

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Hess</i>	DATE <i>8-29-13</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>000088</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>Close, per Roy's note on Blue Sheet, dated 9-20-13</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>9-10-13</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.			

**MEMORANDUM**

**TO: THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**FROM: CARENET OF LANCASTER AND  
GENESIS HEALTH CARE, INC.**

**REGARDING: DISBURSEMENT OF STATE FUNDS  
UNDER PROVISOS 33.31 and 33.34**

**DATE: August 26, 2013**

**TO: Mr. Roy Hess**  
South Carolina Department of Health and Human Services  
1801 Main Street  
Columbia, SC 29201

Dear Mr. Hess:

As you recall, I spoke with you recently regarding the distribution of funds by the state legislature to FQHCs [including FQHC look-alikes) pursuant to provisos 33.31 and 33.34. You requested I submit my suggestions and comments to you in writing. For your convenience I have also attached a copy of Provisos 33.31, 33.31 and 117.14 as an addendum to this memorandum.

First, as we discussed, I am the CEO of Genesis Health Care, Inc. Genesis is one of two FQHC look-alikes in South Carolina. The other is CareNet of Lancaster. Its' CEO is Mr. Clarence Carpenter. Both CareNet and Genesis are members of the SC Primary Care Association (PCA). The Board of Directors of the PCA is composed of all CEO and Executive Directors of FQHCs in South Carolina - except for the CEOs of CareNet and Genesis. Unfortunately for the communities served by Genesis and CareNet, the Board of the PCA does not allow FQHC look-alikes representation on its' Board of Directors, nor are the FQHC look-alikes allowed input into policy decisions of the PCA. Therefore, the PCA is speaking only for the 330 grantees, and not the look-alikes.

The look-alikes have had no input into, nor they been permitted to see the recommendations of the PCA concerning disbursement of the "baseline funding," as well as the capital funding authorized by the legislature. I am trusting you and the Department to take into consideration that the communities served by FQHC look-alikes have **no** voice, vote, or advocate, and as a results have had no idea previously of what has been recommended to the Department concerning the disbursements of funds under provisos 33.31 and 33.34. I have requested on several occasions that Ms. Lathran Woodard (CEO of the PCA) provide me a copy of the suggestions that were submitted the Department by the PCA on behalf of FQHCs across the state. To date we have not been provided the information, because it is considered to be a work in progress that has not yet been finalized. We would very much appreciate an opportunity to participate in it's finalization process. Without the input of the look-alikes it will not fairly represent all the shareholders and thus the document may not fairly represent all members who are being served. The

priority is that everyone in the community of the underserved have equity according to state laws and common sense attitude of fairness. Our hope is that the Department will take into account our comments and recommendations as set forth on behalf of the communities we serve.

As I unable to obtain a copy of the PCA recommendations, I respectfully request you forward me a copy of the comments and recommendations from the PCA as to the distributions under both provisos 33.31 and 33.34 including the recommendations made in regard to capital expenditures as well as the \$5 Million "baseline" funding available to all FQHCs including FQHC look-alikes. This request is made as a matter of common courtesy and pursuant to the South Carolina Freedom of Information Act. Please understand again - our purpose is equitable service to those who deserve it.

### **Comment 1**

Proviso 33.31 [for capital improvement distributions] requires the input of the South Carolina Primary Association(PCA) to determine priority of needs among FQHC LALs and FQHCs receiving grants under section 330 of the Public Health Service Act. However, the *voting* PCA membership consists *only* of FQHCs receiving federal grant monies. Therefore, FQHC look-alikes (LALs) respectfully request the Department consider taking no action in disbursing the state funds until the behaviors of the Primary Care Association are consistent with the spirit of the non-discriminatory provisions of proviso 117.24. Our goal is to allow the Department adequate opportunity to review the needs of all FQHCs including *the communities and patients represented by the FQHC look-alikes* to insure: (1) a fair and equitable distribution of all funds, and (2) ultimately to save DHHS the time and effort in having to review the matter after the fact. For your information, the pertinent part of proviso 117.24 states as follows:

- (GP: Discrimination Policy) . . . It is the policy of the State to take affirmative action to remove the disparate effects of past discrimination, if any, because of race, color, sex, national origin, age, religion or physical disability. . . .  
(remainder omitted)

### **Comment 2**

#### **The \$2 Million capital funds distributions**

Even if funds for capital improvements are otherwise available for distribution to all FQHCs including FQHC look-alikes, I respectfully note that the communities served by FQHCs receiving grants under section 330 of the Public Health Act have received in excess of \$34,000,000.00 (as detailed below) in the past three years in federal stimulus money for capital improvements and operations while the communities served by FQHC Look-alikes have received *no funds at all*. It not reasonable that the intent of the General Assembly is to fund "330 grantees" to the exclusion of FQHC LALs. As the communities served by FQHC look-alikes have no voice on the Board of the PCA, the input of the PCA into this matter is compromised. We respectfully request the recommendations of the PCA regarding the disbursement of capital funding be disregarded.

