



**Health Services**  
LOS ANGELES COUNTY

March 30, 2007

Los Angeles County  
Board of Supervisors

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TO: Each Supervisor

FROM: Bruce A. Chernof, M.D.   
Director and Chief Medical Officer

SUBJECT: **CMS EXTENSION AGREEMENT FOR MARTIN LUTHER KING, JR. – HARBOR HOSPITAL (MLK-HARBOR)**

Bruce A. Chernof, MD  
Director and Chief Medical Officer

John R. Cochran III  
Chief Deputy Director

Robert G. Splawn, MD  
Senior Medical Director

The Centers for Medicare and Medicaid Services (CMS), State of California Department of Health Services (SDHS) and the County executed an agreement to extend MLK-Harbor's Medicare Provider Agreement as we had requested until August 15, 2007. This memo outlines the Agreement terms, which are substantially similar to those discussed with your Board at the March 27, 2007, Board meeting. The Department executed this Agreement pursuant to the authority granted by your Board at that meeting, after review by County Counsel.

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- 1) Period of Agreement: March 31, 2007 to August 15, 2007: This is the extension time period DHS requested of CMS and the State. It is also the period incorporated into the Metrocare plan, approved by the Board of Supervisors on October 17, 2006.
- 2) CMS Survey: CMS will require MLK-Harbor to be ready for survey and to notify CMS no later than July 9, 2007 of its readiness. Our Metrocare schedule has MLK-Harbor ready for survey no later than July 1, 2007. CMS has agreed that it will expedite the determination process and seek to communicate the determination to the County within 15 calendar days of completion of its on-site survey work, or will grant a one-time extension of 30 calendar days from August 15, 2007 for the report to be provided.
- 3) Payments: CMS will fully reimburse MLK-Harbor for services from March 31, 2007 to April 30, 2007. For the period from May 1, 2007, the County has agreed not to seek reimbursement for non-emergency services for Medicare and MediCal patients and those other individuals covered under the terms of the California Medicaid waiver. The Department's fiscal estimates indicated that this could have an impact of between 25 to 38 million dollars, which assumes no Medicare or Medicaid



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reimbursement for non-emergency services from May 1 to August 15. As a result of detailed discussion with CMS and the State, we will be revising those estimates to reflect eligible billings for Medicare, MediCal and uninsured patients who meet the strict CMS definition of emergency medical services. We expect the financial impact to be somewhat reduced as a result of our better understanding of patients who would meet the emergency standard.

- 4) Resumption of Payments: CMS and the State have agreed to a resumption of the normal payments to MLK-Harbor on the sooner of August 15, 2007 or the date CMS determines MLK-Harbor is in full compliance with the Medicare Conditions of Participation. This would be either the last day of its on-site survey, or the last day of a re-visit for a correction of a cited Condition of Participation issue if one is identified. This would favorably impact the fiscal impact since MLK-Harbor could resume normal billing and payments sooner than the August 15, 2007 date used in our financial calculations.
- 5) As a condition of CMS approval of this extension, the County agreed to waive its appeal rights, both administrative and judicial, to challenge a termination based on findings made by CMS during the course of this Agreement, including the findings of the survey anticipated in July, 2007. The Agreement provides that all the resident slots will be maintained as long as the existing provider agreement remains in place.
- 6) The existing limits on the number of resident physician positions will be maintained as long as the existing provider agreement remains in place.
- 7) Other key provisions: As a part of the discussions leading to this Agreement, CMS insisted on a provision that established this to be the last and final extension to the provider agreement that CMS will grant or the County will request. CMS reserved the right to move to terminate the provider agreement if the facility is found to be in immediate jeopardy as a result of its non-compliance with the Conditions of Participation.

The executed Extension Agreement is attached for your reference. If you have any questions about its content or intent, please give me a call.

With the full cooperation of all of the elected officials from our California delegation, the Governor and his key staff, and each of you and your staff, we have gotten the opportunity to complete this difficult and challenging restructuring of the hospital.

