

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Officer

BOARD AGENDA # B-13

Urgent Routine

AGENDA DATE March 24, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of a Loan Secured by the Tobacco Securitization Fund not to exceed \$11,140,050 for the Payment to Doctors Medical Center of the County's Share of Funds Recently Recouped by the Centers for Medicare and Medicaid Services (CMS) Pursuant to the Amended and Restated Affiliation Agreement for Reimbursement of Family Practice Residency Costs from 2001 to 2008, and Including the Estimated County's Cost Through June 30, 2010 and Continuation of Master Planning Efforts for Graduate Medical Education Programs in Stanislaus County-Chief Executive Office

STAFF RECOMMENDATIONS:

1. Approve the issuance of a secured note from the Tobacco Securitization Fund in an amount not to exceed \$11,140,050 for the payment of the County's share of funds recently recouped by the Centers for Medicare and Medicaid Services (CMS) for reimbursement of Family Practice Residency Costs from 2001 to June 30, 2008 to Doctors Medical Center and the County's share of Residency program costs for the 2008-2009 and 2009-2010 fiscal years and authorize the Chief Executive Officer to finalize the amount of the note prior to issuance.
2. Authorize the Treasurer-Tax Collector and Chairman of the Board of Supervisors to sign the loan agreement.

(Continued on Page 2)

FISCAL IMPACT:

The Health Services Agency's Family Medicine Residency Program includes inpatient training at Doctors Medical Center (DMC) and outpatient training through the Agency's ambulatory clinics. Last fiscal year the direct program costs were approximately \$4.2 million.

The program is funded primarily by federal graduate medical education (GME) funding and offsets approximately \$2.7 million of the total direct costs leaving approximately \$1.5 million which is shared equally by the County and DMC pursuant to the October 10, 2000 Amended and Restated Affiliation Agreement.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2009-178

On motion of Supervisor Grover and approved by the following vote, Seconded by Supervisor O'Brien

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION: Corrected Staff Recommendation No. 1 to read as follows: "approve the issuance of a note 'secured' from the Tobacco Securitization Fund in an amount not to exceed \$11,140,050 for the payment of the County's share of funds recently recouped by the Centers for Medicare and Medicaid Services (CMS) for reimbursement of Family Practice Residency Costs from 2001 to 06/30/2008 to Doctors Medical Center (DMC) and the County's share of Residency program costs for the 2008-2009 and 2009-2010 fiscal years and authorize the CEO to finalize the amount of the note prior to issuance"; approved Staff Recommendations Nos. 1-5 as corrected

ATTEST: Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of a Loan Secured by the Tobacco Securitization Fund not to exceed \$11,140,050 and the Payment to Doctors Medical Center of \$9,637,050 Pursuant to the Amended and Restated Affiliation Agreement of October 10, 2000, for the County's Share of Funds Recently Recouped by the Centers for Medicare and Medicaid Services (CMS) for Reimbursement for Family Practice Medicare Residency Costs from 2001 to 2008 and Related Actions Including Continuation of Master Planning Efforts for Graduate Medical Education Programs in Stanislaus County

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STAFF RECOMMENDATIONS: (Continued)

3. Authorize the payment to Doctors Medical Center (DMC) in the amount not to exceed \$9,637,050 million for Graduate Medical Education for the Family Medicine Residency Program for Fiscal Years 2000-2001 through 2007-2008.
4. Support all efforts to appeal the Federal recoupment of Graduate Medical Education funding from Doctors Medical Center for the Stanislaus Family Medicine Residency program.
5. Direct the Chief Executive Officer and Health Services Agency Managing Director to continue master planning efforts for the Family Medicine Residency Program and other Graduate Medical Education programs as may benefit the community.

FISCAL IMPACT (Continued):

Recent federal determinations by the federal Centers for Medicare and Medicaid Services have resulted in the recoupment of all GME funds distributed to the program from 2001 through 2008 (June 30, 2008) and future payments for the program have been halted. In accordance with the Amended and Restated Affiliation Agreement approved by the Board of Supervisors on October 10, 2000, between DMC and the County for the management and operation of the Stanislaus Family Medicine Residency Program, the County has an obligation to pay DMC an amount equal to 50% of the shortfall of reimbursement for the program to the extent not already paid to DMC.

