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September 26, 2005

TO: Each Supervisor

FROM: Thomas L. Garthwaite, M.D.
Director and Chief Medical Officer

SUBJECT: DUAL TRACK CONTINGENCY PLAN FOR KING DREW MEDICAL CENTER – STATUS REPORT

On August 16, your Board instructed the Department to prepare a dual track contingency plan with firm timelines to enact reforms and restructure King/Drew Medical Center (KDMC), in the event additional adverse actions are taken by the Centers for Medicare and Medicaid Services (CMS) or California State Licensing, and in the event that the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) does not reinstate KDMC's accreditation. This is to provide your Board a status report on the development of the plan, the major issues that are being analyzed and to request a two week extension to develop a more thorough report.

Status of Various Accrediting Body Reviews

CMS

KDMC has operated under a Memorandum of Understanding (MOU) with CMS since October 2004. This MOU provided a one year timeframe for the facility to address the deficiencies and areas of non-compliance with CMS's conditions of participation. CMS has stated that it will conduct a full-scope survey of KDMC at the expiration of the MOU. The Department anticipates that the survey will be conducted anytime between November and January.

The actual date will be set by CMS.

Based on the outcome of CMS's full-scope survey, there are a number of potential scenarios that may impact the more than $200 million in annual federal funding that goes to KDMC.

These scenarios include:

- The facility is found to be compliant (or substantially in compliance) with all of the 23 Medicare Conditions of Participation. This would mean that KDMC's federal funds would be unaffected.

- The facility is found to be significantly out of compliance and CMS immediately withdraws the majority of Federal funding. This scenario requires substantial planning and an analysis of options ranging from operating the hospital without federal funds to closure of the facility.

- The facility is found to be significantly out of compliance and CMS only continues to provide a part of the federal funds currently going to the facility such as providing reimbursement for emergency services only. This scenario also requires a plan and analysis of options ranging from continuing to run the hospital while bringing it into compliance to planning for its phase out and closure.

State Licensing

State Licensing, in addition to its reviews on behalf of CMS, has conducted several independent site visits during the MOU period. State Licensing has the authority to revoke licensure of the hospital or to close various units and services if they believe the services do not meet their minimum requirements. State Licensing recently released a report outlining various deficiencies previously reported to your Board. The hospital is currently preparing plans of corrections to those findings.

JCAHO

Navigant and DHS staff continue to make progress in bringing the hospital into compliance with JCAHO's accreditation standards. A mock survey conducted by an outside entity last month showed some progress in key areas but the hospital is not currently ready to reapply for accreditation. Navigant had initially recommended a December JCAHO survey. That date is being reassessed based on the hospital's current progress and the Department will report back on the planned JCAHO survey date in our final report in two weeks.

ACGME

The Accrediting Council for Graduate Medical Education (ACGME) plans to conduct an institutional review of KDMC's overall residency programs in January. The two previous institutional reviews have been rated "unfavorable" and a third "unfavorable" finding if upheld would result in the loss of all training programs at KDMC. It is important to note that in the event that ACGME withdraws accreditation, programs would likely be allowed to be phased out over the existing academic year and the next.

Planning Activities Related to Loss of CMS Accreditation or Licensure of Hospital

The range of alternatives being evaluated based on the above potential outcomes includes:

- Keeping KDMC open and operating at current or proposed levels (depending on whether the Board adopts the Department's recent service reconfiguration recommendations). Under this model, if CMS were to terminate participation in Medicare, the County would absorb the approximately $200 million in lost Medicare and Medicaid/Medi-Cal reimbursement for the period of time during which the hospital seeks CMS recertification. DHS estimates that the remediation and reapplication processes will take between nine and 12 months.

