

INDIGENT CARE AFFILIATION AGREEMENT

This Indigent Care Affiliation Agreement (the "Agreement") is entered into as of March __, 2018 ("Effective Date"), by and between Burnet County, a unit of local government within the State of Texas ("the Governmental Entity") and Baylor Scott & White Health on behalf of the Affiliated Hospital listed on Exhibit 1. The hospital listed in Exhibit 1 is organized and licensed under the laws of the State of Texas and its principal offices are provided. Any reference to an Affiliated Hospital in this agreement refers to the hospital listed in Exhibit 1.

RECITALS

WHEREAS, the Affiliated Hospital and the Governmental Entity collectively provide substantial uncompensated care to indigent persons annually;

WHEREAS, the State's under-funding of, and reductions in eligibility for, Medicaid increases the volumes of indigent patients who rely on hospital emergency room services as the source of primary healthcare and shifts the burden for indigent care to the Affiliated Hospital, the Governmental Entity, and local community;

WHEREAS, the Governmental Entity and the Affiliated Hospital recognize that the State will continue to under-fund the Texas Medicaid program and that the indigent numbers in their community will continue to grow;

WHEREAS, the Governmental Entity and the Affiliated Hospital desire to ensure that the indigent have access to and receive health care services;

WHEREAS, the Governmental Entity and the Affiliated Hospital recognize that it is in their best interest to increase funding for the Medicaid population and to access federal funding for the indigent to which the Affiliated Hospital will be entitled under the State's Medicaid program; and

WHEREAS, the Governmental Entity and the Affiliated Hospital recognize that they need to cooperate to ensure their ability to deliver cost efficient healthcare services to indigent patients in their community;

NOW, THEREFORE, in consideration of the promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and agreed, the parties agree as follows:

1.0 INDIGENT CARE COLLABORATION

- 1.1 **Improving Access to Healthcare for Indigent.** The Governmental Entity and the Affiliated Hospital will assess the opportunities to improve access to healthcare for indigent persons residing in the community through

participation in the Medicaid program including the Medicaid payments authorized by the Texas Healthcare Transformation and Quality Improvement Program Section 1115 Waiver (the "Section 1115 Waiver").

2.0 REPRESENTATIONS AND WARRANTIES

2.1 Affiliated Hospital Representations and Warranties. The Affiliated Hospital represents and warrants that:

- a. It is a Texas corporation or partnership or other entity qualified to do business in Texas, duly established and created pursuant to applicable law with all requisite power and authority to enter into this Agreement in all respects;
- b. There is no agreement to condition any amounts transferred by the Governmental Entity nor the amount of Medicaid payments received on the amount of indigent care the Affiliated Hospital has provided or will provide;
- c. There is no agreement to condition the amount of the Affiliated Hospital's indigent care obligation on the amount transferred by the Governmental Entity nor the amount of any Medicaid payment the Affiliated Hospital might receive;
- d. No escrow, trust, or other funding mechanism exists, the amount of which is conditioned or contingent on the amount of indigent care services provided or to be provided by the Affiliated Hospital; and that any escrow, trust or other funding mechanism utilized in connection with an anticipated intergovernmental transfer ("IGT") from the Governmental Entity has been disclosed to HHSC and is not used to effect a quid pro quo for the provision of indigent care services by or on behalf of the Affiliated Hospital;
- e. The Affiliated Hospital will not return or refund any Medicaid payments received to the Governmental Entity;
- f. No part of any Medicaid payment received under the Section 1115 Waiver program will be used to pay a contingent fee, consulting fee, or legal fee associated with the Affiliated Hospital's receipt of payments under the Section 1115 Waiver program.
- g. The execution, delivery, and performance by the Affiliated Hospital of this Agreement are within the Affiliated Hospital's powers, are not in contravention of any other instruments governing the Affiliated Hospital and have been duly authorized and approved by the Affiliated Hospital as and to the extent required by applicable law;

- h. Neither the Affiliated Hospital, nor any of its representatives are (i) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. Section 1320a-7b(f) (the "federal health care programs"); (ii) convicted of a criminal offense related to the provision of health care items or services but not yet excluded, debarred, or otherwise declared ineligible to participate in the federal health care programs; or (iii) under investigation or otherwise aware of any circumstance which may result in the exclusion of the Affiliated Hospital or any of its representatives from participating in federal health care programs; and
- i. This Agreement has been duly and validly executed and delivered by the Affiliated Hospital.