For the Department's information, the funds received by FQHC 330 grantees in the last three years (above and beyond their 330 grant funding) include the following:

#### **ADDITIONAL FEDERAL STIMULUS FUNDS ALLOCATED TO FQHCs WITH FEDERAL**

**GRANTS IN SC SINCE 2012**  
**TOTAL -- \$34,781,494**

1. Little River Medical Center Inc. Little River S.C. \$5,523,205
2. Beaufort-Jasper Health Services Inc. Ridgeland S.C. \$7,912,493
3. Beaufort-Jasper Health Services, Inc Ridgeland 29936 \$9,101,293
4. Black River Healthcare, Inc. Olanta 29114 \$1,045,913
5. CareSouth Carolina, Inc. Hartsville, SC 29551 \$2,086,978
6. Carolina HC, Inc. Greenwood 29646 \$1,415,053
7. Community Medicine Foundation Rock Hill 29731 \$801,937
8. Eau Claire Cooperative HC, Inc. Columbia 29203 \$2,087,674
9. Family HC, Inc. Orangeburg 29116 \$1,627,514
10. Franklin C. Fetter Family HC Charleston 29403 \$1,467,119
11. Health Care Partners of South Carolina, Inc. Conway 29501 \$822,600
12. HopeHealth, Inc. Florence 29503 \$430,748
13. Little River Medical Center, Inc. Little River \$6,827,618
14. Low Country Health Care System, Inc. Fairfax 29827 \$926,257
15. New Horizon Family Health Services, Inc. Greenville 29602 \$1,262,674
16. Regenesiis Organization Community HC Spartanburg 29306 \$704,637
17. Richland Community Health Care Assn Eastover 29044 \$881,195
18. Rural Health Services, Inc. Clearwater 29822 \$676,816
19. Sandhills Medical Foundation, Inc. Jefferson 29718 \$679,049
20. South Carolina Primary Health Care Association Columbia 29223 \$451,686
21. St. James-Santee Family HC, Inc. Mc Clellanville 29458 \$624,957
22. Sumter Family HC Sumter 29150 \$859,776

**Comment 3**

As we were researching the matter in preparation for our comments, we discovered that South Carolina law prohibits expenditures of state funds for capital improvements projects that are not on state-owned property. When we discovered this matter, we felt compelled to bring it to the attention of the Department as the Department has been vested with the authority and burden of insuring the disbursement of state funds in compliance with state law.

Please see 11-9-130 of the SC Code of Laws. There is no waiver of this requirement in the 2013-14 SC Budget. Therefore, distribution of state funds to FQHCs for capital expenditures are unlawful until and unless the General Assembly addresses the issue.

**SECTION 11-9-130. Funds for capital improvement projects not on state-owned property. [SC ST SEC 11-9-130]**

Funds authorized by the General Assembly for capital improvement projects not located on state-owned property may be expended only if the projects are owned or operated by a governmental entity including, but not limited to, municipalities or counties or a combination of governmental entities or by a separate authority whose membership controlled by a governmental entity.

HISTORY: 1988 Act No. 638, § 13.

#### **Comment 4**

In the past, the PCA has used a distribution methodology that is dependent on the past performance of a FQHC in serving the uninsured and under-insured. This formula consistently allows funded FQHCs a distinct advantage as they already receive federal grant funding to serve the uninsured in the first instance. The PCA's suggestions make use of past UDS information to fund future services as opposed to creating the additional capacity to serve the uninsured in communities without federally-grant funding. The PCA methodology is flawed by definition because the use of past UDS information is inconsistent with the goals of the General Assembly of increasing the numbers of the uninsured and underinsured who are not currently being reached. The UDS methodology is not geared to reach *new* patients but, rather, allows communities that are currently receiving grant funding to use additional grant funding to service the needs of the existing populations being served by the FQHC 330 grantees. While no one argues with the need for additional services for all areas of the state, the goal of the funds allocated by the General Assembly and the new programs initiated by the Department are designed to reach those individuals who are not currently being served at all.

Respectfully, the FQHC LALs suggest the more reasoned method of distribution is to (a) concentrate the distribution of the state funding to those communities that have the highest amounts of uninsured and underinsured and patients and (b) that are not currently being served by FQHCs already receiving 330 grant funding.

#### **OUR REQUESTS**

**The FQHC Look-Alikes in South Carolina respectfully request the following:**

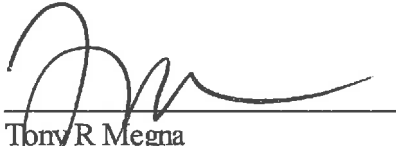
- 1. That the Department not distribute any funds to FQHCs receiving funds under Section 330 of the Public Service Health Act based on their participation in and control of the South Carolina Primary Care Association, and the anti-discrimination provisions of Proviso 117.14 until a complete and thorough review be made.**
- 2. That the Department disregard the advice of the South Carolina Primary Care Association for the following reasons: 1-it denies the communities and patients served by FQHC LALs a voice in matters of resource allocation; 2-it denies LALs a means of overcoming past discriminatory practices, and 3-LALs have no opportunity to be treated fairly and equitably. As this recommendation is evaluated by the Department, we respectfully request the Department consider the adverse effects on the communities and patients served by FQHC LALs.**
- 3. That when (and if) the Department does distribute capital and other state funds under the 2013-14 state provisos, it considers funding the communities and patients which the FQHC LALs serve prior to funding FQHC grantees. FQHC look-alikes are in all ways equal to funded FQHCs but do not receive additional funding to treat the uninsured and under-insured living in our communities in the first instance.**