BAC:jrc  
Revised 4-2-07

Attachment

c: Chief Administrative Officer  
County Counsel  
Executive Officer, Board of Supervisors

**Tax Identification Number: 95-600927WF**  
**National Provider Identification No: 1568486033**  
**CMS Certification Number: 05-0578**

**EXTENSION AGREEMENT for MLK-HARBOR HOSPITAL**

This Agreement (the "Agreement") is made as of this 30th day of March 2007 between the County of Los Angeles on behalf of LAC/Martin Luther King Jr.-Harbor Hospital of California ("MLK-Harbor Hospital"), the State of California Department of Health Services ("State") and the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") (collectively, the "Parties") for the time period of March 31, 2007 through August 15, 2007, as affected by section E.6, as follows:

**Recitals**

*Whereas*, the MLK-Harbor Hospital has had a history of noncompliance with Medicare Conditions of Participation (CoPs) over a period of many years, under different administrators, and has undergone at least 17 surveys since January 2004;

*Whereas*, on September 22, 2006, CMS provided notice to the Martin Luther King Jr./Charles R. Drew Medical Center (since renamed MLK-Harbor Hospital) that its Medicare provider agreement would be terminated on November 30, 2006 due to the Hospital's continued failure to meet Medicare CoPs since January 2004;

*Whereas*, at the Hospital's request and via letter on November 21, 2006, CMS extended the effective date of the termination from November 30, 2006 to March 31, 2007 in order to protect patients during a period of downsizing and transition of certain services to Harbor-UCLA Medical Center pursuant to the MetroCare Plan;

*Whereas* MLK-Harbor Hospital, under an approved plan of the Los Angeles County Board of Supervisors, made considerable progress in restructuring MLK-Harbor Hospital while continuing to provide care and services to the community under the MetroCare Plan;

*Whereas*, the MLK-Harbor Hospital, although continuing to be noncompliant with federal certification requirements, continues to demonstrate progress since November 2006 in stabilizing the hospital through downsizing, transferring select "high risk" care/services to Harbor UCLA, and operating in the absence of any finding of immediate jeopardy incidents;

*Whereas*, the MLK-Harbor Hospital has indicated a willingness to continue making substantial improvements, including substantive personnel and resource investments, to establish the ability to both meet Medicare CoPs and improve systems of care so that the hospital is able to maintain compliance consistently over time;

*Whereas*, the parties acknowledge that there exists full and fair consideration for the commitments made herein, including the waiver of any appeal rights.

**THEREFORE**, in response to a further request from MLK-Harbor Hospital for an extension of the provider agreement termination date, as contained in the February 16, 2007 letter to Leslie Norwalk, Acting Administrator of the Centers for Medicare & Medicaid Services (CMS), and in consideration of the stipulations contained herein, the parties agree to the following.

A. The CMS Agrees to:

1. **Amendment #1 to the Notice of Termination:** CMS agrees to amend the notice of termination to extend the effective date for termination of the provider agreement from March 31, 2007 to April 30, 2007 in order to continue protection for patients during the last steps of downsizing and transition of certain services to Harbor-UCLA, and without the limitations on reimbursement specified in section C.1.
2. **Amendment #2 to the Notice of Termination:** CMS, at the request of MLK-Harbor Hospital, further agrees to extend the termination date from April 30, 2007 to August 15, 2007, subject to the limitations on reimbursement specified in section C.1, as affected by section E.6.
3. **Revisit Survey:** Upon request from MLK-Harbor Hospital, CMS will authorize a revisit survey prior to the August 15, 2007 date. CMS will strive to expedite the determination process and seek to communicate the compliance determination pursuant to any survey within 15 calendar days of the completion of the survey onsite visit.
4. **Right of Termination:** CMS reserves the right to move to immediate termination if the hospital does not comply with the Medicare CoPs.
5. **GME/IME:** CMS agrees that presently existing limits on the number of residents pursuant to 42 C.F.R. §412.105 (f) and §413.79 (c) (GME/IME FTEs) will continue to be applied at MLK-Harbor Hospital as long as the existing provider agreement remains in place, regardless of the fact that MLK-Harbor Hospital will not at any time seek payment for Medicare and Medicaid services provided during the time period and under the terms specified in Section C.1 of this Agreement, with the proviso that such FTEs will be relinquished at any point the existing provider agreement is terminated.

