 170,976.00
Family Health	1	4.76%	\$ 71,428.57	0.00	0.00%	\$ -	0.9	7.4%	\$ 11,607.71	3.3%	\$ 263,933.15
Franklin C. Felt	1	4.76%	\$ 71,428.57	0.00	0.00%	\$ -	0.1	1.7%	\$ 2,355.00	4.8%	\$ 240,456.77
Genesis	1	4.76%	\$ 71,428.57	0.00	0.00%	\$ -	0.8	6.30%	\$ 10,245.00	4.0%	\$ 199,827.52
Health Care Partners	1	4.76%	\$ 71,428.57	0.00	0.00%	\$ -	0.0	0.0%	\$ 0.00	3.5%	\$ 173,505.86
Heritage	1	4.76%	\$ 71,428.57	0.00	0.00%	\$ -	0.0	0.0%	\$ 0.00	4.8%	\$ 238,095.24
HopeHealth	1	4.76%	\$ 71,428.57	0.39	5.57%	\$ 111,337.67	0.75	5.79%	\$ 86,861.65	5.4%	\$ 269,627.89
Little River	1	4.76%	\$ 71,428.57	0.50	7.07%	\$ 141,322.30	0.02	0.16%	\$ 2,357.10	4.3%	\$ 215,107.96
Low Country	1	4.76%	\$ 71,428.57	0.29	4.18%	\$ 83,580.94	0.94	7.31%	\$ 109,710.11	5.3%	\$ 264,719.62
New Horizon	1	4.76%	\$ 71,428.57	0.55	7.83%	\$ 156,622.38	0.33	2.55%	\$ 38,301.42	5.3%	\$ 266,352.37
North Central	1	4.76%	\$ 71,428.57	0.37	5.24%	\$ 104,716.24	0.19	1.47%	\$ 22,096.34	4.0%	\$ 198,241.16
Regenesis	1	4.76%	\$ 71,428.57	0.30	4.22%	\$ 84,351.74	0.33	2.56%	\$ 38,355.89	3.9%	\$ 194,136.20
Rural Health	1	4.76%	\$ 71,428.57	0.36	5.15%	\$ 102,903.80	0.31	2.37%	\$ 35,540.77	4.2%	\$ 209,873.14
Sandhills	1	4.76%	\$ 71,428.57	0.34	4.85%	\$ 96,901.66	0.96	7.44%	\$ 111,551.96	5.6%	\$ 279,882.20
St. James-Santee	1	4.76%	\$ 71,428.57	0.46	6.62%	\$ 132,323.18	0.82	6.34%	\$ 95,083.17	6.0%	\$ 298,834.92
Sumter	1	4.76%	\$ 71,428.57	0.28	4.06%	\$ 81,167.72	0.98	7.57%	\$ 113,562.10	5.3%	\$ 266,158.39
TOTAL	21	100.00%	\$ 1,500,000.00	6.69	100.00%	\$ 2,000,000.00	12.27	100.00%	\$ 1,500,000.00	100.0%	\$ 5,000,000.00

2013 FQHC SC Legislative Appropriations

Language Provided by the SC General Assembly

Final 33.31 Proviso Language: http://scstatehouse.gov/sess120_2013-2014/appropriations2013/tap1b.htm#s33

(DHHS: Community Health Center/FQHC) Entities receiving funding under Section 330 of the Public Health Services Act, qualify to receive funds provided in this act for Community Health Center/FQHC. FQHC Look-A-Likes are also included in the distribution of these funds. However, no entity is eligible to receive funds allocated by this proviso if the Chief Executive Officer is not an employee of the entity or is hired under a management agreement to operate the entity.

This appropriation shall be disbursed as follows: (1) thirty percent of the total appropriation will be divided among qualifying entities; and (2) the balance of the appropriation will be distributed with forty percent based on uninsured patients served and thirty percent based on the number of patients seen from counties with a population of less than 125,000. Any newly established Community Health Center/FQHC shall receive an amount equivalent to the average disbursement made to all Centers/FQHCs.

All data is taken from the 2010 United States Census and 2012 UDS reports submitted by FQHCs to JSI.

30% Base Distribution

This base distribution divides 30% of all available funds evenly among SC FQHCs

40% Based on Uninsured Patient Population

For this distribution, each FQHC's internal rate of uninsured patients is calculated by dividing its uninsured population by its total population to get the value used in comparison against other FQHCs.

30% Based on Rural Patient Population

For this distribution, each FQHC's number of rural patients is calculated by cross referencing reported numbers of patients living in each zip code with zip codes located, completely or partially, within counties with fewer than 125,000 residents. Each FQHC's number of rural patients is then divided by its total population to get the value used in comparison against other FQHCs.

Enclosure B

Community Health Center	30%				40%				Frequency of Patients Served in Rural Counties				100%			
	Base Distribution				Uninsured Frequency Within CHC				Association Methodology Distribution				Totals			
	Association Methodology Distribution	ECCHC Proposed Methodology Distribution	Difference		Association Methodology Distribution	ECCHC Proposed Methodology Distribution	Difference		Association Methodology Distribution	ECCHC Proposed Methodology Distribution	Difference	Association Methodology Distribution	ECCHC Proposed Methodology Distribution	Difference		
CareSouth Carolina, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 122,965.33	\$ 226,736.04	\$ 103,770.71		\$ 113,039.45	\$ 238,255.91	\$ 125,216.46	\$ 307,433.36	\$ 536,420.52	\$ 228,987.17		
Eau Claire Cooperative Health Centers, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 70,486.24	\$ 208,829.41	\$ 138,343.17		\$ 29,081.19	\$ 97,271.30	\$ 68,216.11	\$ 170,978.00	\$ 377,535.29	\$ 206,558.28		
Carolina Health Centers, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 68,196.47	\$ 100,963.81	\$ 32,767.34		\$ 112,772.17	\$ 190,121.88	\$ 77,349.71	\$ 262,397.21	\$ 362,534.26	\$ 110,137.04		
Family Health Centers, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 80,896.84	\$ 98,469.31	\$ 17,582.47		\$ 111,607.74	\$ 157,246.71	\$ 45,641.97	\$ 263,933.15	\$ 327,137.60	\$ 63,204.45		
Little River Medical Center, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 141,332.30	\$ 194,855.08	\$ 53,523.78		\$ 2,367.10	\$ 3,630.73	\$ 1,273.63	\$ 215,117.97	\$ 269,915.38	\$ 54,797.41		
New Horizon Family Health Services, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 155,622.38	\$ 191,569.77	\$ 34,937.39		\$ 38,301.42	\$ 53,539.64	\$ 15,238.22	\$ 286,352.37	\$ 316,527.98	\$ 50,175.61		
Franklin C. Fetter Family Health Center, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 150,672.21	\$ 164,824.28	\$ 14,152.07		\$ 18,365.99	\$ 23,178.49	\$ 4,822.50	\$ 240,456.77	\$ 259,431.34	\$ 18,974.57		
Reafor-Jasper-Hampton Comprehensive Health Services, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 123,474.75	\$ 128,195.10	\$ 5,720.35		\$ 45,937.99	\$ 64,663.69	\$ 8,645.60	\$ 240,841.31	\$ 265,207.26	\$ 14,365.95		
Heritage	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 95,238.10	\$ 95,238.10	\$ (0.00)		\$ 71,428.57	\$ 71,428.57	\$ 0.00	\$ 238,085.24	\$ 238,085.24	\$ (0.00)		
Black River Healthcare, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 88,294.35	\$ 77,895.87	\$ (10,338.48)		\$ 110,871.72	\$ 111,197.80	\$ 526.08	\$ 270,334.64	\$ 280,522.24	\$ (9,812.40)		
ReGenesis Health Care, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 84,351.74	\$ 61,032.07	\$ (23,319.67)		\$ 38,355.89	\$ 31,273.08	\$ (7,082.81)	\$ 194,136.20	\$ 163,733.72	\$ (30,402.48)		
Sunder Family Health Center, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 81,167.72	\$ 61,700.04	\$ (19,467.68)		\$ 113,562.10	\$ 100,694.30	\$ (12,867.80)	\$ 266,168.39	\$ 233,722.92	\$ (32,435.48)		
Low Country Health Care Systems, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 83,580.94	\$ 60,270.30	\$ (23,310.64)		\$ 108,710.11	\$ 91,002.45	\$ (18,707.66)	\$ 264,719.62	\$ 222,701.32	\$ (42,018.30)		
Rural Health Services, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 102,903.80	\$ 63,168.59	\$ (39,747.21)		\$ 35,540.77	\$ 25,333.85	\$ (10,207.12)	\$ 209,873.14	\$ 169,918.80	\$ (49,954.34)		
North Central Family Medical Center Health Care Partners of SC, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 104,716.24	\$ 60,448.85	\$ (44,267.39)		\$ 22,086.34	\$ 14,459.72	\$ (7,626.62)	\$ 198,241.15	\$ 146,337.14	\$ (51,904.01)		
HopeHealth, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 79,454.86	\$ 37,922.36	\$ (41,532.50)		\$ 22,622.43	\$ 11,987.01	\$ (10,635.42)	\$ 173,505.96	\$ 121,337.94	\$ (52,167.92)		
CareNet, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 111,337.67	\$ 69,688.92	\$ (41,748.75)		\$ 86,861.65	\$ 62,338.54	\$ (24,523.11)	\$ 286,627.89	\$ 203,565.03	\$ (86,271.66)		
Genesis Health Care, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ -	\$ -	\$ -		\$ 107,836.53	\$ 36,636.31	\$ (71,200.22)	\$ 178,265.10	\$ 108,064.88	\$ (71,200.22)		
Genesis Medical Foundation, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 25,153.23	\$ 6,266.52	\$ (18,886.71)		\$ 103,245.72	\$ 28,866.46	\$ (74,379.26)	\$ 193,827.62	\$ 106,567.84	\$ (86,259.78)		
St. James - Sanjee Family Health Center, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 96,901.66	\$ 44,237.62	\$ (52,664.04)		\$ 111,561.96	\$ 58,184.04	\$ (53,377.92)	\$ 279,882.19	\$ 173,660.23	\$ (106,221.96)		
TOTAL	\$ 1,500,000.00	\$ 1,500,000.00	\$ -		\$ 2,000,010.01	\$ 2,000,000.00	\$ (10.01)		\$ 1,500,000.01	\$ 1,500,000.00	\$ (0.01)	\$ 5,000,010.02	\$ 5,000,000.00	\$ (10.02)		