## A FINAL NOTE

**Enclosed you will find a letter from the Attorney for the Board of Directors indicating that the CEO of Genesis Health Care, Inc. is an employee of Genesis Health Care, Inc. and neither Genesis nor its' CEO operates under a management agreement of any type. A copy of that letter is attached hereto.**

It is with great respect and appreciation for the responsibilities and duties of the Department that the information, comments and suggestions are made herein. We trust the Department will assist the communities to whom no federal or state funding has been provided. The funded FQHCs that comprise the Board of Directors of the South Carolina Primary Care Association serve a wonderful purpose. We are all grateful that they can use federal grant funds to serve the citizens of their communities and this request is in no way intended to diminish their efforts and contributions. FQHCs look-alikes, that receive no such grant funding, are simply respectfully request the Department consider the plight of the uninsured and under-insured in our communities and look to to make the allocation of scarce resources a bit more equitable.

If you should have any questions, or would like to receive further information or documentation please do not hesitate to call the Tony R. Megna, CEO of Genesis Health Care, Inc. (803-606-5973).

  
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Tony R Megna  
CEO  
Genesis Health Care, Inc.

**ADDENDUM**  
**TEXT OF PROVISOS 33.31, 33.34 and 117.14**

**Proviso 33.31 provides:**

**33.31.** (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.

\* \* \*

(D) Primary Care Safety Net - The department shall develop a methodology to reimburse safety net providers to provide primary care, behavioral health services, and pharmacy services for chronically ill individuals that do not have access to affordable insurance. Qualifying safety net providers are approved, licensed, and duly organized Federally Qualified Health Centers (FQHCs, entities receiving funding under Section 330 of the Public Health Services Act, and FQHC Look-A-Likes), Rural Health Clinics (RHCs), Free Clinics, other clinics serving the uninsured, and Welvista. No FQHC and FQHC Look-A-Likes operating under a management agreement or operated by a Chief Executive Officer who is not an employee of the entity is eligible to receive funds allocated by this proviso.

The department shall allocate at least \$5,000,000 for baseline funding to FQHCs as defined in paragraph (D), at least \$2,000,000 for documented capital needs for FQHCs as defined in paragraph (D), at least \$2,000,000 for baseline funding for Free Clinics, and at least \$5,000,000 for innovative care strategies for qualifying safety net providers.

The department shall consult with the SC Primary Health Care Association to determine the entities with the most critical capital needs. From the aforementioned \$14,000,000, Welvista shall receive at least an additional \$600,000.

To be eligible for funds, qualifying providers shall be required to provide the department patient and service data to assist in the overall improvement of the state's health quality and when appropriate safety net providers must enter into a MOU with hospitals to co-manage chronically ill uninsured high-utilizers of emergency room services. Participants in this program shall submit evaluations of effectiveness annually to the department.

**Proviso 33.34 provides:**

**33.34.** (DHHS: Medicaid Accountability and Quality Improvement Initiative) From the funds appropriated and authorized to the Department of Health and Human Services, the department shall implement the following accountability and quality improvement initiatives:

(A) Healthy Outcomes Initiative - Upon approval of the Centers for Medicare and Medicaid Services (CMS), the Department of Health and Human Services shall make available to participating hospitals up to a \$35,000,000 aggregate rate incentive effective October 1, 2013. This incentive shall be directly linked to a hospital's participation in initiatives designed to reduce system cost and increase health

outcomes. To improve community health, the department may explore various health outreach, education and patient wellness and incentive programs. Working with Kershaw Health and its LiveWell Kershaw program, the department may pilot diabetes, smoking cessation, weight management, and heart disease interventions to identify the potential to offer such interventions as models for other hospitals to pursue. These initiatives may include, but are not limited to:

(1) entering into a Memorandum of Understanding (MOU) with selected primary health care and other providers to co-manage chronically ill uninsured high-utilizers of emergency room services; and

(2) participating in price and quality transparency efforts initiated by the department.

In designing these initiatives the department shall receive public input, and make the final determination of the initiative design. The department shall, no later than August 1, 2013, publish the manner in which participation in these initiatives will correspond with incentives. If at the end of the state fiscal year the Department determines that this program is not generating cost savings or increasing health outcomes the department may retract this incentive in part or full.

(B) Disproportionate Share (DSH) Payment Accountability - Upon approval of CMS, in order to increase accountability for money reimbursed to hospitals under the DSH program and to improve outcomes for the uninsured, hospitals shall:

(1) submit claims-level data for all individuals receiving uncompensated care; and

(2) obtain a patient attestation to determine whether or not the individual receiving uncompensated care has access to affordable health insurance or does not have other means to pay for services.