- KDMC remaining open as an acute inpatient medical facility, but with a significantly reduced scope of service. The County would absorb the revenue loss associated with the operation of the smaller hospital while the hospital prepares for CMS recertification. It is anticipated that the revenue impact for operating a smaller hospital would be less than maintaining the hospital at its current level. Under this model, KDMC would function as a receiving hospital for patients transferred from other hospitals impacted by the closure of its emergency room. Patients requiring eliminated services would be treated at other DHS hospitals or in private facilities.

- Maintaining KDMC's inpatient hospital license as is and removing the outpatient primary and specialty care services from the hospital license in order to preserve federal and state funding for outpatient services. The County would absorb the revenue loss associated with maintaining and operating an acute inpatient hospital during the recertification process. Whether to maintain emergency services under this model would have to be evaluated. One risk associated with this model is that free-standing outpatient services are likely to be reimbursed at a significantly reduced rate and ultimately returning these services to an inpatient hospital license

would require substantial physical plant investments in order to meet state building code standards required for licensure.

- Terminating the hospital's inpatient license and reconfiguring it to operate as an outpatient facility only. Outpatient services to be retained could include primary and specialty services, ambulatory surgery, and ancillary services. The County funding associated with operating inpatient services would be reallocated among other DHS and private hospitals to offset the cost of providing emergency and inpatient services to patients displaced by the closure of inpatient services.

- Closing KDMC entirely and reallocating $106 million in County cost and any other available revenues to purchase services in other DHS and private facilities.

A detailed flow-chart is being developed that identifies key decision points and timelines to address the issues identified above.

Planning Activities Related to Loss of CMS Accreditation or Licensure of Hospital

As mentioned previously, a third "unfavorable" finding by the ACGME's Institutional Review Committee (IRC) would most likely result in the loss of accreditation of all the residency training programs.

The institutional review is scheduled for January 17, 2006. A decision based on the review would most likely occur at the IRC's regularly scheduled meeting in April 2006.

If given a "proposed withdrawal", the sponsoring institution can rebut the citations and document compliance with the IRC's requirements before entering into a formal appeal process. It is important to note that Drew University is the "sponsoring institution" for the residency programs. Based on this rebuttal, the IRC will decide to either confirm its action to withdraw accreditation or modify its position. The IRC would most likely make this decision at their October 2006 meeting.

ACGME Appeal Process

If the IRC goes forward to withdraw accreditation, it will send a letter of notification confirming the withdrawal of accreditation. Drew University would then have 30 days to submit a written request for a hearing before an appeals panel of the IRC. Failure to provide written notice within 30 days causes the accreditation action to be deemed final and not subject to further appeal.

The appeal process is not intended to serve as a new or independent review of the institution. Instead, it is intended to serve as a review of the appropriateness of already communicated adverse action. Thus, the file would be considered "frozen" at that time with respect to the addition of information not previously presented to the IRC. A decision by the appeals panel would be communicated to Drew University within 15 days and would be considered final.

If a withdrawal of accreditation is upheld, Drew University's programs would be allowed to complete the current academic year and one additional academic year. During that time, no new residents can be appointed to the programs.

Issues in the Event of Withdrawal of Accreditation

If the event of loss of accreditation of all training programs at KDMC, there are many issues that would need to be addressed. The most complicated is ensuring appropriate clinical coverage of services without residents.

Action steps, key decision points and timelines will be developed in the Department's final report to address this contingency and will include plans for the:

- Development of a physician staffing model for non-teaching services
- Development of the clinical services offered under a non-teaching model
- Identification of private physician groups and contract negotiations
- Transition of residents
- Assessment of interest by other medical schools and private training programs in partnerships with the hospital.

<u>Contracting Out Options</u>

The Department continues pursue discussions with interested parties regarding taking over the management and operations at KDMC. One interested party is working with the Department to analyze budget, workload, and funding based on the newly approved Statewide MediCal Hospital Financing Redesign plan. With the current pace of discussions, the Department believes a contracting framework could be developed by the end of the year.

The Department will provide a more detailed plan to address the above to your Board in two weeks. In the meantime, if you have any questions, please call me.

TLG:jw

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