Health Center	Total # of Patients Served	Fraction of Uninsured Patients Served in Health Center	# of Uninsured Patients Served	# of Uninsured Patients Served/(Total # of Uninsured Patients)	Allocated Funds Out of 2 Million
Beaufort-Jasper-Hampton Comprehensive Health Services, Inc.	17538	0.43	7713	0.03	\$ 128,185.10
Black River Healthcare, Inc.	15202	0.31	4651	0.04	\$ 77,685.67
Carnell, Inc.	5046	0.00	0	0.00	\$
CareSouth Carolina, Inc.	31481	0.43	13537	0.11	\$ 228,738.04
Carroll Health Centers, Inc.	25121	0.24	6028	0.05	\$ 100,983.61
North Central Family Medical Center	9784	0.37	3599	0.03	\$ 80,446.55
Carroll County Health Services, Inc.	49671	0.27	13418	0.10	\$ 208,324.43
Family Health Centers, Inc.	20894	0.28	5878	0.05	\$ 88,459.31
Franklin C. Foster Family Health Center, Inc.	18567	0.53	9841	0.08	\$ 164,824.28
Garrards Health Care, Inc.	4157	0.08	374	0.00	\$ 0.265.52
Health Care Partners of SC, Inc.	8088	0.28	2294	0.02	\$ 37,922.38
Hopewell, Inc.	10653	0.39	4155	0.03	\$ 69,968.82
Little River Medical Center, Inc.	23287	0.50	11834	0.10	\$ 194,665.08
Low Country Health Care System, Inc.	12408	0.28	3538	0.03	\$ 80,270.36
New Horizon Family Health Services, Inc.	20794	0.55	11437	0.10	\$ 191,655.77
Reynolds Health Care, Inc.	12146	0.30	3644	0.03	\$ 61,032.07
Rural Health Services, Inc.	10474	0.38	3711	0.03	\$ 63,595.59
Sanatulla Medical Foundation, Inc.	7768	0.34	2641	0.02	\$ 44,237.82
St. James - St. James Family Health Center, Inc.	8274	0.46	2794	0.02	\$ 46,796.96
Sumter Family Health Center, Inc.	13156	0.28	3694	0.03	\$ 61,703.04
Heritage	0	0.00	9956	0.05	\$ 95,236.10
TOTAL	322780	6.68	119405	1	\$ 2,000,600.90

Health Center	Total # of Patients Served	Fraction of Rural Patients Served in Health Center	# of Rural Patients Served	# of Rural Patients Served/(Total # of Rural Patients)	Allocated Funds out of 1.5 Million
Beaufort-Jasper-Hampton Comprehensive Health Services, Inc.	17538	0.39	6898	0.04	\$ 54,593.59
Black River Healthcare, Inc.	15202	0.52	14252	0.07	\$ 111,187.80
Carnell, Inc.	5046	0.93	4696	0.02	\$ 36,636.31
Carroll County Health Services, Inc.	31481	0.87	30537	0.46	\$ 228,255.91
Carroll Health Centers, Inc.	25121	0.97	24387	0.13	\$ 190,121.86
North Central Family Medical Center	9784	0.19	1853	0.01	\$ 14,458.72
Carroll County Health Services, Inc.	49671	0.25	12488	0.08	\$ 97,277.30
Family Health Centers, Inc.	20894	0.56	20154	0.10	\$ 157,240.71
Franklin C. Foster Family Health Center, Inc.	18567	0.18	2971	0.02	\$ 23,176.49
Garrards Health Care, Inc.	4157	0.89	3700	0.02	\$ 28,896.46
Health Care Partners of SC, Inc.	8088	0.18	1536	0.01	\$ 11,967.01
Hopewell, Inc.	10653	0.75	7990	0.04	\$ 62,336.54
Little River Medical Center, Inc.	23287	0.62	485	0.00	\$ 3,683.73
Low Country Health Care System, Inc.	12408	0.94	11694	0.04	\$ 91,002.45
New Horizon Family Health Services, Inc.	20794	0.33	6882	0.04	\$ 53,539.64
Reynolds Health Care, Inc.	12146	0.33	4036	0.02	\$ 31,273.06
Rural Health Services, Inc.	10474	0.31	3247	0.02	\$ 25,333.86
Sanatulla Medical Foundation, Inc.	7768	0.86	7457	0.04	\$ 68,164.04
St. James - St. James Family Health Center, Inc.	8274	0.82	4891	0.03	\$ 38,890.83
Sumter Family Health Center, Inc.	13156	0.86	12853	0.07	\$ 100,594.30
Heritage	0	0.00	9455	0.05	\$ 71,426.57
TOTAL	322780	12.26	192251	1	\$ 1,500,000.00

Health Center	Total # of Patients Served	Fraction of Uninsured Patients Served in Health Center	# of Uninsured Patients Served	[# Uninsured Patients Served]/[Total # of Uninsured Patients]	Allocated Funds Out of 2 Million
Beaufort-Jasper-Hampton Comprehensive Health Services, Inc.	17938	0.43	7713	0.06	\$ 129,195.10
Black River Healthcare, Inc.	15002	0.31	4651	0.04	\$ 77,995.87
CareNet, Inc.	5049	0.00	0	0.00	\$ -
CareSouth Carolina, Inc.	31481	0.43	13537	0.11	\$ 226,736.04
Carolina Health Centers, Inc.	25121	0.24	6029	0.05	\$ 100,983.81
Community Medicine Foundation, Inc. (North Central Family Medical Center)	9754	0.37	3609	0.03	\$ 60,448.85
East Ohio Cooperative Health Centers, Inc.	49871	0.25	12468	0.10	\$ 206,929.11
Family Health Centers, Inc.	20994	0.28	5878	0.05	\$ 98,459.31
Franklin C. Fetter Family Health Center, Inc.	18587	0.53	9841	0.08	\$ 164,824.28
Genesis Health Care, Inc.	4157	0.09	374	0.00	\$ 6,266.52
Health Care Partners of SC, Inc.	8086	0.28	2264	0.02	\$ 37,922.36
HopeHealth, Inc.	10653	0.39	4155	0.03	\$ 69,588.92
Little River Medical Center, Inc.	23267	0.50	11834	0.10	\$ 194,856.08
Low Country Health Care System, Inc.	12408	0.29	3598	0.03	\$ 60,270.30
New Horizon Family Health Services, Inc.	20794	0.55	11437	0.10	\$ 191,559.77
ReGenesis Health Care, Inc.	12146	0.30	3644	0.03	\$ 61,032.07
Rural Health Services, Inc.	10474	0.36	3771	0.03	\$ 63,156.59
Sandhills Medical Foundation, Inc.	7768	0.34	2641	0.02	\$ 44,237.62
St. James - Santee Family Health Center, Inc.	6074	0.46	2794	0.02	\$ 46,798.96
Sumter Family Health Center, Inc.	13156	0.28	3684	0.03	\$ 61,700.04
Heritage	0	0.00	5665	0.05	\$ 95,330.10
TOTAL	322760	6.68	119406	1	\$ 2,000,000.00

EAU CLAIRE 2012 RURAL PTS.