A total of \$11,140,050 is needed to fund the County's 50% share of the Federal Recoupment for the period of Fiscal Year 2000-2001 through Fiscal Year 2007-2008 (\$9,637,050) and the costs not covered for the 2008-2009 and 2009-2010 fiscal years (\$1,503,000) for which no GME funds are forthcoming. The annual net cost to the County is expected to increase by approximately \$764,000 for the upcoming 2009-2010 fiscal year, if federal funding is not reinstated (this amount is included in the recommended note). In order to accommodate the estimated total payment of \$9,637,050 million to DMC for the recoupment of federal funds as well as the projected increase in costs of the Residency Program for fiscal years 2008-2009 through 2009-2010, it is recommended that a loan between the Health Services Agency and the Treasury be approved and secured by interest earnings of the Tobacco Securitization Fund.

This note will carry the treasury interest rate in effect for all other County funds. The annual payments will be funded using 80 percent of the interest earnings of the Tobacco Securitization Fund. Payments on the note are estimated to begin in 2018, after the payment in full of the Series 2005 "A" Stanislaus County note, established for

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the repayment of the Health Services Agency's past operating deficits. The note is anticipated to be paid off in 2026.

DISCUSSION:

Stanislaus County currently operates and is the sponsor of the Stanislaus Family Medicine Residency Program, which provides outpatient services through the Health Services Agency's ambulatory clinics and inpatient services through an agreement with Doctors Medical Center (DMC), a Tenet Healthcare Corporation hospital located in Modesto. The Residency Program is funded largely with federal Graduate Medical Education (GME) funding from the Centers for Medicare and Medicaid Services (CMS). Recent actions by CMS have determined the Residency Program to be ineligible for federal funding retroactive to 2001. The County's agreement with DMC provides for cost-sharing in the event GME funds are insufficient to cover program costs. The actions recommended will provide for the county to pay its share of this cost and to continue to work closely with DMC to appeal the CMS decision, as well as continue with a master planning effort to preserve the Family Medicine Residency Program and grow physician resident training to the benefit of the community.

Background

Stanislaus County has provided health services to its underserved communities since 1893 when the first Stanislaus County hospital was built. The focus of the County government health system was compassionate, quality care to those in need.

The County's first physician residency training program was formed in 1935 and was affiliated with Stanford University. In 1975, the current Family Medicine Residency Program was established in affiliation with the University of California, Davis School of Medicine. The Residency Program is a three year training program in the primary care area of Family Medicine. Completion of the Residency Program enables a licensed physician to take the Family Medicine Board exam to become "Board Certified." The program, now called the Stanislaus Family Medicine Residency Program, is a fully accredited program with the Accreditation Council for Graduate Medical Education (ACGME) and is noted for its gifted, diverse and culturally sensitive physicians. A critical component of the County's 1975 decision to participate in a family medicine residency program was to meet the ever-increasing local demand for obstetrical care for Medicaid (Medi-Cal) patients. The Residency Program also has focused on providing well-rounded training for residents to facilitate their operating independently in medically underserved areas, which includes delivering babies. The Residency Program, which has graduated 232 new primary care physicians since 1975, currently trains 27 residents a year.

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From 1975 to 1997, the County operated the Residency Program through the County-owned Stanislaus Medical Center and seven healthcare sites. In the 1990s, the Board of Supervisors was faced with the multiple challenges including the defection of patients with commercial coverage to expanded private hospitals in the area, with the resulting payer mix affording little opportunity to break even, and rising costs of technology, labor and indigent care. However, California's dramatically changing seismic requirements for facilities presented perhaps the greatest financial challenge to the County, prompting the Board of Supervisors in 1995 to conclude it would be too costly to renovate or rebuild the 1940s vintage medical center to satisfy State-mandated earthquake safety measures.

In light of these substantial challenges, the County took measures to close the County hospital and in November 1997, entered into an agreement with Doctors Medical Center (DMC) whereby DMC became the principal teaching hospital for the Residency Program and served county patients. The Residency Program agreement includes funding commitments, as follows:

II.A. Grant Commitment. HSA agrees that it will contribute to DMC by way of grant, an amount equal to 50% of the Agreed Formula Amount as defined below (such grant amount, the "Grant") for each Fiscal Year (or part thereof) during the term of this Agreement, commencing with the Fiscal Year ending May 31, 1998....