(C) Rural Hospital DSH Payment - Upon approval of CMS, Medicaid-designated rural hospitals in South Carolina shall receive full coverage of uncompensated care as part of the State's Medicaid Disproportionate Share (DSH) program. Funds shall be allocated from the existing DSH program and shall not exceed \$20,000,000 total funds. Rural Hospitals are ineligible for this increased coverage should they not participate in reporting and quality guidelines published by the department and outlined in the Healthy Outcomes Initiative in the Fiscal Year 2013-2014 Appropriations Act. These guidelines shall be published no later than August 1, 2013.

In addition to the requirements placed upon them by the department, rural hospitals must actively participate with the department and any other stakeholder identified by the department, in efforts to design an alternative health care delivery system in these regions.

(D) Primary Care Safety Net - The department shall develop a methodology to reimburse safety net providers to provide primary care, behavioral health services, and pharmacy services for chronically ill individuals that do not have access to affordable insurance. Qualifying safety net providers are approved, licensed, and duly organized Federally Qualified Health Centers (FQHCs, entities receiving funding under Section 330 of the Public Health Services Act, and FQHC Look-A-Likes), Rural Health Clinics (RHCs), Free Clinics, other clinics serving the uninsured, and Welvista. No FQHC and FQHC Look-A-Likes operating under a management agreement or operated by a Chief Executive Officer who is not an employee of the entity is eligible to receive funds allocated by this proviso.

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To be eligible for funds, qualifying providers shall be required to provide the department patient and service data to assist in the overall improvement of the state's health quality and when appropriate safety net providers must enter into a MOU with hospitals to co-manage chronically ill uninsured high-utilizers of emergency room services. Participants in this program shall submit evaluations of effectiveness annually to the department.

(E) Rural Provider Capacity - The department shall incentivize the development of rural physician coverage and capacity building through the following mechanisms:

(1) the department shall leverage the Graduate Medical Education program and develop a methodology to improve accountability and increased outcomes for the State's GME and Supplemental Teaching Payments investment by January 1, 2014;

(2) the department shall develop a program to leverage the use of teaching hospitals to provide rural physician coverage, expand the use of Telemedicine, and ensure targeted placement and support of OB/GYN services in at least four counties with a demonstrated lack of adequate OB/GYN resources by July 1, 2014; and

(3) during the current fiscal year the department shall allocate \$4,000,000 to the MUSC Hospital Authority for telemedicine.

(F) Community Residential Care Optional State Supplement - The department shall establish policies and procedures to include establishing a facility rate per eligible beneficiary at \$1,500 per month for recipients and providers who meet the requirements for the enhanced maximum OSS payment; establish eligibility criteria; and establish a methodology for increasing the personal needs allowance. The department will revise the net income limit to accommodate the change in the maximum OSS facility rate. A total of at least \$12,000,000 shall be made available for this rate increase. The facility rate shall increase a minimum of \$100 per month per eligible beneficiary. All current recipients shall remain eligible for the supplement during the fiscal year and nothing contained herein may conflict with or limit existing regulations.

In addition, the department will establish Quality of Care Standards and other requirements for facilities licensed as a Community Residential Care Facility and participating in the OSS program and Medicaid Waiver services.

**Proviso 117.14 provides:**

**117.14. (GP: Discrimination Policy)** It is the policy of the State of South Carolina to recruit, hire, train, and promote employees without discrimination because of race, color, sex, national origin, age, religion or physical disability. This policy is to apply to all levels and phases of personnel within state government, including but not limited to recruiting, hiring, compensation, benefits, promotions, transfers, layoffs, recalls from layoffs, and educational, social, or recreational programs. It is the policy of the State to take affirmative action to remove the disparate effects of past discrimination, if any, because of race, color, sex, national origin, age, religion or physical disability.

Each state agency shall submit to the State Human Affairs Commission employment and filled vacancy data by race and sex by October thirty-first, of each year.

In accordance with Section 1-13-110 of the South Carolina Code of Laws of 1976, as amended, the Human Affairs Commission shall submit a report on the status of state agencies' Affirmative Action Plans and Programs to the General Assembly by February first each year. This report shall contain the total number of persons employed in each job group, by race and sex, at the end of the preceding reporting period, a breakdown by race and sex of those hired or promoted from within the agency during the reporting period, and an indication of whether affirmative action goals were achieved. For each job group referenced in the Human Affairs report, where the hiring of personnel does not reflect the percentage goals established in the agency's affirmative action plan for the year in question, the state agency shall

submit a detailed explanation to the Human Affairs Commission by February fifteenth, explaining why goals were not achieved.

The Human Affairs Commission shall review the explanations and notify the Budget and Control Board of any agency not in satisfactory compliance with meeting its stated goals.

The Budget and Control Board shall notify any agency not in compliance that their request for additional appropriations for the current appropriation cycle, may not be processed until such time as the Budget and Control Board, after consultation with the Human Affairs Commission, is satisfied that the agency is making a good faith effort to comply with its affirmative action plan, and that the compliance must be accomplished within a reasonable length of time to be determined by the mission and circumstances of the agency. This requirement shall not affect additional appropriation requests for public assistance payments or aid to entities. This section does not apply to those agencies that have been exempted from the reporting requirements of the Human Affairs Commission.