Zip	County	Patients
29006	Aiken	843
29014	Fairfield	25
29015	Fairfield	364
29016	Fairfield	398
29036	Kershaw/Lee	52
29032	Kershaw/Lee	12
29036	Newberry	94
29037	Newberry	18
29040	Sumter/Lee	27
29045	Fairfield	307
29047	Calhoun/Orangeburg	11
29053	Lexington/Calhoun	2140
29055	Fairfield	25
29065	Fairfield	144
29070	Lexington/Saluda	1064
29075	Newberry	28
29078	Kershaw/Richland	74
29102	Clarendon	11
29105	Aiken/Saluda	103
29107	Orangeburg	12
29108	Newberry	1934
29112	Orangeburg/Lexington	115
29115	Orangeburg	41
29118	Orangeburg/Calhoun	20
29126	Newberry	87
29127	Newberry	265
29128	Sumter/Kershaw/Lee	71
29129	Aiken/Saluda/Edgefield	129
29130	Fairfield	685
29135	Calhoun/Orangeburg	61
29137	Newberry	134
29138	Saluda/Greenwood/Edgefield	217
29145	Newberry	57
29150	Sumter	53
29153	Sumter/Lee	32
29154	Sumter	74
29160	Lexington/Calhoun	532
29164	Aiken	218
29166	Saluda	21
29168	Sumter	36
29178	Newberry	167
29180	Fairfield	1786
29325	Laurens	34
29351	Laurens	25
29355	Newberry	21
29360	Laurens	18
29706	Chester/York	15
29720	Lancaster	15
29801	Aiken	21
29805	Aiken	16
29824	Edgefield/Saluda	16
29832	Edgefield/Saluda	34
Total		12702
Total/49871		0.254697119

Health Center	Total # of Patients Served	Fraction of Rural Patients Served in Health Center	# of Rural Patients Served	[# Rural Patients Served]/[Total # of Rural Patients]	Allocated Funds out of 1.5 Million
Beaufort-Jasper-Hampton Comprehensive Health Services, Inc.	17938	0.39	6996	0.04	\$ 54,583.59
Black River Healthcare, Inc.	15002	0.95	14252	0.07	\$ 111,197.80
CareNet, Inc.	5049	0.93	4696	0.02	\$ 36,636.31
CareSouth Carolina, Inc.	31481	0.97	30537	0.16	\$ 238,255.91
Carolina Health Centers, Inc.	25121	0.97	24367	0.13	\$ 190,121.88
Community Medicine Foundation, Inc. (North Central Family Medical Center)	9754	0.19	1853	0.01	\$ 14,459.72
Eau Claire Cooperative Health Centers, Inc.	49871	0.25	12468	0.06	\$ 97,271.30
Family Health Centers, Inc.	20994	0.96	20154	0.10	\$ 157,249.71
Franklin C. Fetter Family Health Center, Inc.	18567	0.16	2971	0.02	\$ 23,178.49
Genesis Health Care, Inc.	4157	0.89	3700	0.02	\$ 28,866.46
Health Care Partners of SC, Inc.	8086	0.19	1536	0.01	\$ 11,987.01
HopeHealth, Inc.	10653	0.75	7990	0.04	\$ 62,338.54
Little River Medical Center, Inc.	23267	0.02	465	0.00	\$ 3,630.73
Low Country Health Care System, Inc.	12408	0.94	11684	0.06	\$ 91,002.45
New Horizon Family Health Services, Inc.	20794	0.33	6862	0.04	\$ 53,539.64
ReGenesis Health Care, Inc.	12146	0.33	4008	0.02	\$ 31,273.08
Rural Health Services, Inc.	10474	0.31	3247	0.02	\$ 25,333.65
Sandhills Medical Foundation, Inc.	7768	0.96	7457	0.04	\$ 58,184.04
St. James - Santee Family Health Center, Inc.	6074	0.82	4981	0.03	\$ 38,860.83
Sumter Family Health Center, Inc.	13156	0.98	12893	0.07	\$ 100,594.30
Heritage	0	0.00	0	0.05	\$ 7,748.57
Primary Care Association of SC, Inc. (SC Migrant Health Program)	1553	0.00	0	0.00	\$ 0.00
TOTAL	324313	12.29	192251	1	\$ 1,500,000.00

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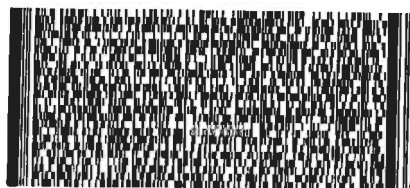
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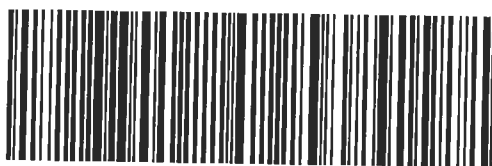
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September 3, 2013

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SEP 04 2013

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Via E-Mail & Federal Express

Anthony Keck, Director
S.C. Department of Health & Human Services
1801 Main Street
Columbia, S.C. 29202

**Re: Eau Claire Cooperative Health Center
Allocation of Funds Pursuant to Proviso 33.31 of the
FY2013-2014 South Carolina Appropriations Act**

Dear Mr. Keck:

I have been retained by Eau Claire Cooperative Health Center ("**Eau Claire**"), a federally qualified health center that receives funding under Section 330 of the federal Public Health Services Act, to represent its interests with respect to the above-referenced matter. I am writing to follow up on Dr. Hamilton's August 29th e-mail correspondence to you and to assist him with outlining for you the relevant legal issues in preparation for your meeting with him this Friday.

It is our understanding that some time during the month of September, the Department intends to disburse \$5,000,000 in appropriated funds, pursuant to Proviso 33.31 of the Department's budget adopted in the FY2013-2014 Appropriations Act ("**Proviso Funds**"), to the Community Health Centers/Federally Qualified Health Centers ("**FQHCs**") located in South Carolina. It further is our understanding that the Department intends to allocate these funds using what can only be described as an illegal methodology developed by the S.C. Primary Health Care Association (the "**Association**"). See **Enclosure A**. However, as explained below, the Department's disbursement of funds using this allocation methodology (the "**Association Methodology**") will be in violation of Proviso 33.31 and South Carolina law because it will be made in violation of applicable constitutional and statutory provisions and of the Department's authority, upon unlawful procedure, is affected by other error of law, is arbitrary or capricious or otherwise characterized by abuse of discretion or clearly unwarranted exercise of discretion.

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Unfortunately, to date, Dr. Hamilton's objections have gone unheeded, and the Association's Board Chair has strongly discouraged Dr. Hamilton from exercising Eau Claire's rights to contact the Department directly, claiming that such contact would serve no useful purpose but will shed a negative light on the FQHCs in this state. We disagree. Eau Claire is the facility receiving the appropriated funds directly, not through the Association, and therefore Eau Claire seeking your intervention to prevent this improper disbursement of appropriated funds, which otherwise will cause irreparable harm to Eau Claire.

The Association Methodology is fatally flawed for three primary reasons:

(1) First, the Association applied an arbitrary, strained interpretation of Proviso 33.31. The plain language of Subsections (2) and (3) of the Proviso specifically requires the distribution to facilities to be based on "uninsured patients served" and "the number of patients seen from counties with a population of less than 125,000." The only rational interpretation of this language is to allocate the Proviso Funds based on a simple calculation of the number of uninsured and rural patients served by each facility *relative to the total number of uninsured and rural patients served by all FQHCs*. A revised proposed allocation is contained in **Enclosure B**.