2.2 Governmental Entity Representations and Warranties. The Governmental Entity represents and warrants that:

- a. It is a unit of local government within the State of Texas, duly established and created with all requisite power and authority to enter into this Agreement in all respects;
- b. There is no agreement to condition the amount transferred by the Governmental Entity nor the amount of Medicaid supplemental payments on the amount of indigent care the Affiliated Hospital have provided or will provide;
- c. There is no agreement to condition the amount of the Affiliated Hospital's indigent care obligation on the amount transferred by the Governmental Entity nor the amount of any Medicaid supplemental payment the Affiliated Hospital might receive;
- d. No escrow, trust, or other funding mechanism exists, the amount of which is conditioned or contingent on the amount of indigent care services provided or to be provided by the Affiliated Hospital; and that any escrow, trust or other funding mechanism utilized in connection with an anticipated IGT from the Governmental Entity has been disclosed to HHSC and is not used to effect a quid pro quo for the provision of indigent care services by or on behalf of the Affiliated Hospital;
- e. The Governmental Entity has not received and will not receive refunds of payments the Governmental Entity made or makes to the Affiliated Hospital for any purpose in consideration for an IGT by the Governmental Entity to fund Medicaid supplemental payments;

- f. The execution, delivery, and performance by the Governmental Entity of this Agreement are within the Governmental Entity's powers, are not in contravention of any other instruments governing the Governmental Entity and have been duly authorized and approved by the Board of Directors of the Governmental Entity as and to the extent required by applicable law;
- g. This Agreement has been duly and validly executed by the Governmental Entity;
- h. The Governmental Entity has not received and has no agreement to receive any portion of any Medicaid payments made to Affiliated Hospital;
- i. The Governmental Entity has not entered into a contingent fee arrangement related to its participation in the Section 1115 Waiver program;
- j. The Governmental Entity is authorized to participate in the Section 1115 Waiver program pursuant to a vote of its governing body in a public meeting preceded by public notice published in accordance with its usual and customary practices or the Texas Open Meetings Act, as applicable; and
- k. Notwithstanding anything in this Agreement to the contrary, any decision by the Governmental Entity to provide funding for the Medicaid program is at the sole discretion of the Governmental Entity.

3.0 OBLIGATIONS OF THE AFFILIATED HOSPITAL

- 3.1 **Agreement to Collaborate with the Governmental Entity.** The Affiliated Hospital agrees to work cooperatively with the Governmental Entity to improve access to health care for indigent persons.
- 3.2 **Documentation.** The Affiliated Hospital agrees to provide the Governmental Entity documentation that demonstrates the amount and types of health care (including indigent health care and Medicaid services historically provided in its community) as requested by the Governmental Entity, but no more frequently than quarterly.
- 3.3 **Compliance with State and Federal Law.** The Affiliated Hospital agrees to retain qualified professionals to ensure health care is provided in compliance with state and federal charity care laws, anti-trust laws, and any other applicable laws, and the Medicare and Medicaid programs.
- 3.4 **Indigent Care Program Participation.** At all times during the term of this Agreement, the Affiliated Hospital shall use their best efforts to maintain its qualifications for participation in the Medicaid and Medicare programs.

3.5 **Compliance with HIPAA.** To the extent applicable to this Agreement, the Affiliated Hospital agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Section 1320d, *et seq.* ("HIPAA"), and any current and future regulations promulgated thereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162 (the "Federal Electronic Transaction Regulations"), all as amended from time to time, and all collectively referred to herein as "HIPAA Requirements." The Affiliated Hospital agrees not to use or further disclose any Protected Health Information (as defined in the Federal Privacy Regulations) or EPHI (as defined in the Federal Security Regulations), other than as permitted by the HIPAA Requirements and the terms of the Agreement. In addition, the Affiliated Hospital agrees to comply with any state laws and regulations that govern or pertain to the confidentiality, privacy, security of, and electronic transactions pertaining to, health care information.

As and to the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, the Affiliated Hospital shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after rendering of such services. The Affiliated Hospital will also indemnify and hold the Governmental Entity harmless if any amount of reimbursement is denied or disallowed because of the Affiliated Hospital's failure to comply with the obligations set forth in this section. Such indemnity shall include, but not be limited to, the amount of reimbursement denied, plus any interest, penalties and legal costs. If the Affiliated Hospital carries out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization, the Affiliated Hospital agrees to include this requirement in any such subcontract. This section is included pursuant to, and is governed by the requirements of, 42. U.S.C. § 1395x(v)(1) and the regulations thereto.