B. The State of California Survey Agency, & the Fiscal Intermediary-National Government Services, as CMS' agents, will do the following on behalf of CMS:

1. **Fiscal Monitoring:** Monthly, monitor the billing of Medicare claims to ensure compliance with the Agreement provisions. Exercise, as needed, any audits to ensure compliance with the Agreement, with the approval of the CMS San Francisco Regional Office. In any audit of cost reports for the period of time of this Agreement, the provisions of this Agreement shall be incorporated. CMS also reserves the right to verify monthly expenditures and costs with reports submitted to the fiscal intermediary. CMS may request audited financial statements with footnotes and endnotes to clarify the financial status of the Hospital.
2. **Review of Monitoring Reports:** Conduct periodic monitoring of quality of care at MLK-Harbor Hospital. Consult with the CMS San Francisco Regional Office on any findings or questions.

3. **Complaint Investigations:** Conduct complaint investigations as required.

C. MLK-Harbor Hospital Agrees to:

1. **Limitation on Reimbursement:** Except for certain emergency services described in section C.2 below, the MLK-Harbor Hospital will not seek reimbursement at any time from Medicare or Medicaid, nor submit claims to CMS or the Single State Medicaid Agency for such reimbursement or payment (including but not limited to costs under the Disproportionate Share Hospital and Safety Net Care Pool provisions of California's current 1115 waiver for hospital financing), for any services provided to Medicare or Medicaid beneficiaries, or to uninsured individuals, between May 1, 2007 and either (a) August 15, 2007, as affected by section E.6, or (b) the date CMS makes a determination that MLK-Harbor Hospital is in full compliance with the Medicare CoPs, if earlier than August 15, 2007. The effective date of CMS' determination of compliance shall not be later than the last day of onsite hospital presence of the survey team for the revisit survey upon which a finding of full compliance is based, including a revisit survey made for the purpose of verifying the correction of a previously-cited CoP. MLK-Harbor Hospital agrees that any Medicare or Medicaid payments subject to the payment prohibitions of this subsection, but which are inadvertently received by the Hospital or State, will be subject to post-payment review and be considered overpayments. Nothing in this Agreement shall limit the ability of the State to redistribute properly claimed federal funds in accordance with State law.
2. **Exception for Emergency Services:** Services that meet the definition of emergency services under 42 C.F.R. §§ 424.101, 102, and 103(a)(1); are provided in accordance with 42 C.F.R. § 424.103(a)(1), (3), (4); and are substantiated in accordance with applicable portions of § 424.103(b), including emergency services to the uninsured, are exempt from the limitation on reimbursement in section C.1.
3. **Notification of Readiness:** MLK-Harbor Hospital shall notify CMS no later than July 9, 2007 regarding the Hospital's readiness to meet Medicare CoPs.
4. **No Further Extensions:** Except as provided in section E.6., there will be no further extensions of the provider agreement beyond August 15, 2007, and no requests for such extension by MLK-Harbor Hospital or the State of California if MLK-Harbor Hospital has not established to CMS' satisfaction by that date that the hospital is in full compliance with the Medicare CoPs.
5. **Incorporation into Provider Agreement:** MLK-Harbor Hospital agrees to incorporate the contents of this Agreement into its Medicare and Medi-Cal provider agreements, and the MLK-Harbor Hospital waives its appeal rights, both administrative and judicial, to challenge a termination based on findings made by CMS, or the State on behalf of CMS, during the course of implementing this Agreement.
6. **Audits and Verification:** All cost reports and claims related to this Agreement shall be certified as true and accurate by MLK-Harbor Hospital's designated authorized official. Within 30 days of execution of this Agreement, MLK-Harbor Hospital will provide the

Single State Medicaid Agency and the CMS San Francisco Regional Office with a description of the financial controls it will put in place to ensure compliance with the reimbursement limits specified in Sections C.1 and C.2 of this Agreement. Within 30 days after the end of any month in which claims for emergency services are submitted for reimbursement under Section C.2, MLK-Harbor Hospital agrees to provide a report to CMS and the State Medicaid Agency that includes documentation to support conformance of those claims with the definitions under 42 C.F.R. § 424.101, with the exception of 42 C.F.R. § 424.103 (a)(5).