Instead, the Association has devised a convoluted formula to calculate each FQHC's "frequency" of uninsured and rural patients served, using a facility-specific percentage of uninsured and rural patients – *i.e.*, dividing the total number of uninsured patients served by the individual facility to the total number of patients *served by the facility*, and by dividing the total number of rural patients served by the facility to the total number of patients *served by the facility*. That factor then is taken as a percentage of the other FQHCs' aggregate factors to arrive at a percentage applied to the total Proviso Funds allocated in Subsections (2) and (3).

The Association has claimed that it is merely following the letter of the Proviso language. However, nowhere in the Proviso, in the historical practices of the Department, or in the overall purpose of FQHC funding is there an intent to utilize such a complex, convoluted formula to allocate the Proviso Funds. Had the General Assembly intended for the Department to employ such a calculation, it would have expressly spelled it out in the Proviso.

To illustrate how much the Association's Methodology would cause an absurd result at odds with the legislative intent of the Proviso, the Association is proposing that, based on its "frequency" factor, Eau Claire will receive *the least amount* of funds (approximately \$170,000) out of all 20

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FQHCs,¹ even though it is the largest FQHC provider in the state. Consider the following statistics from 2012:

- Of the 20 FQHCs with a total of 130 delivery sites in South Carolina, Eau Claire operates 23 sites, or **18% of the total delivery sites** (Rank: 1st)
- Eau Claire served **10.7% of the total number of uninsured patients** served by all FQHCs (Rank: 2nd)
- Eau Claire served **6% of the total number of rural patients** served by all FQHCs (Rank: 5th (tied))
- Eau Claire provided care through 48 provider FTE's, or **16% of the total FHQC Provider FTE's** (Rank: 1st – the next highest provider FTE count is CareSouth Carolina (9%))
- Eau Claire operated through 338 FTE's, or **15% of the total FTE's** used by all FQHCs (Rank: 1st)
- Eau Claire received **10% of total revenue received by all FQHCs** (Rank: 2nd)

Despite these statistics and rankings relative to the other 19 FQHCs, the Association has chosen to allocate **3.4%** of total Proviso Funds to Eau Claire, thus assigning Eau Claire a ranking of **20th** in the state.

Moreover, use of the Association Methodology results in a distribution of over \$238,000 to Heritage Essential Medical Services, which did not begin serving *any* patients until the second quarter of 2013.² By contrast, the Association would have Eau Claire, which served almost 50,000 total patients in 2012, receive \$170,000 -- \$67,000 *less* than Heritage, which served 0 patients in 2012. It is worth noting here that Heritage recently received an unfavorable site inspection by the U.S. Bureau of Primary Health Care, and it is Eau Claire's understanding that the Bureau intends to return to Heritage for a follow-on inspection with the next ninety (90) days. Thus, the Department would disburse over \$238,000 to a facility whose certification appears to be in jeopardy.

It is clear that the Association has provided the Department with an indefensible, arbitrary, capricious and utterly irrational method to distribute the Proviso Funds among the FQHCs. **The Department must reject the Association Methodology and utilize a rational basis that is commensurate with the service provided by each FQHC as a safety net provider. Eau Claire urges the Department to consider and adopt the proposed allocation methodology set forth in Enclosure B.**

¹ Enclosure A reflects 21 FQHCs, but Black River should now be merged into HopeHealth.

² This allocation apparently is based on Proviso 33.31 language stating that any "new established [FQHC] shall receive an amount equivalent to the average disbursement made to all Centers/FQHCs."

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(2) Second, the methodology fails to include the uninsured and rural patients served by the now-defunct Richland Community Healthcare Association ("**RCHCA**"), whose operations were assumed by Eau Claire in the second quarter of 2012. A review of Enclosure A reveals that the Association failed to even recognize RCHCA as a center that served uninsured and rural patients during 2012. By contrast, the Association allocated over \$270,000 to the now-defunct Black River facility, whose operations were transferred to HopeHealth Community Health Center in the first quarter of 2013. Accordingly, based on the Association Methodology, HopeHealth will receive Proviso Funds based on patients served by both HopeHealth and Black River during 2012, but Eau Claire will receive Proviso Funds based solely on patients served by Eau Claire but not RCHCA. **This is a clear and blatant error that can easily be corrected, and must be corrected, by using RCHCA 2012 data.**

(3) Finally, there is no directive or other requirement in Proviso 33.31 for the Department to consult with or otherwise rely on the Association to develop the allocation methodology for Proviso 33.31 Funds. By contrast, the Department clearly is required to consult with the Association to identify facilities with capital needs pursuant to Proviso 33.34(D). Thus, if the General Assembly had intended for the Department to consult with the Association regarding allocation of Proviso 33.31 Funds, it would have done so. The Department's blanket reliance on the Association Methodology to allocate funds entrusted to it by the General Assembly would be an abuse of discretion and potentially an illegal delegation of Department authority.

I think you will agree that once the disbursement of Proviso 33.31 Funds is made to the FQHCs based on the Association Methodology, it will be virtually impossible to recoup and reallocate those funds without the expenditure of significant efforts and resources by Department staff. We therefore urge the Department to:

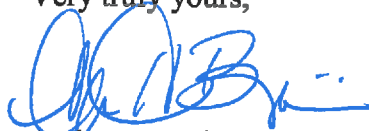
- immediately advise the Association as well as the FQHC Community in writing that it does not intend to use the Association Methodology; and
- consider and adopt the proposed allocation methodology set forth in **Enclosure B** and disburse the Proviso 33.31 Funds accordingly.

We look forward to receiving the Department's response to Eau Claire's position and demand and a swift resolution of this dispute. Should a mutually acceptable resolution not be reached, Eau Claire will have no choice but to pursue legal action.

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With best regards, I am

Very truly yours,



Andrea H. Brisbin

Enclosures (2)

cc: Richard P. Hepfer, Esquire (via e-mail @ hepfer@scdhhs.gov) (w/ encls.)
Stuart A. Hamilton, M.D. (via e-mail) (w/ encls.)

Enclosure A

Total Appropriation	\$	5,000,000.00
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Community Health Center	30%			40%			30%			Total % of Appropriation	Total \$ Appropriation
	Base Distribution			Uninsured Frequency within CHC			Frequency of Patients Served in Rural Counties				
	Value	%	\$	Value	%	\$	Value	%	\$		
Beaufort-Jasper-Hampton	1	4.76%	\$ 71,428.57	0.43	6.17%	\$ 123,474.75	0.39	3.06%	\$ 45,937.99	4.8%	\$ 240,841.31
Black River	1	4.76%	\$ 71,428.57	0.31	4.41%	\$ 88,234.35	0.95	7.38%	\$ 110,671.72	5.4%	\$ 270,334.64
CareNet	1	4.76%	\$ 71,428.57	0.00	0.00%	\$ -	0.93	7.19%	\$ 107,836.53	3.6%	\$ 179,265.10
CareSouth	1	4.76%	\$ 71,428.57	0.43	6.15%	\$ 122,965.33	0.97	7.54%	\$ 113,039.45	6.1%	\$ 307,433.35
Carolina Health	1	4.76%	\$ 71,428.57	0.24	3.41%	\$ 68,196.47	0.97	7.52%	\$ 112,772.17	5.0%	\$ 252,397.22
Eau Claire	1	4.76%	\$ 71,428.57	0.25	3.52%	\$ 70,486.24	0.25	1.94%	\$ 29,061.19	3.4%	\$ 170,976.00
Family Health	1	4.76%	\$ 71,428.57	0.39	4.04%	\$ 80,968.44	0.9	7.4%	\$ 11,607.1	5.3%	\$ 263,933.15
Franklin C. Felt	1	4.76%	\$ 71,428.57	0.3	7.53%	\$ 150,722.2	0.1	1.2%	\$ 355.0	4.8%	\$ 240,456.77
Genesis	1	4.76%	\$ 71,428.57	0.3	1.2%	\$ 24,532.2	0.8	6.6%	\$ 10,245.1	4.0%	\$ 199,827.52
Health Care Partners	1	4.76%	\$ 71,428.57	0.3	1.7%	\$ 79,548.7	0.3	5.51%	\$ 2,622.4	3.5%	\$ 173,505.86
Heritage	1	4.76%	\$ 71,428.57		4.76%	\$ 95,238.10		4.76%	\$ 71,428.57	4.8%	\$ 238,095.24
HopeHealth	1	4.76%	\$ 71,428.57	0.39	5.57%	\$ 111,337.67	0.75	5.79%	\$ 86,861.65	5.4%	\$ 269,627.89
Little River	1	4.76%	\$ 71,428.57	0.50	7.07%	\$ 141,322.30	0.02	0.16%	\$ 2,357.10	4.3%	\$ 215,107.96
Low Country	1	4.76%	\$ 71,428.57	0.29	4.18%	\$ 83,580.94	0.94	7.31%	\$ 109,710.11	5.3%	\$ 264,719.62
New Horizon	1	4.76%	\$ 71,428.57	0.55	7.83%	\$ 156,622.38	0.33	2.55%	\$ 38,301.42	5.3%	\$ 266,352.37
North Central	1	4.76%	\$ 71,428.57	0.37	5.24%	\$ 104,716.24	0.19	1.47%	\$ 22,096.34	4.0%	\$ 198,241.16
Regenesis	1	4.76%	\$ 71,428.57	0.30	4.22%	\$ 84,351.74	0.33	2.56%	\$ 38,355.89	3.9%	\$ 194,136.20
Rural Health	1	4.76%	\$ 71,428.57	0.36	5.15%	\$ 102,903.80	0.31	2.37%	\$ 35,540.77	4.2%	\$ 209,873.14
Sandhills	1	4.76%	\$ 71,428.57	0.34	4.85%	\$ 96,901.66	0.96	7.44%	\$ 111,551.96	5.6%	\$ 279,882.20
St. James-Santee	1	4.76%	\$ 71,428.57	0.46	6.62%	\$ 132,323.18	0.82	6.34%	\$ 95,083.17	6.0%	\$ 298,834.92
Sumter	1	4.76%	\$ 71,428.57	0.28	4.06%	\$ 81,167.72	0.98	7.57%	\$ 113,562.10	5.3%	\$ 266,158.39
TOTAL	21	100.00%	\$ 1,500,000.00	6.69	100.00%	\$ 2,000,000.00	12.27	100.00%	\$ 1,500,000.00	100.0%	\$ 5,000,000.00