**MILLING LAW OFFICE, LLC**

88 Public Square  
Darlington, South Carolina, 29532.

**JOHN M. MILLING**  
(Retired S. C. Circuit Court Judge)  
(Certified Circuit Court Mediator)

Telephone (843)393-4083  
FAX (843)393-1281  
P.O. Drawer 519 (29540)  
[johnmilling@bellsouth.net](mailto:johnmilling@bellsouth.net)

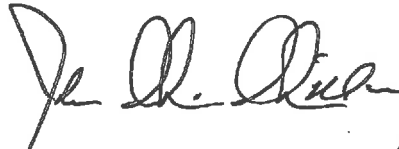
**July 2, 2013.**

**TO WHOM IT MAY CONCERN:**

**The Chief Executive Officer of Genesis Health Care, Inc. is an employee of Genesis and has not, is not and was not hired under a Management Agreement to operate Genesis Health Care, Inc.**

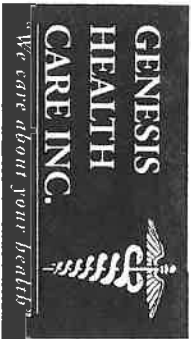
**Genesis Health Care, Inc. is qualified to participate in all program funds allocated to FQHCs by the South Carolina legislature.**

**Yours very truly,**

A handwritten signature in black ink, appearing to read 'John M. Milling', written over a horizontal line.

**JOHN M. MILLING**  
**Counsel for Board of Directors,**  
**Genesis Health Care, Inc.**

**JMM/sbb**



*201 Cashua Street  
Darlington, SC 29532*

Mr. Roy Hess  
South Carolina Department of Health and Human Services  
1801 Main Street  
Columbia, SC 29201



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

Close ✓

ACTION REFERRAL

TO <i>Hess</i>	DATE <i>8-29-13</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>000088</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
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APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			<i>Spoke with Mr. Regan on September 20th and indicated that was <del>done</del> RUTHODOLOGY HAS NOT BEEN FINIALIZED. He was ok with that. Ray 9-20-13</i>
2.			<i>Please SCAN to Bruce Canfer</i>
3.			
4.			

*Ray - 9/20/13*  
I am not real sure when you gave this to me, but I just found it mixed in with my logs for Pete. I have scanned and emailed to you and Bruce today. Sorry! Anne

## **MEMORANDUM**

**TO: THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**FROM: CARENET OF LANCASTER AND  
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**REGARDING: DISBURSEMENT OF STATE FUNDS  
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Even if funds for capital improvements are otherwise available for distribution to all FQHCs including FQHC look-alikes, I respectfully note that the communities served by FQHCs receiving grants under section 330 of the Public Health Act have received in excess of \$34,000,000.00 (as detailed below) in the past three years in federal stimulus money for capital improvements and operations while the communities served by FQHC Look-alikes have received *no funds at all*. It not reasonable that the intent of the General Assembly is to fund "330 grantees" to the exclusion of FQHC LALs. As the communities served by FQHC look-alikes have no voice on the Board of the PCA, the input of the PCA into this matter is compromised. We respectfully request the recommendations of the PCA regarding the disbursement of capital funding be disregarded.

For the Department's information, the funds received by FQHC 330 grantees in the last three years (above and beyond their 330 grant funding) include the following:

#### ADDITIONAL FEDERAL STIMULUS FUNDS ALLOCATED TO FQHCs WITH FEDERAL



**GRANTS IN SC SINCE 2012**  
**TOTAL -- \$34,781,494**

1. Little River Medical Center Inc. Little River S.C. \$5,523,205
2. Beaufort-Jasper Health Services Inc. Ridgeland S.C. \$7,912,493
3. Beaufort-Jasper Health Services, Inc Ridgeland 29936 \$9,101,293
4. Black River Healthcare, Inc. Olanta 29114 \$1,045,913
5. CareSouth Carolina, Inc. Hartsville, SC 29551 \$2,086,978
6. Carolina HC, Inc. Greenwood 29646 \$1,415,053
7. Community Medicine Foundation Rock Hill 29731 \$801,937
8. Eau Claire Cooperative HC, Inc. Columbia 29203 \$2,087,674
9. Family HC, Inc. Orangeburg 29116 \$1,627,514
10. Franklin C. Fetter Family HC Charleston 29403 \$1,467,119
11. Health Care Partners of South Carolina, Inc. Conway 29501 \$822,600
12. HopeHealth, Inc. Florence 29503 \$430,748
13. Little River Medical Center, Inc. Little River \$6,827,618
14. Low Country Health Care System, Inc. Fairfax 29827 \$926,257
15. New Horizon Family Health Services, Inc. Greenville 29602 \$1,262,674
16. Regenesis Organization Community HC Spartanburg 29306 \$704,637
17. Richland Community Health Care Assn Eastover 29044 \$881,195
18. Rural Health Services, Inc. Clearwater 29822 \$676,816
19. Sandhills Medical Foundation, Inc. Jefferson 29718 \$679,049
20. South Carolina Primary Health Care Association Columbia 29223 \$451,686
21. St. James-Santee Family HC, Inc. Mc Clellanville 29458 \$624,957
22. Sumter Family HC Sumter 29150 \$859,776

**Comment 3**

As we were researching the matter in preparation for our comments, we discovered that South Carolina law prohibits expenditures of state funds for capital improvements projects that are not on state-owned property. When we discovered this matter, we felt compelled to bring it to the attention of the Department as the Department has been vested with the authority and burden of insuring the disbursement of state funds in compliance with state law.