4.0. OBLIGATIONS OF THE GOVERNMENTAL ENTITY

4.1 **Agreement to Cooperate with the Affiliated Hospital.** The Governmental Entity agrees to work cooperatively with the Affiliated Hospital to improve access to health care for indigent persons.

4.2 **No Condition on Medicaid Funding.** The Governmental Entity agrees that it will not condition the amount to which it funds the non-federal share of

Medicaid supplemental payments on a specified or required minimum amount of prospective indigent care.

- 4.3 **Retrospective Evaluation of Services.** The Governmental Entity may retrospectively evaluate the amount and impact of the Affiliated Hospital's indigent care delivery and can rely on such historical information in determining whether and to what degree it will provide an IGT in the future.
- 4.4 **Documents Publicly Available.** The Governmental Entity agrees to make publicly available any documentation utilized in connection with intergovernmental transfers of funds and any documentation executed by the Governmental Entity related to its participation in the Section 1115 Waiver, including this Agreement.
- 4.5 **Use of Public Funds.** To the extent the Governmental Entity decides to provide funding for Medicaid supplemental payments, the Governmental Entity agrees to use public funds for such funding.
- 4.6 **Compliance with HIPAA.** The Governmental Entity agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Sections 1320d, *et seq.* ("HIPAA"), and any current and future regulations promulgated thereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162 (the "Federal Electronic Transaction Regulations"), all as amended from time to time, and all collectively referred to herein as "HIPAA Requirements." The Governmental Entity agrees not to use or further disclose any Protected Health Information (as defined in the Federal Privacy Regulations) or EPHI (as defined in the Federal Security Regulations), other than as permitted by the HIPAA Requirements and the terms of the Agreement. In addition, the Governmental Entity agrees to comply with any state laws and regulations that govern or pertain to the confidentiality, privacy, security of, and electronic transactions pertaining to, health care information.

As and to the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, the Governmental Entity shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after rendering of such services. The Governmental Entity will also indemnify and hold the Affiliated Hospital harmless if any amount of reimbursement is denied or disallowed because of the Governmental Entity's failure to comply with the obligations set forth in this section. Such indemnity shall include, but not be limited to, the amount of

reimbursement denied, plus any interest, penalties and legal costs. If the Governmental Entity carries out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization, the Affiliated Hospital agrees to include this requirement in any such subcontract. This section is included pursuant to, and is governed by the requirements of, 42. U.S.C. § 1395x(v)(1) and the regulations thereto.

5.0 GENERAL PROVISIONS

5.1 Term and Termination. The term of this Agreement shall be one year from Effective Date and shall automatically continue thereafter for additional terms of one year unless the parties agree otherwise; provided, however, that this Agreement shall terminate immediately upon written notice by either the Governmental Entity or the Affiliated Hospital to the other party.

5.2 Notices. All notices required or permitted hereunder shall be in writing and shall be sufficiently given and deemed to have been received upon personal delivery, by overnight carrier, by email, or by United States mail, postage prepaid, registered or certified mail, addressed to the parties as follows:

Governmental Entity: [Burnet County
c/o: Burnet County Judge
220 S. Pierce St.
Burnet, Texas 78611]

Affiliated Hospital: Baylor Scott & White Health
Attn: William Galinsky
2401 S. 31st Street MS-AR-M200
Temple, Texas 76508

With a Copy to: Carlos Zaffirini Jr.
Adelanto HealthCare Ventures, L.L.C.
401 W. 15th Street, Suite 840
Austin, TX 78701

and:

Charles Luband
Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089

5.3 Relationship Between the Parties. The relationship between the Governmental Entity and the Affiliated Hospital is solely a contractual relationship between independent contractors. No party hereto is an agent or employee of any other party. Nothing in this Agreement shall prevent any affiliation or contracting by any party with any third party, with the exception that no party may contract or affiliate with other party to gain entitlement to Medicaid supplemental payments pursuant to this Agreement.

5.4 Venue and Governing Law. Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Smith County, Texas, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules. The Affiliated Hospital understands that the Governmental Entity is a political subdivision of the State of Texas and governed by certain statutes applicable thereto.