2013 FQHC SC Legislative Appropriations

Language Provided by the SC General Assembly

Final 33.31 Proviso Language: http://scstatehouse.gov/sess120_2013-2014/appropriations2013/tap1b.htm#s33

(DHHS: Community Health Center/FQHC) Entities receiving funding under Section 330 of the Public Health Services Act, qualify to receive funds provided in this act for Community Health Center/FQHC. FQHC Look-A-Likes are also included in the distribution of these funds. However, no entity is eligible to receive funds allocated by this proviso if the Chief Executive Officer is not an employee of the entity or is hired under a management agreement to operate the entity.

This appropriation shall be disbursed as follows: (1) thirty percent of the total appropriation will be divided among qualifying entities; and (2) the balance of the appropriation will be distributed with forty percent based on uninsured patients served and thirty percent based on the number of patients seen from counties with a population of less than 125,000. Any newly established Community Health Center/FQHC shall receive an amount equivalent to the average disbursement made to all Centers/FQHCs.

All data is taken from the 2010 United States Census and 2012 UDS reports submitted by FQHCs to JSI.

30% Base Distribution

This base distribution divides 30% of all available funds evenly among SC FQHCs

40% Based on Uninsured Patient Population

For this distribution, each FQHC's internal rate of uninsured patients is calculated by dividing its uninsured population by its total population to get the value used in comparison against other FQHCs.

30% Based on Rural Patient Population

For this distribution, each FQHC's number of rural patients is calculated by cross referencing reported numbers of patients living in each zip code with zip codes located, completely or partially, within counties with fewer than 125,000 residents. Each FQHC's number of rural patients is then divided by its total population to get the value used in comparison against other FQHCs.

Enclosure B

Community Health Center	30%				40%				30%				100%			
	Base Distribution				Uninsured Frequency Within CHC				Frequency of Patients Served in Rural Counties				Totals			
	Association Methodology Distribution	ECCHC Proposed Methodology Distribution	Difference		Association Methodology Distribution	ECCHC Proposed Methodology Distribution	Difference		Association Methodology Distribution	ECCHC Proposed Methodology Distribution	Difference		Association Methodology Distribution	ECCHC Proposed Methodology Distribution	Difference	
CareSouth Carolina, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 122,965.33	\$ 226,736.04	\$ 103,770.71		\$ 113,039.45	\$ 238,255.91	\$ 125,216.46		\$ 307,433.35	\$ 536,420.52	\$ 228,987.17	
Eau Claire Cooperative Health Centers, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 70,486.24	\$ 208,829.41	\$ 138,343.17		\$ 29,061.19	\$ 97,277.30	\$ 68,216.11		\$ 170,976.00	\$ 377,535.29	\$ 206,559.28	
Carolina Health Centers, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 68,196.47	\$ 100,993.81	\$ 32,787.34		\$ 112,772.17	\$ 190,121.88	\$ 77,349.71		\$ 252,397.21	\$ 362,534.26	\$ 110,137.04	
Family Health Centers, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 80,896.84	\$ 98,459.31	\$ 17,562.47		\$ 111,607.74	\$ 157,249.71	\$ 45,641.97		\$ 263,933.15	\$ 327,137.60	\$ 63,204.45	
Little River Medical Center, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 141,332.30	\$ 194,856.08	\$ 53,523.78		\$ 2,357.10	\$ 3,630.73	\$ 1,273.63		\$ 215,117.97	\$ 289,915.38	\$ 74,797.41	
New Horizon Family Health Services, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 156,622.38	\$ 191,559.77	\$ 34,937.39		\$ 38,301.42	\$ 53,539.64	\$ 15,238.22		\$ 266,352.37	\$ 316,527.98	\$ 50,175.61	
Franklin C. Fetter Family Health Center, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 150,672.21	\$ 164,824.28	\$ 14,152.07		\$ 18,355.99	\$ 23,178.49	\$ 4,822.50		\$ 240,456.77	\$ 259,431.34	\$ 18,974.57	
Beaufort-Jasper-Hampton Comprehensive Health Services, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 123,474.75	\$ 129,195.10	\$ 5,720.35		\$ 45,937.99	\$ 54,583.59	\$ 8,645.60		\$ 240,841.31	\$ 255,207.26	\$ 14,365.95	
Heritage	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 95,238.10	\$ 95,238.10	\$ (0.00)		\$ 71,428.57	\$ 71,428.57	\$ 0.00		\$ 238,095.24	\$ 238,095.24	\$ (0.00)	
Black River Healthcare, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 88,234.35	\$ 77,895.87	\$ (10,338.48)		\$ 110,671.72	\$ 111,197.80	\$ 526.08		\$ 270,334.64	\$ 260,522.24	\$ (9,812.40)	
ReGenesis Health Care, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 84,351.74	\$ 61,032.07	\$ (23,319.57)		\$ 38,355.89	\$ 31,273.08	\$ (7,082.81)		\$ 194,136.20	\$ 163,733.72	\$ (30,402.48)	
Sumter Family Health Center, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 81,157.72	\$ 61,700.04	\$ (19,457.68)		\$ 113,562.10	\$ 100,594.30	\$ (12,967.80)		\$ 266,158.39	\$ 233,722.92	\$ (32,435.48)	
Low Country Health Care System, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 83,580.94	\$ 60,270.30	\$ (23,310.64)		\$ 109,710.11	\$ 91,002.45	\$ (18,707.66)		\$ 264,719.62	\$ 222,701.32	\$ (42,018.30)	
Rural Health Services, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 102,903.80	\$ 63,156.59	\$ (39,747.21)		\$ 35,540.77	\$ 25,333.65	\$ (10,207.12)		\$ 209,873.14	\$ 159,918.80	\$ (49,954.34)	
North Central Family Medical Center	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 104,716.24	\$ 60,448.85	\$ (44,267.39)		\$ 22,096.34	\$ 14,459.72	\$ (7,636.62)		\$ 198,241.15	\$ 146,337.14	\$ (51,904.01)	
Health Care Partners of SC, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 79,454.86	\$ 37,922.36	\$ (41,532.50)		\$ 22,622.43	\$ 11,987.01	\$ (10,635.42)		\$ 173,505.86	\$ 121,337.94	\$ (52,167.92)	
HopeHealth, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 111,337.67	\$ 69,588.92	\$ (41,748.75)		\$ 86,861.65	\$ 62,338.54	\$ (24,523.11)		\$ 269,627.89	\$ 203,356.03	\$ (66,271.86)	
CareNet, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ -	\$ -	\$ -		\$ 107,836.53	\$ 36,636.31	\$ (71,200.22)		\$ 179,265.10	\$ 108,064.88	\$ (71,200.22)	
Genesis Health Care, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 25,153.23	\$ 6,266.52	\$ (18,886.71)		\$ 103,245.72	\$ 28,866.46	\$ (74,379.26)		\$ 199,827.52	\$ 105,561.54	\$ (93,265.98)	
Sandhills Medical Foundation, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 96,901.66	\$ 44,237.62	\$ (52,664.04)		\$ 111,551.96	\$ 58,184.04	\$ (53,367.92)		\$ 279,882.19	\$ 173,850.23	\$ (106,031.96)	
St. James - Santee Family Health Center, Inc.	\$ 71,428.57	\$ 71,428.57	\$ -		\$ 132,323.18	\$ 48,798.96	\$ (83,524.22)		\$ 95,083.17	\$ 38,860.83	\$ (56,222.34)		\$ 298,834.92	\$ 157,088.36	\$ (141,746.56)	
TOTAL	\$ 1,500,000.00	\$ 1,500,000.00	\$ -		\$ 2,000,010.01	\$ 2,000,000.00	\$ (10.01)		\$ 1,500,000.01	\$ 1,500,000.00	\$ (0.01)		\$ 5,000,010.02	\$ 5,000,000.00	\$ (10.02)	