For purposes of this provision, "Agreed Formula Amount" for each Fiscal Year, shall mean the amount of Medicare reimbursement for the Family Practice Residency Program paid or payable to DMC upon finalization of the audited DMC cost report for such Fiscal Year, less the cost of the Family Practice Residency Program incurred by DMC pursuant to Section III.C. of this Agreement for such Fiscal Year; provided that the Agreed Formula Amount for each year shall not exceed the aggregate of the overheads set forth in Attachment B.

II.B. Purpose of Grants. The parties acknowledge that the Grants will be used to pay for the general overheads of DMC as outlined in Attachment B hereto, and are not intended as reimbursement of resident salaries and fringe benefits, supervisory physician costs or other direct or indirect costs of the Family Practice Residency Program that are incurred by DMC."

Additionally, the Agreement included language regarding the potential for increased or decreased funding:

II.E. Cooperation in Seeking Additional Funding. HSA and DMC shall use all reasonable efforts to cooperate in applying for additional Medicare funding or in

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appealing any cost reimbursement determination related to the Family Practice Residency Program. The cost of such application, appeal or other action shall be borne equally between the parties. Any recovery shall be shared equally between HSA and DMC after the payment of costs related to the appeal...."

Funding Issue

Prior to closure of Stanislaus Medical Center, the County received federal GME funding to support the Residency Program. Federal GME funding continued, and was "re-based" to a lower rate by the Federal Government after the closure of the County Hospital when the inpatient training function was now being provided by DMC. However, during this time period, Congress enacted the Balanced Budget Act of 1997, which included Full-time Equivalency (FTE) caps for residency training programs, but did not include clear guidance on how to determine if a program was "new" for the purposes of claiming GME funding. The fiscal intermediary, a private insurance company used by CMS to perform audit and payment functions under Medicare, did determine the program at DMC to be "new," thereby generating a lower per resident rate of reimbursement. DMC has claimed the cost of providing graduate medical education for the Residency Program since the transfer occurred, and until recently received federal GME funds to cover the majority of the costs of the program, with DMC and the County sharing equally in overpayments or underpayments and DMC's direct overhead costs.

The County was notified by DMC of a potential financial exposure for the Family Practice Residency program, in that CMS had notified DMC of their intent to re-open the cost reports filed by DMC for the years 2001 through 2007, and to halt all future payments that support the Residency Program. Tenet Healthcare Corporation and Doctors Medical Center, along with the County, have pursued all potential administrative remedies to this situation, to no avail as of this date.

As of the end of January, 2009, DMC was notified by CMS that the recoupment process for federal GME funding for the years 2001 through 2007 had begun, through the receipt of Notices of Program Reimbursement for each of the years in question. Subsequently, DMC has repaid CMS a total of \$19,274,099. In keeping with the County's responsibility and obligation for funding shortfalls under the Amended and Restated Affiliation Agreement approved by the Board of Supervisors on October 10, 2000, between DMC and the County for the management and operation of the Stanislaus Family Medicine Residency Program, the County has an exposure for one-half or \$9,637,050.

In order to accommodate the payment of \$9,637,050 to DMC for the CMS recoupment of Graduate Medical Education funding for fiscal years 2000-2001 to 2007-2008 as well

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as the additional \$1,503,000 related to the County's increased exposure of the Residency Program expenses for fiscal years 2008-2009 and 2009-2010, it is recommended that a secured note (hereinafter referred to Series 2009 "A" and securitized using 80% of the interest earnings from the Tobacco Securitization Fund) be created between the Health Services Agency and the County's Treasury. According to the attached note, the County will make payments of interest and principal by making payments to the Investment Trust Fund held by the Stanislaus County Treasurer-Tax Collector. Payments will begin immediately after the payment in full of the Series 2005 "A" note that was established for repayment of the Health Services Agency's past operating deficits. While the Series 2005 "A" note was originally scheduled to pay off in 2020, due to increased interest earnings in the Tobacco Securitization Fund, pay off is now expected to occur in fiscal year 2018-2019. Pay off of the new Series 2009 "A" note recommended in this report is expected to occur in fiscal year 2026-2027 and result in an increase in interest expense of \$7,522,815.