Please see 11-9-130 of the SC Code of Laws. There is no waiver of this requirement in the 2013-14 SC Budget. Therefore, distribution of state funds to FQHCs for capital expenditures are unlawful until and unless the General Assembly addresses the issue.

**SECTION 11-9-130. Funds for capital improvement projects not on state-owned property. [SC ST SEC 11-9-130]**

Funds authorized by the General Assembly for capital improvement projects not located on state-owned property may be expended only if the projects are owned or operated by a governmental entity including, but not limited to, municipalities or counties or a combination of governmental entities or by a separate authority whose membership controlled by a governmental entity.

HISTORY: 1988 Act No. 638, § 13.

#### Comment 4

In the past, the PCA has used a distribution methodology that is dependent on the past performance of a FQHC in serving the uninsured and under-insured. This formula consistently allows funded FQHCs a distinct advantage as they already receive federal grant funding to serve the uninsured in the first instance. The PCA's suggestions make use of past UDS information to fund future services as opposed to creating the additional capacity to serve the uninsured in communities without federally-grant funding. The PCA methodology is flawed by definition because the use of past UDS information is inconsistent with the goals of the General Assembly of increasing the numbers of the uninsured and underinsured who are not currently being reached. The UDS methodology is not geared to reach *new* patients but, rather, allows communities that are currently receiving grant funding to use additional grant funding to service the needs of the existing populations being served by the FQHC 330 grantees. While no one argues with the need for additional services for all areas of the state, the goal of the funds allocated by the General Assembly and the new programs initiated by the Department are designed to reach those individuals who are not currently being served at all.

Respectfully, the FQHC LALs suggest the more reasoned method of distribution is to (a) concentrate the distribution of the state funding to those communities that have the highest amounts of uninsured and underinsured and patients and (b) that are not currently being served by FQHCs already receiving 330 grant funding.

#### OUR REQUESTS

The FQHC Look-Alikes in South Carolina respectfully request the following:

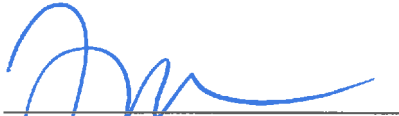
1. That the Department not distribute any funds to FQHCs receiving funds under Section 330 of the Public Service Health Act based on their participation in and control of the South Carolina Primary Care Association, and the anti-discrimination provisions of Proviso 117.14 until a complete and thorough review be made.
2. That the Department disregard the advice of the South Carolina Primary Care Association for the following reasons: 1-it denies the communities and patients served by FQHC LALs a voice in matters of resource allocation; 2-it denies LALs a means of overcoming past discriminatory practices, and 3-LALs have no opportunity to be treated fairly and equitably. As this recommendation is evaluated by the Department, we respectfully request the Department consider the adverse effects on the communities and patients served by FQHC LALs.
3. That when (and if) the Department does distribute capital and other state funds under the 2013-14 state provisos, it considers funding the communities and patients which the FQHC LALs serve prior to funding FQHC grantees. FQHC look-alikes are in all ways equal to funded FQHCs but do not receive additional funding to treat the uninsured and under-insured living in our communities in the first instance.

## A FINAL NOTE

**Enclosed you will find a letter from the Attorney for the Board of Directors indicating that the CEO of Genesis Health Care, Inc. is an employee of Genesis Health Care, Inc. and neither Genesis nor its' CEO operates under a management agreement of any type. A copy of that letter is attached hereto.**

It is with great respect and appreciation for the responsibilities and duties of the Department that the information, comments and suggestions are made herein. We trust the Department will assist the communities to whom no federal or state funding has been provided. The funded FQHCs that comprise the Board of Directors of the South Carolina Primary Care Association serve a wonderful purpose. We are all grateful that they can use federal grant funds to serve the citizens of their communities and this request is in no way intended to diminish their efforts and contributions. FQHCs look-alikes, that receive no such grant funding, are simply respectfully request the Department consider the plight of the uninsured and under-insured in our communities and look to to make the allocation of scarce resources a bit more equitable.

If you should have any questions, or would like to receive further information or documentation please do not hesitate to call the Tony R. Megna, CEO of Genesis Health Care, Inc. (803-606-5973).



Tony R Megna  
CEO

Genesis Health Care, Inc.