D. The Single State Medicaid Agency Agrees to:

1. ***Fiscal Monitoring:*** Implement the limitations on Medicaid reimbursement specified in this Agreement and monitor, on at least a monthly basis, the billing of Medicaid claims to ensure compliance. Exercise, as needed, any audits to ensure compliance with the Agreement, in consultation with the CMS San Francisco Regional Office. In any audit of cost reports for the period of time of this Agreement, the provisions of this Agreement shall be incorporated. CMS also reserves the right to verify monthly expenditures and costs with reports submitted by the State.

E. The Parties Further Agree:

1. ***Enforcement:*** CMS retains the right to terminate the Medicare Provider Agreement (in totality) in the event that the MLK-Harbor Hospital fails to comply with the provisions of this Agreement.
2. ***Agreement as Basis for Resolution:*** This Agreement sets forth the full and complete basis for the resolution of this matter by the parties. Each party shall be responsible for its own attorney fees associated with this Agreement.
3. ***Binding Nature of Agreement:*** This Agreement shall be final and binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.
4. ***Change of Ownership Contingencies:*** In the event that the MLK-Harbor Hospital decides to pursue a change in ownership (CHOW) during the period April 1, 2007 through August 15, 2007, as affected by section E.6, CMS shall be notified 60 days prior to the CHOW, and this Agreement shall be fully disclosed to any potential new owner. CMS reserves the right to terminate or re-negotiate this Agreement if a CHOW occurs and the terms are not acceptable to CMS or the new owners; OR if a new operator assumes the existing provider agreement, the successor entity is responsible for assuring that corrections continue in accordance with this Agreement.
5. ***Closure Contingency:*** In the event the MLK-Harbor Hospital chooses to voluntarily cease operations, or fails to demonstrate compliance with federal participation requirements and has its Medicare Provider Agreement involuntarily terminated and the MLK-Harbor Hospital thereupon determines to cease operation, the MLK-Harbor Hospital shall (a) develop for CMS and State review, and implement, a relocation plan

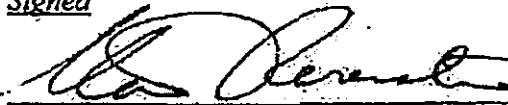
for inpatients and emergency department patients being cared for at the time of closure and (b) provide CMS and the State advance notice at least 15 calendar days prior to the cessation of services, unless CMS terminates the provider agreement, or the State revokes the license, with less than 15 calendar days advance notice.

6. **Communications Contingency:** If a new or revisit survey has been conducted but CMS has failed to issue a determination of the Hospital's compliance status prior to August 15, 2007, this Agreement and all terms of the Agreement shall automatically be extended for an additional - but final - 30 calendar days and be binding on all parties.
7. **Counterparts:** This Agreement may be executed in counterparts and by way of facsimile or electronic signature.
8. **Contacts for Reporting Requirements:** All documents and reports specified in this Agreement shall be forwarded to the following representatives:

Steve Chickering, Consortium Survey & Certification Officer  
Centers for Medicare & Medicaid Services  
90 7<sup>th</sup> Street, Suite 5-300 (5W)  
San Francisco, CA 94103-6707  
415-744-3682  
Steven.Chickering@cms.hhs.gov

Kathleen Billingsley, Deputy Director  
Dept. of Licensing and Certification  
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Signed



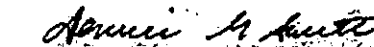
Date: 3/30/2007

Stan Rosenstein, Deputy Director  
California Dept of Health Services  
Medical Care Services  
P.O. Box 997413, MS 4000  
Sacramento, CA 95899-7413



Date: 3/30/2007

Bruce Chernof, M.D., Director  
Los Angeles County Department of Health Services  
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Date: 3/30/2007

Dennis G. Smith, Director  
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