5.5 Assignment. No party may assign any right, obligation, or responsibility under this Agreement except to a successor in interest.

5.6 Third Party Beneficiaries. The parties to this Agreement do not intend to establish any third party beneficiary relationship by virtue of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date(s) set forth below.

COUNTY OF BURNET, TEXAS:

By: J. Oakley

Printed Name: James Oakley

Title: County Judge

Date: 3/23/18

**BAYLOR SCOTT & WHITE HEALTH, on behalf
of the Affiliated Hospital listed in Exhibit 1 (attached
Hereto and made a part of this Agreement):**

By: W Galinsky

Printed Name: William Galinsky

Title: Vice President

Date: 3/22/18

Exhibit 1

Legal Name & DBA	Address	City	State	Zip
Scott & White Hospital - Marble Falls d/b/a Baylor Scott & White Medical Center – Marble Falls	810 W. Hwy 71	Marble Falls	Texas	78654



HEALTH AND HUMAN SERVICES COMMISSION

TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM
1115 DEMONSTRATION WAIVER PROGRAM

**CERTIFICATION OF GOVERNMENTAL ENTITY PARTICIPATION
FOR HOSPITAL AFFILIATES
Version 2012-1 (09/05/2012)**

DOCUMENT HISTORY LOG

STATUS ¹	DOCUMENT REVISION ²	EFFECTIVE DATE	DESCRIPTION ³
Baseline	n/a		Initial version of the Certification of Governmental Entity Participation
Revision	1.1	09/05/2012	Added cover page.
Revision	1.2	09/05/2012	Added Document History Log.
Revision	1.3	09/05/2012	Various formatting changes.
Revision	1.4	09/05/2012	Added version number (Version 2012-1) and date of issuance to cover page and page footer.
Revision	1.5	09/05/2012	Deleted "Texas" from "Health and Human Services Commission" to reflect agency's statutory name.
Revision	1.6	09/05/2012	Revised paragraph 4.g. to replace "and" at the end of subparagraph ii following the semicolon with "or."
¹ "Baseline" indicates initial document issuances, "Revision" indicates changes to the Baseline version, and "Cancellation" indicates withdrawn versions. ² Numbering conventions: Revisions are numbered according to the version of the document and the sequential revision—e.g., "1.2" refers to the first version of the document and the second revision. ³ Brief description of the changes to the document made in the revision.			



HEALTH AND HUMAN SERVICES COMMISSION

TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM 1115 DEMONSTRATION WAIVER PROGRAM

CERTIFICATION OF GOVERNMENTAL ENTITY PARTICIPATION FOR HOSPITAL AFFILIATES

On behalf of Burnet County, a local government
organized under the laws of the State of Texas (hereinafter referred to as "the
Governmental Entity"), I, James Oakley, affirm and certify the
following:

1. Legal Authorization.

- a. The Governmental Entity is legally authorized to levy and collect ad valorem taxes, generate public revenue, or receive and expend appropriated public funds ("Public Funds");
- b. The Governmental Entity is legally authorized to enter into and has entered into Affiliation Agreements with one or more private hospitals ("the Affiliated Hospitals") for, among other purposes, providing indigent care in the community served by the Governmental Entity.

2. Public Adoption and Access.

- a. The governing body of the Governmental Entity adopted the conditions described in this certification by recorded vote taken in a public meeting held in compliance with the Texas Open Meetings Act, Chapter 551, Government Code;
- b. Copies of all Affiliation Agreements will be made available as provided under the Texas Public Information Act, Chapter 552, Government Code, and will be provided to HHSC on request.

3. Funding of Intergovernmental Transfers and Supplemental Payments.

- a. The Governmental Entity has or has agreed to transfer Public Funds to the Health and Human Services Commission (“HHSC”) via intergovernmental transfer (“IGT”) for use as the non-federal share of supplemental waiver payments (the “Supplemental Payments”) to the Affiliated Hospitals in accordance with 1 Tex. Admin. Code §355.8201, Waiver Payments to Hospitals (the “Waiver Program”);
- b. All transfers of Public Funds by the Governmental Entity to HHSC to support the Supplemental Payments to the Affiliated Hospitals under the Waiver Program comply with:
 - i. The applicable regulations that govern provider-related donations codified at section 1903(w) of the Social Security Act (42 U.S.C. §1396b(w)), and Title 42, Code of Federal Regulations, Part 433, subpart B, sections 433.52 and 433.54;
 - ii. HHSC administrative rules codified at 1 Tex. Admin Code §355.8201, Waiver Payments to Hospitals.