Health Center	Total # of Patients Served	Fraction of Uninsured Patients Served in Health Center	# of Uninsured Patients Served	# Uninsured Patients Served/[Total # of Uninsured Patients]	Allocated Funds Out of 2 Million
Beaufort-Jasper-Hampton Comprehensive Health Services, Inc.	17538	0.43	7713	0.06	\$ 128,195.10
Black River Healthcare, Inc.	15002	0.31	4651	0.04	\$ 77,895.87
CareNet, Inc.	5049	0.00	0	0.00	\$ -
CareSouth Carolina, Inc.	31481	0.43	13637	0.11	\$ 228,736.04
Carolina Health Centers, Inc.	25121	0.24	6028	0.05	\$ 100,983.81
North Central Family Medical Center	9754	0.37	3609	0.03	\$ 60,448.85
East Claire Cooperative Health Centers, Inc.	49871	0.25	12488	0.10	\$ 206,829.41
Family Health Centers, Inc.	20994	0.28	5878	0.05	\$ 98,459.31
Franklin C. Fatar Family Health Center, Inc.	18567	0.53	9841	0.08	\$ 164,824.28
Genesis Health Care, Inc.	4157	0.09	374	0.00	\$ 6,285.52
Health Care Partners of SC, Inc.	8086	0.28	2264	0.02	\$ 37,922.36
HopelHealth, Inc.	10653	0.39	4155	0.03	\$ 69,588.92
Little River Medical Center, Inc.	23267	0.50	11634	0.10	\$ 194,866.08
Low Country Health Care System, Inc.	12408	0.29	3598	0.03	\$ 60,270.30
New Horizon Family Health Services, Inc.	20794	0.55	11437	0.10	\$ 191,559.77
ReGenesis Health Care, Inc.	12146	0.30	3644	0.03	\$ 61,032.07
Rural Health Services, Inc.	10474	0.36	3771	0.03	\$ 63,156.59
Sandhills Medical Foundation, Inc.	7768	0.34	2841	0.02	\$ 44,237.62
St. James - Santee Family Health Center, Inc.	6074	0.46	2794	0.02	\$ 46,798.96
Sumter Family Health Center, Inc.	13156	0.28	3684	0.03	\$ 61,700.04
Heritage	0	0.00	5986	0.05	\$ 95,238.10
TOTAL	322760	6.68	119496	1	\$ 2,000,000.00

Health Center	Total # of Patients Served	Fraction of Rural Patients Served in Health Center	# of Rural Patients Served	# Rural Patients Served/[Total # of Rural Patients]	Allocated Funds out of 1.5 Million
Beaufort-Jasper-Hampton Comprehensive Health Services, Inc.	17538	0.39	6996	0.04	\$ 54,583.59
Black River Healthcare, Inc.	15002	0.95	14252	0.07	\$ 111,197.80
CareNet, Inc.	5049	0.93	4695	0.02	\$ 36,638.31
CareSouth Carolina, Inc.	31481	0.97	30537	0.16	\$ 238,255.91
Carolina Health Centers, Inc.	25121	0.97	24367	0.13	\$ 190,121.88
North Central Family Medical Center	9754	0.19	1853	0.01	\$ 14,459.72
East Claire Cooperative Health Centers, Inc.	49871	0.25	12488	0.06	\$ 97,277.30
Family Health Centers, Inc.	20994	0.96	20154	0.10	\$ 157,249.71
Franklin C. Fatar Family Health Center, Inc.	18567	0.16	2871	0.02	\$ 23,178.49
Genesis Health Care, Inc.	4157	0.89	3700	0.02	\$ 28,866.46
Health Care Partners of SC, Inc.	8086	0.19	1536	0.01	\$ 11,987.01
HopelHealth, Inc.	10653	0.75	7990	0.04	\$ 62,336.54
Little River Medical Center, Inc.	23267	0.02	465	0.00	\$ 3,630.73
Low Country Health Care System, Inc.	12408	0.94	11684	0.06	\$ 91,002.45
New Horizon Family Health Services, Inc.	20794	0.33	6862	0.04	\$ 53,539.64
ReGenesis Health Care, Inc.	12146	0.33	4008	0.02	\$ 31,273.08
Rural Health Services, Inc.	10474	0.31	3247	0.02	\$ 25,333.65
Sandhills Medical Foundation, Inc.	7768	0.96	7457	0.04	\$ 58,184.04
St. James - Santee Family Health Center, Inc.	6074	0.82	4981	0.03	\$ 38,860.83
Sumter Family Health Center, Inc.	13156	0.98	12863	0.07	\$ 100,594.30
Heritage	0	0.00	9155	0.05	\$ 71,428.57
TOTAL	322760	12.29	192251	1	\$ 1,500,000.00

Health Center	Total # of Patients Served	Fraction of Uninsured Patients Served in Health Center	# of Uninsured Patients Served	[# Uninsured Patients Served]/[Total # of Uninsured Patients]	Allocated Funds Out of 2 Million
Beaufort-Jasper-Hampton Comprehensive Health Services, Inc.	17938	0.43	7713	0.06	\$ 129,195.10
Black River Healthcare, Inc.	15002	0.31	4651	0.04	\$ 77,895.87
CareNet, Inc.	5049	0.00	0	0.00	\$ -
CareSouth Carolina, Inc.	31481	0.43	13537	0.11	\$ 226,736.04
Carolina Health Centers, Inc.	25121	0.24	6029	0.05	\$ 100,983.81
Community Medicine Foundation, Inc. (North Central Family Medical Center)	9754	0.37	3609	0.03	\$ 60,448.85
Eau Claire Cooperative Health Centers, Inc.	49871	0.25	12468	0.10	\$ 208,829.41
Family Health Centers, Inc.	20994	0.28	5878	0.05	\$ 98,459.31
Franklin C. Fetter Family Health Center, Inc.	18567	0.53	9841	0.08	\$ 164,824.28
Genesis Health Care, Inc.	4157	0.09	374	0.00	\$ 6,266.52
Health Care Partners of SC, Inc.	8086	0.28	2264	0.02	\$ 37,922.36
HopeHealth, Inc.	10653	0.39	4155	0.03	\$ 69,588.92
Little River Medical Center, Inc.	23267	0.50	11634	0.10	\$ 194,856.08
Low Country Health Care System, Inc.	12408	0.29	3598	0.03	\$ 60,270.30
New Horizon Family Health Services, Inc.	20794	0.55	11437	0.10	\$ 191,559.77
ReGenesis Health Care, Inc.	12146	0.30	3644	0.03	\$ 61,032.07
Rural Health Services, Inc.	10474	0.36	3771	0.03	\$ 63,166.59
Sandhills Medical Foundation, Inc.	7768	0.34	2641	0.02	\$ 44,237.62
St. James - Santee Family Health Center, Inc.	6074	0.46	2794	0.02	\$ 46,798.96
Sumter Family Health Center, Inc.	13156	0.28	3684	0.03	\$ 61,700.04
Heritage	0	0.00	5686	0.05	\$ 95,238.10
TOTAL	322760	6.68	119406	1	\$ 2,000,000.00

EAU CLAIRE 2012 RURAL PTS.