Continuing Efforts to Sustain the Residency Program

It is critical that the County continue working with Doctors Medical Center in their pursuit of an appeal to this arbitrary decision of CMS and aggressively pursue with Federal Officials and Elected Officials future funding for Family Practice Residency program. The County, the local medical community and the community at large place great value on the Residency Program. The Residency Program keeps the local hospital emergency departments from becoming completely overburdened. The faculty and resident physicians are a crucial component of the safety net health care available to Stanislaus County residents. Access to health care services for indigent and low-income residents of the County can not be jeopardized as the resident physicians and faculty are critical to meeting the needs of the County's Medi-Cal and indigent patients to the community that is so underserved. The Residency Program helps to address the shortage of primary care physicians in this county and the entire Central Valley. In addition, initial discussions have occurred with the University of California, Merced regarding the potential new UC Merced Medical School. It is anticipated that the Family Medicine Residency Program could be a key training site for future graduates of the new, planned medical school.

Residency Master Planning Efforts

Over the past several years, the County and the Health Services Agency has developed and implemented numerous strategic initiatives in their pursuit of operating efficiencies, not the least of which is the designation as a Federally Qualified Health Center Look-Alike (FQHC-LA). Among the initiatives which had been identified but not fully developed was a review of the Residency Program, to include a possible expansion from the current family medicine program, or the potential to increase the number of

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residents in training. A variety of environmental factors have created an opportunity for the County to consider other organizational models for the continued nurturing and sustaining of the Family Medicine Residency Program and for addressing the physician shortage that exists currently and is projected to worsen over the next 15 years. The County embarked on a process of looking at the assets in the region, some of which are listed here:

- A well-respected Family Medicine Residency Program that graduates 9 residents per year and has demonstrated success in regional retention of those residents;
- Hospitals in the regions without current graduate medical education programs;
- Opening of new Kaiser Permanente Hospital in Modesto;
- The County's designation as an FQHC-LA; and
- Plans for a new UC Merced School of Medicine.

As part of the planning process, various residency program organizational models are possible. Organizational models can include:

- County sponsored programs with rotations at various hospitals and ambulatory sites;
- Individual hospital sponsored programs with rotations at other hospitals and ambulatory sites;
- University sponsored programs with rotations primarily at university based sites, if available; and/or
- Consortium sponsored programs with rotations at various hospitals and ambulatory sites.

The County has recently held a series of meetings, and plan future meetings with staff from Doctors Medical Center, Memorial Medical Center and Kaiser Permanente, who have expressed interest in and support for an expanded physician training program in the Central Valley. Additionally, meetings with UC Merced staff have occurred and support for an expanded residency program appears promising. It is anticipated that, in the near future, the County will call for a "summit" of the local medical community to provide information and garner community physician support in expanded physician training opportunities in the County. The Board of Supervisors' Health Executive Committee was briefed on and indicated support for the upcoming health summit.

Available from the Clerk are the recommended Note and repayment schedule as well as the request from Doctors Medical Center for funding reimbursement pursuant to the County and DMC Amended Affiliation Agreement dated October 10, 2000.

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POLICY ISSUE:

Approval of this item supports the Board of Supervisors priorities of *A healthy community, Effective partnerships* and *Efficient delivery of public services* through the continued delivery of critical health services to the indigent and underinsured population of the County by the Health Services Agency and Doctors Medical Center.

STAFFING IMPACT:

Approval of this item ensures continued quality education and training of 27 resident physicians per year in the Stanislaus Family Medicine Residency Program, supported by existing staff and faculty at the Health Services Agency and Doctors Medical Center.

DOCTORS

MEDICAL CENTER

March 13, 2009

Richard Robinson, CEO
Stanislaus County
1010 10th Street
Modesto, CA 95354

Dear Rick:

This letter serves as official notice that the Centers for Medicare and Medicaid Services (CMS) have determined that the Family Practice Residency Program operated under the Affiliation Agreement between Doctors Medical Center (DMC) and Stanislaus County Health Systems Agency (HSA) as ineligible for program reimbursement for the filed program years 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2008. In addition, 2009, and all future program years, are also determined to be ineligible for program reimbursement.

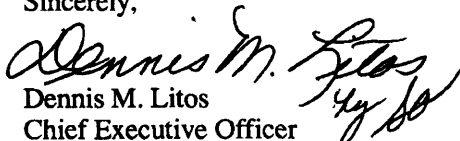
As a result of the CMS Program Determination of the Family Practice Residency Program, CMS has required DMC to repay \$19,274,099 relating to the program years 2001 to 2008. This has been repaid to CMS by DMC through certain payments withheld from the Hospital's Medicare interim payment check owed by CMS to DMC, and from a final payment made by DMC to CMS in February 2008. The detail relating to these payments is outlined in the materials attached.