4. Assurances and Representations.

- a. The Governmental Entity does not and will not at any time receive any part of the supplemental payments that are made by HHSC to the Affiliated Hospitals under the Waiver Program;
- b. The Governmental Entity has not entered into a contingent fee arrangement related to the Governmental Entity’s participation in the Waiver Program;
- c. The Governmental Entity has not entered and will not enter into any agreement to condition either the amount of the Public Funds transferred by the Governmental Entity or the amount of Supplemental Payments an Affiliated Hospital receives on the amount of indigent care the Affiliated Hospital has provided or will provide;
- d. The Governmental Entity has not entered and will not enter into any agreement to condition the amount of any Affiliated Hospital’s indigent care obligation on either the amount of Public Funds transferred by the Governmental Entity to HHSC or the amount of Supplemental Payment an Affiliated Hospital may be eligible to receive;
- e. With regard to any escrow, trust or other financial mechanism (an “Account”) utilized in connection with an indigent care Affiliation Agreement or an IGT issued for a payment period that occurs after the effective date of this Certification, the following representations are true and correct:

- i. The amount of any Account is not conditioned or contingent on the amount of indigent care services that an Affiliated Hospital provided or will provide;
 - ii. The Governmental Entity has disclosed the existence of any Account to HHSC; and
 - iii. Any such Account will not be used to effect a quid pro quo for the provision of indigent care services by or on behalf of the Affiliated Hospitals;
- f. The Governmental Entity has not received and will not receive refunds of payments the Governmental Entity made or makes to an Affiliated Hospital for any purpose in consideration for an IGT of Public Funds by the Governmental Entity to HHSC to support the Supplemental Payments;
- g. The Governmental Entity has not received and will not receive any cash or in-kind transfers from an Affiliated Hospital or any other entity acting on behalf of an Affiliated Hospital or group of Affiliated Hospitals other than transfers and transactions that:
 - i. Following the date this Certification was executed, are unrelated to the administration of the Waiver Program or the delivery of indigent care services under an Affiliation Agreement;
 - ii. Constitute fair market value for goods or services rendered or provided by the Governmental Entity to an Affiliated Hospital; or
 - iii. Represent independent, bona fide transactions negotiated at arms-length and in the ordinary course of business between the Affiliated Hospital and the Governmental Entity;
- h. The Governmental Entity has not:
 - i. Following the date this Certification was executed, assigned or agreed to assign a contractual or statutory obligation of the Governmental Entity to an Affiliated Hospital or any other entity acting on behalf of an Affiliated Hospital or group of Affiliated Hospitals; or
 - ii. Authorized or consented to the assumption of a statutory or contractual obligation of the Governmental Entity by an Affiliated Hospital or any other entity acting on behalf of an Affiliated Hospital or group of Affiliated Hospitals.

5. *Evaluation.*

- a. Consistent with its constitutional, statutory, and fiduciary obligations, the Governmental Entity may evaluate a private hospital's historical experience in providing indigent care in the community or performance under an Affiliation Agreement including the impact and amount of indigent care provided by the hospital, for the following purposes:
 - i. To determine whether the Governmental Entity will enter into an Affiliation Agreement with a private hospital;
 - ii. To determine whether and to what degree the Governmental Entity will supply an IGT, provided such decision does not include consideration of matters prohibited under paragraph 4 of this Certification;
 - iii. To determine whether an Affiliated Hospital's participation benefited the community and whether its continued participation in the indigent care program is likely to continue to benefit the community; or
 - iv. To provide accountability to local taxpayers;
- b. The Governmental Entity's evaluation under this paragraph 5 may:
 - i. Be documented in a manner sufficient to confirm achievement of the Governmental Entity's mission and provide an appropriate and constitutional basis on which to transfer the Public Funds to HHSC; and
 - ii. Not include consideration of matters prohibited under paragraph 4 of this Certification ;

On behalf of the Governmental Entity, I hereby certify that I have read and understood the above statements; that the statements are true, correct, and complete; and that I am authorized to bind the Governmental Entity and to certify to the above.

J. Oakley
Signature

3/26/2018
Date

James Oakley, County Judge
Name and Title

Official Seal
(If applicable)