Zip	County	Patients
29006	Aiken	843
29014	Fairfield	25
29015	Fairfield	364
29016	Fairfield	398
29036	Kershaw/Lee	52
29032	Kershaw/Lee	12
29036	Newberry	94
29037	Newberry	18
29040	Sumter/Lee	27
29045	Fairfield	307
29047	Calhoun/Orangeburg	11
29053	Lexington/Calhoun	2140
29055	Fairfield	25
29065	Fairfield	144
29070	Lexington/Saluda	1064
29075	Newberry	28
29078	Kershaw/Richland	74
29102	Clarendon	11
29105	Aiken/Saluda	103
29107	Orangeburg	12
29108	Newberry	1934
29112	Orangeburg/Lexington	115
29115	Orangeburg	41
29118	Orangeburg/Calhoun	20
29126	Newberry	87
29127	Newberry	265
29128	Sumter/Kershaw/Lee	71
29129	Aiken/Saluda/Edgefield	129
29130	Fairfield	685
29135	Calhoun/Orangeburg	61
29137	Newberry	134
29138	Saluda/Greenwood/Edgefield	217
29145	Newberry	57
29150	Sumter	53
29153	Sumter/Lee	32
29154	Sumter	74
29160	Lexington/Calhoun	532
29164	Aiken	218
29166	Saluda	21
29168	Sumter	36
29178	Newberry	167
29180	Fairfield	1786
29325	Laurens	34
29351	Laurens	25
29355	Newberry	21
29360	Laurens	18
29706	Chester/York	15
29720	Lancaster	15
29801	Aiken	21
29805	Aiken	16
29824	Edgefield/Saluda	16
29832	Edgefield/Saluda	34
Total		12702
Total/49871		0.254697119

Health Center	Total # of Patients Served	Fraction of Rural Patients Served in Health Center	# of Rural Patients Served	[# Rural Patients Served]/[Total # of Rural Patients]	Allocated Funds out of 1.5 Million
Beaufort-Jasper-Hampton Comprehensive Health Services, Inc.	17938	0.39	6996	0.04	\$ 54,583.59
Black River Healthcare, Inc.	15002	0.95	14252	0.07	\$ 111,197.80
CareNet, Inc.	5049	0.93	4696	0.02	\$ 36,636.31
CareSouth Carolina, Inc.	31481	0.97	30537	0.16	\$ 238,255.91
Carolina Health Centers, Inc.	25121	0.97	24367	0.13	\$ 190,121.88
Community Medicine Foundation, Inc. (North Central Family Medical Center)	9754	0.19	1853	0.01	\$ 14,459.72
Eau Claire Cooperative Health Centers, Inc.	49871	0.25	12468	0.06	\$ 97,277.30
Family Health Centers, Inc.	20994	0.96	20154	0.10	\$ 157,249.71
Franklin C. Fetter Family Health Center, Inc.	18567	0.16	2971	0.02	\$ 23,178.49
Genesis Health Care, Inc.	4157	0.89	3700	0.02	\$ 28,866.46
Health Care Partners of SC, Inc.	8086	0.19	1536	0.01	\$ 11,987.01
HopeHealth, Inc.	10653	0.75	7990	0.04	\$ 62,338.54
Little River Medical Center, Inc.	23267	0.02	465	0.00	\$ 3,630.73
Low Country Health Care System, Inc.	12408	0.94	11664	0.06	\$ 91,002.45
New Horizon Family Health Services, Inc.	20794	0.33	6862	0.04	\$ 53,539.64
ReGenesis Health Care, Inc.	12146	0.33	4008	0.02	\$ 31,273.08
Rural Health Services, Inc.	10474	0.31	3247	0.02	\$ 25,333.65
Sandhills Medical Foundation, Inc.	7768	0.96	7457	0.04	\$ 58,184.04
St. James - Santee Family Health Center, Inc.	6074	0.82	4981	0.03	\$ 38,860.83
Sumter Family Health Center, Inc.	13156	0.98	12893	0.07	\$ 100,594.30
Heritage	0	0.00	9155	0.05	\$ 71,428.57
Primary Care Association of SC, Inc. (SC Migrant Health Program)	1553	0.00	0	0.00	\$.
TOTAL	324313	12.29	192251	1	\$ 1,500,000.00



September 26, 2013

Andrea H. Brisbin, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 340
Charleston, South Carolina 29204-0340

RE: Eau Claire Cooperative Health Center
Allocation of Funds Pursuant to Proviso 33.31 of the FY2013-2014 South Carolina
Appropriations Act
Letter of September 3, 2013

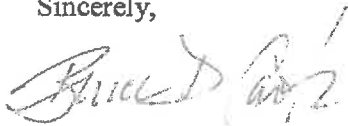
Dear Ms. Brisbin:

On behalf of the South Carolina Department of Health and Human Services ("SCDHHS"), I am writing you to thank you for the information and concerns you raised on behalf of Eau Claire Cooperative Health Center. I also want to assure you that SCDHHS takes its obligations under the Proviso seriously. We are still in the process of establishing the allocation methodology for distribution of the funds appropriated under Proviso 33.31. No final decision has been made. We are sorry that Eau Claire Cooperative Health Center had incorrect information regarding the finalization of the allocation methodology and disbursement of funds under Proviso 33.31.

SCDHHS has received a proposed allocation methodology from the S.C. Primary Health Care Association. Their proposed methodology, the information and data you provided in your September 3rd letter, as well as other relevant information will be considered as we develop the allocation methodology. We hope to complete the methodology soon and will certainly communicate that methodology at the appropriate time.

If you have any questions or need additional information, please contact me at (803) 898-2793 or by e-mail at carterbd@scdhh.gov.

Sincerely,



Bruce D. Carter
Assistant General Counsel

Haynsworth
Sinkler Boyd, P.A.

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September 3, 2013

Via E-Mail & Federal Express

Anthony Keck, Director
S.C. Department of Health & Human Services
1801 Main Street
Columbia, S.C. 29202

**Re: Eau Claire Cooperative Health Center
Allocation of Funds Pursuant to Proviso 33.31 of the
FY2013-2014 South Carolina Appropriations Act**

Dear Mr. Keck:

I have been retained by Eau Claire Cooperative Health Center ("*Eau Claire*"), a federally qualified health center that receives funding under Section 330 of the federal Public Health Services Act, to represent its interests with respect to the above-referenced matter. I am writing to follow up on Dr. Hamilton's August 29th e-mail correspondence to you and to assist him with outlining for you the relevant legal issues in preparation for your meeting with him this Friday.

It is our understanding that some time during the month of September, the Department intends to disburse \$5,000,000 in appropriated funds, pursuant to Proviso 33.31 of the Department's budget adopted in the FY2013-2014 Appropriations Act ("*Proviso Funds*"), to the Community Health Centers/Federally Qualified Health Centers ("*FQHCs*") located in South Carolina. It further is our understanding that the Department intends to allocate these funds using what can only be described as an illegal methodology developed by the S.C. Primary Health Care Association (the "*Association*"). See Enclosure A. However, as explained below, the Department's disbursement of funds using this allocation methodology (the "*Association Methodology*") will be in violation of Proviso 33.31 and South Carolina law because it will be made in violation of applicable constitutional and statutory provisions and of the Department's authority, upon unlawful procedure, is affected by other error of law, is arbitrary or capricious or otherwise characterized by abuse of discretion or clearly unwarranted exercise of discretion.

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Unfortunately, to date, Dr. Hamilton's objections have gone unheeded, and the Association's Board Chair has strongly discouraged Dr. Hamilton from exercising Eau Claire's rights to contact the Department directly, claiming that such contact would serve no useful purpose but will shed a negative light on the FQHCs in this state. We disagree. Eau Claire is the facility receiving the appropriated funds directly, not through the Association, and therefore Eau Claire seeking your intervention to prevent this improper disbursement of appropriated funds, which otherwise will cause irreparable harm to Eau Claire.