According to the amended Affiliation Agreement dated October 9, 2000, Stanislaus County is liable for fifty percent of the CMS funds repaid to CMS on behalf of the Family Practice Residency Program. Stanislaus County, therefore, is officially notified of their obligation to pay DMC \$9,637,050 which represents the County's fifty percent obligation.

Provided with this notice is a binder which includes all relevant documentation relating to this matter. Any questions you may have relating to the documentation provided may be directed to Greg Berry, Chief Financial Officer at DMC. He may be reached at 576-3790.

Your immediate attention to this matter is appreciated. DMC remains committed to maintaining the Family Practice Residency Program with Stanislaus County Health Systems Agency either through our existing fifty percent joint funding Affiliation Agreement or through a new Community Graduate Medical Education Consortium which is currently being explored.

Sincerely,


Dennis M. Litos
Chief Executive Officer

Cc: Jeff Flocken
Jeff Koury
Craig Armin
Greg Berry
Mary Ann Lee

**UNITED STATES OF AMERICA
STATE OF CALIFORNIA
COUNTY OF STANISLAUS
SERIES 2009 "A"
STANISLAUS COUNTY NOTE**

\$11,140,050

The County of Stanislaus, duly organized and existing under and pursuant to the Constitution and laws of the State of California (the "County"), for the value received hereby promises to pay (but only out of the funds hereinafter mentioned) to the owner (the "Stanislaus County Treasurer – Tax Collector") the principal amount due under the terms of this Note. The principal amount of the Note is in the amount of \$11,140,050.

Pursuant to Government Code Section 53855, this Note is subject to call and redemption in whole or in part at any time prior to maturity without penalty or premium by the County upon County tendering to the owner hereof all or a portion of the principal amount due hereunder.

The County will make payments of the interest and principal due under this Note by making annual payments to the Investment Trust Fund held by the Stanislaus County Treasurer/Tax Collector immediately after the payment in full of the Series 2005 "A" Stanislaus County Note. Immediately upon a deposit being made to the Investment Trust Fund, the owner of this Note shall credit the amount of such deposit to the interest and principal amount due hereunder. See Estimated Amortization Schedule attached.

The Note shall be payable in full on the Maturity Date; provided, however, that the County, in its sole discretion and at its option, may renew this Note for fifteen consecutive one-year periods (each a "renewal Date"). Renewal shall occur automatically unless the Note is redeemed as permitted herein.

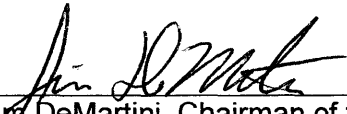
This Note represents the entirety of the County's Series 2009 "A" Note issue, and is issued under and pursuant to the laws of the State of California, including, but not limited to, the provisions of Sections 53850 *et seq.* of California Government Code and the Law, and pursuant to Resolution No. 2009-178 (the "Resolution") adopted by the Board of Supervisors of the County of Stanislaus on March 24, 2009, authorizing the execution of this Note. Reference is hereby made to said Resolution for a specific description of the security provided for the payment of the principal of and interest on this Note, and to all provisions of which the owner hereof by his acceptance of this Note hereby consents and agrees.

This Note is not a lien or charge of liability against the County or against the Board of Supervisors of the County, or against any property or funds of the County or said Board of Supervisors, except as provided in the Resolution, and neither the payment of the principal hereof nor any part hereof, nor of any interest hereon, constitutes a debt, liability or obligation of the County except as provided in the Resolution or applicable law.

The Board hereby covenants and warrants that it will pay promptly, when due, the principal of this Note and interest accruing herein, all in accordance with the terms hereof and the terms and provisions set forth in the Resolution.

It is hereby certified that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all indebtedness and obligations of the County, do not exceed any limit prescribed by the Resolution or the laws of the State of California.

IN WITNESS WHEREOF, the County of Stanislaus has caused this Note to be signed in its name by the Chairman of the Board of Supervisors of the County and countersigned by the Clerk to the Board, and has caused this Note to be dated as of March 24, 2009.