**ADDENDUM**  
**TEXT OF PROVISOS 33.31, 33.34 and 117.14**

**Proviso 33.31 provides:**

**33.31.** (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.

\* \* \*

(D) Primary Care Safety Net - The department shall develop a methodology to reimburse safety net providers to provide primary care, behavioral health services, and pharmacy services for chronically ill individuals that do not have access to affordable insurance. Qualifying safety net providers are approved, licensed, and duly organized Federally Qualified Health Centers (FQHCs, entities receiving funding under Section 330 of the Public Health Services Act, and FQHC Look-A-Likes), Rural Health Clinics (RHCs), Free Clinics, other clinics serving the uninsured, and Welvista. No FQHC and FQHC Look-A-Likes operating under a management agreement or operated by a Chief Executive Officer who is not an employee of the entity is eligible to receive funds allocated by this proviso.

The department shall allocate at least \$5,000,000 for baseline funding to FQHCs as defined in paragraph (D), at least \$2,000,000 for documented capital needs for FQHCs as defined in paragraph (D), at least \$2,000,000 for baseline funding for Free Clinics, and at least \$5,000,000 for innovative care strategies for qualifying safety net providers.

The department shall consult with the SC Primary Health Care Association to determine the entities with the most critical capital needs. From the aforementioned \$14,000,000, Welvista shall receive at least an additional \$600,000.

To be eligible for funds, qualifying providers shall be required to provide the department patient and service data to assist in the overall improvement of the state's health quality and when appropriate safety net providers must enter into a MOU with hospitals to co-manage chronically ill uninsured high-utilizers of emergency room services. Participants in this program shall submit evaluations of effectiveness annually to the department.

**Proviso 33.34 provides:**

**33.34.** (DHHS: Medicaid Accountability and Quality Improvement Initiative) From the funds appropriated and authorized to the Department of Health and Human Services, the department shall implement the following accountability and quality improvement initiatives:

(A) Healthy Outcomes Initiative - Upon approval of the Centers for Medicare and Medicaid Services (CMS), the Department of Health and Human Services shall make available to participating hospitals up to a \$35,000,000 aggregate rate incentive effective October 1, 2013. This incentive shall be directly linked to a hospital's participation in initiatives designed to reduce system cost and increase health

outcomes. To improve community health, the department may explore various health outreach, education and patient wellness and incentive programs. Working with Kershaw Health and its LiveWell Kershaw program, the department may pilot diabetes, smoking cessation, weight management, and heart disease interventions to identify the potential to offer such interventions as models for other hospitals to pursue. These initiatives may include, but are not limited to:

- (1) entering into a Memorandum of Understanding (MOU) with selected primary health care and other providers to co-manage chronically ill uninsured high-utilizers of emergency room services; and
- (2) participating in price and quality transparency efforts initiated by the department.

In designing these initiatives the department shall receive public input, and make the final determination of the initiative design. The department shall, no later than August 1, 2013, publish the manner in which participation in these initiatives will correspond with incentives. If at the end of the state fiscal year the Department determines that this program is not generating cost savings or increasing health outcomes the department may retract this incentive in part or full.

(B) Disproportionate Share (DSH) Payment Accountability - Upon approval of CMS, in order to increase accountability for money reimbursed to hospitals under the DSH program and to improve outcomes for the uninsured, hospitals shall:

- (1) submit claims-level data for all individuals receiving uncompensated care; and
- (2) obtain a patient attestation to determine whether or not the individual receiving uncompensated care has access to affordable health insurance or does not have other means to pay for services.

(C) Rural Hospital DSH Payment - Upon approval of CMS, Medicaid-designated rural hospitals in South Carolina shall receive full coverage of uncompensated care as part of the State's Medicaid Disproportionate Share (DSH) program. Funds shall be allocated from the existing DSH program and shall not exceed \$20,000,000 total funds. Rural Hospitals are ineligible for this increased coverage should they not participate in reporting and quality guidelines published by the department and outlined in the Healthy Outcomes Initiative in the Fiscal Year 2013-2014 Appropriations Act. These guidelines shall be published no later than August 1, 2013.

In addition to the requirements placed upon them by the department, rural hospitals must actively participate with the department and any other stakeholder identified by the department, in efforts to design an alternative health care delivery system in these regions.

(D) Primary Care Safety Net - The department shall develop a methodology to reimburse safety net providers to provide primary care, behavioral health services, and pharmacy services for chronically ill individuals that do not have access to affordable insurance. Qualifying safety net providers are approved, licensed, and duly organized Federally Qualified Health Centers (FQHCs, entities receiving funding under Section 330 of the Public Health Services Act, and FQHC Look-A-Likes), Rural Health Clinics (RHCs), Free Clinics, other clinics serving the uninsured, and Welvista. No FQHC and FQHC Look-A-Likes operating under a management agreement or operated by a Chief Executive Officer who is not an employee of the entity is eligible to receive funds allocated by this proviso.

The department shall allocate at least \$5,000,000 for baseline funding to FQHCs as defined in paragraph (D), at least \$2,000,000 for documented capital needs for FQHCs as defined in paragraph (D), at least \$2,000,000 for baseline funding for Free Clinics, and at least \$5,000,000 for innovative care strategies for qualifying safety net providers.

The department shall consult with the SC Primary Health Care Association to determine the entities with the most critical capital needs. From the aforementioned \$14,000,000, Welvista shall receive at least an additional \$600,000.