The Association Methodology is fatally flawed for three primary reasons:

(1) First, the Association applied an arbitrary, strained interpretation of Proviso 33.31. The plain language of Subsections (2) and (3) of the Proviso specifically requires the distribution to facilities to be based on "uninsured patients served" and "the number of patients seen from counties with a population of less than 125,000." The only rational interpretation of this language is to allocate the Proviso Funds based on a simple calculation of the number of uninsured and rural patients served by each facility *relative to the total number of uninsured and rural patients served by all FQHCs*. A revised proposed allocation is contained in Enclosure B.

Instead, the Association has devised a convoluted formula to calculate each FQHC's "frequency" of uninsured and rural patients served, using a facility-specific percentage of uninsured and rural patients - *i.e.*, dividing the total number of uninsured patients served by the individual facility to the total number of patients *served by the facility*, and by dividing the total number of rural patients served by the facility to the total number of patients *served by the facility*. That factor then is taken as a percentage of the other FQHCs' aggregate factors to arrive at a percentage applied to the total Proviso Funds allocated in Subsections (2) and (3).

The Association has claimed that it is merely following the letter of the Proviso language. However, nowhere in the Proviso, in the historical practices of the Department, or in the overall purpose of FQHC funding is there an intent to utilize such a complex, convoluted formula to allocate the Proviso Funds. Had the General Assembly intended for the Department to employ such a calculation, it would have expressly spelled it out in the Proviso.

To illustrate how much the Association's Methodology would cause an absurd result at odds with the legislative intent of the Proviso, the Association is proposing that, based on its "frequency" factor, Eau Claire will receive *the least amount* of funds (approximately \$170,000) out of all 20

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FQHCs,¹ even though it is the largest FQHC provider in the state. Consider the following statistics from 2012:

- Of the 20 FQHCs with a total of 130 delivery sites in South Carolina, Eau Claire operates 23 sites, or 18% of the total delivery sites (Rank: 1st)
- Eau Claire served 10.7% of the total number of uninsured patients served by all FQHCs (Rank: 2nd)
- Eau Claire served 6% of the total number of rural patients served by all FQHCs (Rank: 5th (tied))
- Eau Claire provided care through 48 provider FTE's, or 16% of the total FQHC Provider FTE's (Rank: 1st – the next highest provider FTE count is CareSouth Carolina (9%))
- Eau Claire operated through 338 FTE's, or 15% of the total FTE's used by all FQHCs (Rank: 1st)
- Eau Claire received 10% of total revenue received by all FQHCs (Rank: 2nd)

Despite these statistics and rankings relative to the other 19 FQHCs, the Association has chosen to allocate 3.4% of total Proviso Funds to Eau Claire, thus assigning Eau Claire a ranking of 20th in the state.

Moreover, use of the Association Methodology results in a distribution of over \$238,000 to Heritage Essential Medical Services, which did not begin serving *any* patients until the second quarter of 2013.² By contrast, the Association would have Eau Claire, which served almost 50,000 total patients in 2012, receive \$170,000 – \$67,000 *less* than Heritage, which served 0 patients in 2012. It is worth noting here that Heritage recently received an unfavorable site inspection by the U.S. Bureau of Primary Health Care, and it is Eau Claire's understanding that the Bureau intends to return to Heritage for a follow-on inspection with the next ninety (90) days. Thus, the Department would disburse over \$238,000 to a facility whose *certification* appears to be in jeopardy.

It is clear that the Association has provided the Department with an indefensible, arbitrary, capricious and utterly irrational method to distribute the Proviso Funds among the FQHCs. The Department must reject the Association Methodology and utilize a rational basis that is commensurate with the service provided by each FQHC as a safety net provider. Eau Claire urges the Department to consider and adopt the proposed allocation methodology set forth in Enclosure B.

¹ Enclosure A reflects 21 FQHCs, but Black River should now be merged into HopeHealth.

² This allocation apparently is based on Proviso 33.31 language stating that any "new established [FQHC] shall receive an amount equivalent to the average disbursement made to all Centers/FQHCs."

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(2) Second, the methodology fails to include the uninsured and rural patients served by the now-defunct Richland Community Healthcare Association ("**RCHCA**"), whose operations were assumed by Eau Claire in the second quarter of 2012. A review of Enclosure A reveals that the Association failed to even recognize RCHCA as a center that served uninsured and rural patients during 2012. By contrast, the Association allocated over \$270,000 to the now-defunct Black River facility, whose operations were transferred to HopeHealth Community Health Center in the first quarter of 2013. Accordingly, based on the Association Methodology, HopeHealth will receive Proviso Funds based on patients served by both HopeHealth and Black River during 2012, but Eau Claire will receive Proviso Funds based solely on patients served by Eau Claire but not RCHCA. **This is a clear and blatant error that can easily be corrected, and must be corrected, by using RCHCA 2012 data.**

(3) Finally, there is no directive or other requirement in Proviso 33.31 for the Department to consult with or otherwise rely on the Association to develop the allocation methodology for Proviso 33.31 Funds. By contrast, the Department clearly is required to consult with the Association to identify facilities with capital needs pursuant to Proviso 33.34(D). Thus, if the General Assembly had intended for the Department to consult with the Association regarding allocation of Proviso 33.31 Funds, it would have done so. The Department's blanket reliance on the Association Methodology to allocate funds entrusted to it by the General Assembly would be an abuse of discretion and potentially an illegal delegation of Department authority.

I think you will agree that once the disbursement of Proviso 33.31 Funds is made to the FQHCs based on the Association Methodology, it will be virtually impossible to recoup and reallocate those funds without the expenditure of significant efforts and resources by Department staff. We therefore urge the Department to:

- immediately advise the Association as well as the FQHC Community in writing that it does not intend to use the Association Methodology; and
- consider and adopt the proposed allocation methodology set forth in Enclosure B and disburse the Proviso 33.31 Funds accordingly.

We look forward to receiving the Department's response to Eau Claire's position and demand and a swift resolution of this dispute. Should a mutually acceptable resolution not be reached, Eau Claire will have no choice but to pursue legal action.

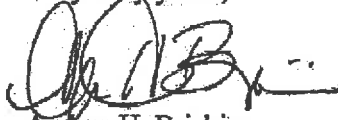
Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

Anthony Keck
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With best regards, I am

Very truly yours,



Andrea H. Brisbin

Enclosures (2)

cc: Richard P. Hepfer, Esquire (via e-mail @ hepfer@scdhhs.gov) (w/ encls.)
Stuart A. Hamilton, M.D. (via e-mail) (w/ encls.)

Brenda James

From: Bryan Kost
Sent: Wednesday, September 25, 2013 9:39 AM
To: Jan Polatty; Brenda James
Subject: Fwd: FQHC Capital
Attachments: Hamilton letter.pdf; ATT00001.htm

Tony got this letter, right?

Bryan Kost, SCDHHS.
Phone: 803-898-2865.
Mobile: 803-429-3201.
Email: kostbr@scdhhs.gov

Begin forwarded message:

From: "Doug Bryant" <bryantco@sc.rr.com>
To: "Bryan Kost" <kostbr@scdhhs.gov>
Subject: RE: FQHC Capital

Bryan, I've attached the letter sent from Dr. Hamilton's attorney Ms. Brisbin to Mr. Keck on Sept. 3. I had no idea the letter existed until my meeting on Thursday with M. Smith in Sumter. I've called Dr. Hamilton and attempting to set up a meeting with him to discuss. Dr. Hamilton is on the Association Board and the Legislative committee of SCPHCA. Doug

From: Bryan Kost [<mailto:kostbr@scdhhs.gov>]
Sent: Wednesday, September 25, 2013 8:56 AM
To: Doug Bryant
Cc: Jennifer Lynch
Subject: Re: FQHC Capital

What attorney letter Sir?

Bryan Kost, SCDHHS.
Phone: 803-898-2865.
Mobile: 803-429-3201.
Email: kostbr@scdhhs.gov<<mailto:kostbr@scdhhs.gov>>

On Sep 25, 2013, at 8:47 AM, "Doug Bryant" <bryantco@sc.rr.com<<mailto:bryantco@sc.rr.com>>> wrote:
Jennifer we talked about the capital list yesterday. I received the capital list back late last night with instructions to talk with Mr. Keck. Second read the letter from the attorney yesterday. I may be able to fill in some missing information for you. Please give me a call when you have time. Office 803-754-7468 or 803-260-1773(cell). Thanks Doug

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