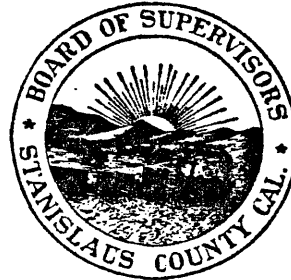


Jim DeMartini, Chairman of the Board of
Supervisors of the County of Stanislaus,
State of California

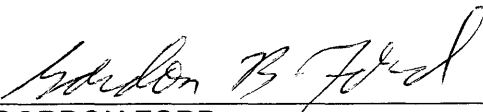
ATTEST:



Christine Ferraro Tallman
Clerk to the Board of Supervisors of
the County of Stanislaus, State of
California

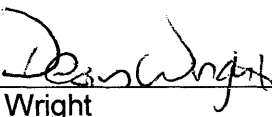


APPROVED AS TO CONTENT:



GORDON FORD
Treasurer-Tax Collector

APPROVED AS TO FORM:
JOHN P. DOERING
County Counsel

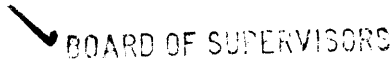
By 

Dean Wright
Deputy County Counsel

H.S.A. DEFICIT REPAYMENT SCHEDULE FOR RESIDENCY EXPOSURE
\$11,140,050 RESIDENCY EXPOSURE - Interest Costs - April 1, 2009
20-Mar-09

Fiscal Year Beginning	FY Beginning Balance	Transfer from County	Balance After Transfer	Fiscal Year Ending	Pool Earnings Rate	Pool Interest Charged	FY Ending Balance
				6/30/2003			
7/1/2003				6/30/2004	1.94%		
7/1/2004				6/30/2005	2.20%		
7/1/2005				6/30/2006	3.47%		
7/1/2006				6/30/2007	4.80%		
7/1/2007				6/30/2008	4.52%		
7/1/2008	-11,140,050.00		-11,140,050.00	6/30/2009	3.00%	-83,550.38	-11,223,600.38
7/1/2009	-11,223,600.38		-11,223,600.38	6/30/2010	4.00%	-448,944.02	-11,672,544.39
7/1/2010	-11,672,544.39		-11,672,544.39	6/30/2011	4.00%	-466,901.78	-12,139,446.17
7/1/2011	-12,139,446.17		-12,139,446.17	6/30/2012	4.00%	-485,577.85	-12,625,024.01
7/1/2012	-12,625,024.01		-12,625,024.01	6/30/2013	4.00%	-505,000.96	-13,130,024.97
7/1/2013	-13,130,024.97		-13,130,024.97	6/30/2014	4.00%	-525,201.00	-13,655,225.97
7/1/2014	-13,655,225.97		-13,655,225.97	6/30/2015	4.00%	-546,209.04	-14,201,435.01
7/1/2015	-14,201,435.01		-14,201,435.01	6/30/2016	4.00%	-568,057.40	-14,769,492.41
7/1/2016	-14,769,492.41		-14,769,492.41	6/30/2017	4.00%	-590,779.70	-15,360,272.11
7/1/2017	-15,360,272.11		-15,360,272.11	6/30/2018	4.00%	-614,410.88	-15,974,682.99
7/1/2018	-15,974,682.99	1,339,601.13	-14,635,081.86	6/30/2019	4.00%	-585,403.27	-15,220,485.14
7/1/2019	-15,220,485.14	2,189,731.74	-13,030,753.40	6/30/2020	4.00%	-521,230.14	-13,551,983.53
7/1/2020	-13,551,983.53	2,209,475.33	-11,342,508.21	6/30/2021	4.00%	-453,700.33	-11,796,208.54
7/1/2021	-11,796,208.54	2,229,396.60	-9,566,811.93	6/30/2022	4.00%	-382,672.48	-9,949,484.41
7/1/2022	-9,949,484.41	2,249,497.17	-7,699,987.24	6/30/2023	4.00%	-307,999.49	-8,007,986.73
7/1/2023	-8,007,986.73	2,269,778.65	-5,738,208.08	6/30/2024	4.00%	-229,528.32	-5,967,736.40
7/1/2024	-5,967,736.40	2,290,242.66	-3,677,493.75	6/30/2025	4.00%	-147,099.75	-3,824,593.50
7/2/2025	-3,824,593.50	2,310,890.84	-1,513,702.66	7/1/2025	4.00%	-60,548.11	-1,574,250.76
7/1/2026	-1,574,250.76	1,574,250.76	0.00	6/30/2026	4.00%	0.00	0.00

-7,522,815



Davis Wright Tremaine LLP 2009 MAR 23 1 A 9: 01

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March 16, 2009

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 020510

Re: Residency Program Consortium for Stanislaus County

Dear Senator Feinstein:

On behalf of Stanislaus County, this letter summarizes the existing criteria required for consideration under existing Medicare regulations for a proposed consortium of providers within the County to obtain approval from the Centers for Medicare & Medicaid Services (CMS) for "new" medical residency training programs that include family medicine. As discussed in this letter, it is respectfully submitted that CMS has proposed additional criteria for the family medicine program that are not set forth in CMS regulations or published guidelines.