To be eligible for funds, qualifying providers shall be required to provide the department patient and service data to assist in the overall improvement of the state's health quality and when appropriate safety net providers must enter into a MOU with hospitals to co-manage chronically ill uninsured high-utilizers of emergency room services. Participants in this program shall submit evaluations of effectiveness annually to the department.

(E) Rural Provider Capacity - The department shall incentivize the development of rural physician coverage and capacity building through the following mechanisms:

(1) the department shall leverage the Graduate Medical Education program and develop a methodology to improve accountability and increased outcomes for the State's GME and Supplemental Teaching Payments investment by January 1, 2014;

(2) the department shall develop a program to leverage the use of teaching hospitals to provide rural physician coverage, expand the use of Telemedicine, and ensure targeted placement and support of OB/GYN services in at least four counties with a demonstrated lack of adequate OB/GYN resources by July 1, 2014; and

(3) during the current fiscal year the department shall allocate \$4,000,000 to the MUSC Hospital Authority for telemedicine.

(F) Community Residential Care Optional State Supplement - The department shall establish policies and procedures to include establishing a facility rate per eligible beneficiary at \$1,500 per month for recipients and providers who meet the requirements for the enhanced maximum OSS payment; establish eligibility criteria; and establish a methodology for increasing the personal needs allowance. The department will revise the net income limit to accommodate the change in the maximum OSS facility rate. A total of at least \$12,000,000 shall be made available for this rate increase. The facility rate shall increase a minimum of \$100 per month per eligible beneficiary. All current recipients shall remain eligible for the supplement during the fiscal year and nothing contained herein may conflict with or limit existing regulations.

In addition, the department will establish Quality of Care Standards and other requirements for facilities licensed as a Community Residential Care Facility and participating in the OSS program and Medicaid Waiver services.

**Proviso 117.14 provides:**

**117.14. (GP: Discrimination Policy)** It is the policy of the State of South Carolina to recruit, hire, train, and promote employees without discrimination because of race, color, sex, national origin, age, religion or physical disability. This policy is to apply to all levels and phases of personnel within state government, including but not limited to recruiting, hiring, compensation, benefits, promotions, transfers, layoffs, recalls from layoffs, and educational, social, or recreational programs. It is the policy of the State to take affirmative action to remove the disparate effects of past discrimination, if any, because of race, color, sex, national origin, age, religion or physical disability.

Each state agency shall submit to the State Human Affairs Commission employment and filled vacancy data by race and sex by October thirty-first, of each year.

In accordance with Section 1-13-110 of the South Carolina Code of Laws of 1976, as amended, the Human Affairs Commission shall submit a report on the status of state agencies' Affirmative Action Plans and Programs to the General Assembly by February first each year. This report shall contain the total number of persons employed in each job group, by race and sex, at the end of the preceding reporting period, a breakdown by race and sex of those hired or promoted from within the agency during the reporting period, and an indication of whether affirmative action goals were achieved. For each job group referenced in the Human Affairs report, where the hiring of personnel does not reflect the percentage goals established in the agency's affirmative action plan for the year in question, the state agency shall

submit a detailed explanation to the Human Affairs Commission by February fifteenth, explaining why goals were not achieved.

The Human Affairs Commission shall review the explanations and notify the Budget and Control Board of any agency not in satisfactory compliance with meeting its stated goals.

The Budget and Control Board shall notify any agency not in compliance that their request for additional appropriations for the current appropriation cycle, may not be processed until such time as the Budget and Control Board, after consultation with the Human Affairs Commission, is satisfied that the agency is making a good faith effort to comply with its affirmative action plan, and that the compliance must be accomplished within a reasonable length of time to be determined by the mission and circumstances of the agency. This requirement shall not affect additional appropriation requests for public assistance payments or aid to entities. This section does not apply to those agencies that have been exempted from the reporting requirements of the Human Affairs Commission.

**MILLING LAW OFFICE, LLC**

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Darlington, South Carolina, 29532.

**JOHN M. MILLING**  
(Retired S. C. Circuit Court Judge)  
(Certified Circuit Court Mediator)

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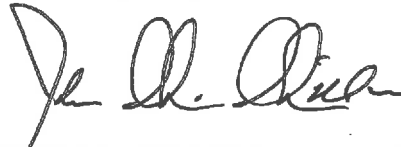
**July 2, 2013.**

**TO WHOM IT MAY CONCERN:**

**The Chief Executive Officer of Genesis Health Care, Inc. is an employee of Genesis and has not, is not and was not hired under a Management Agreement to operate Genesis Health Care, Inc.**

**Genesis Health Care, Inc. is qualified to participate in all program funds allocated to FQHCs by the South Carolina legislature.**

**Yours very truly,**



**JOHN M. MILLING**  
**Counsel for Board of Directors,**  
**Genesis Health Care, Inc.**

**JMM/sbb**





*201 Cashua Street  
Darlington, SC 29532*

Mr. Roy Hess  
South Carolina Department of Health and Human Services  
1801 Main Street  
Columbia, SC 29201



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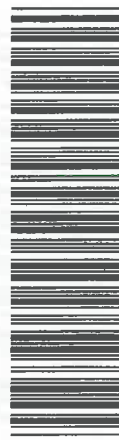
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