BACKGROUND

The County of Stanislaus Health Services Agency is the Sponsoring Institution of an existing Family Medicine Residency Program that is centered at Doctors Medical Center (DMC) for inpatient training and the County's FQHC Look-Alikes for ambulatory care training. The Family Medicine Residency Program is the heart of the safety net indigent health care system in Stanislaus County, especially for children, pregnant women and other vulnerable populations.

The County, along with DMC, the FQHC Look-Alikes, Memorial Medical Center and Kaiser Foundation Hospitals are designing a new, nonprofit consortium (Consortium) that will become the Sponsoring Institution of residency programs in the community.

It is proposed that the participants in the Consortium will establish a nonprofit, tax-exempt entity that will sponsor residency training programs, in addition to promotion of other health education and research activities that will benefit the residents of Stanislaus Counties and the surrounding areas (many of which are rural communities with limited health care resources). The Consortium will seek "initial accreditation" from the Accreditation Council for Graduate Medical Education



(ACGME) and American Osteopathic Association (AOA) for the residency programs to be sponsored by the Consortium.

As discussed in the attached report on the Consortium, there will be substantial changes from the existing Family Medicine Residency Program, including:

- A new Sponsoring Institution
- An additional Program Director
- A reduction in allopathic family medicine residents
- The addition of osteopathic residents in family medicine
- A change in curriculum to incorporate two additional hospitals, one of which will be a major participating institution (both of which are nonprofit)
- The reduction of resident FTEs at DMC from 27 to approximately 9
- The addition of the FQHC Look-Alikes as a family medicine center for the residency programs
- The addition of new faculty members, including osteopathic physicians and community based physicians
- The addition of a new academic partner for osteopathic training components

CMS STANDARDS FOR RESIDENCY PROGRAMS

Representatives of the County have met on several occasions with CMS staff to discuss the establishment of the Consortium. These discussions have included the development of new residency programs for the community and the proposed changes to the Family Medicine Residency Program that are contemplated under Consortium sponsorship.

CMS staff have been receptive to the Consortium proposal, and, with one exception, provided initial positive feedback for the Consortium model and the residency programs in specialties other than the critical component of the family medicine training program (which is the foundation of the Consortium-sponsored residency programs and the community safety net). As to the proposed changes to the Family Medicine Residency Program, CMS has stated that, in addition to ACGME approval of a new family medicine residency program, the program must meet additional criteria proposed by CMS.

CMS is required by its regulations to abide by the determinations made by national accrediting organizations.¹ In Section 413.79(l), CMS defines a “new medical residency training program” as follows:

¹ See, e.g., 42 C.F.R. 413.75(b)(2) (defining “approved medical residency program” and “residents”).



For purposes of this section, a new medical residency training program means a medical residency that receives initial accreditation by the appropriate accrediting body² or begins training residents on or after January 1, 1995.

This definition is straightforward and establishes a sole criterion for “new” program status: a letter from the appropriate accrediting body granting a residency program initial accreditation suffices to satisfy the regulatory requirements, without more. The accreditation approval or training of residents (once such approval is secured) are the only requirements for “new” program status defined in the Medicare regulations.

As noted above, the Consortium has proposed to seek “new” program status for all of its residency programs, including the restructured family medicine program. If ACGME approves the Consortium’s family medicine program as a “new” program, the family medicine program must be considered as a “new” program under the Medicare regulations for GME and IME payments.

Notwithstanding the limited criterion in the Medicare regulations, representatives of CMS have implied that there is discretion on the part of the Medicare program to impose additional criteria for “new” program, none of which are set forth in the Medicare regulations. These include two options offered by CMS staff in order to obtain GME/IME funding:

- **Option One: New AOA Family Medicine Program**
 - Establish a new family medicine residency program accredited by AOA and terminate the existing ACGME accredited family medicine program.

The proposed Consortium intends to pursue AOA accreditation for a new family medicine residency program, but not as the sole option for providing family medicine residency training in the County.

- **Option Two: New ACGME Family Medicine Program in Addition to an AOA Family Medicine Program**
 - Obtain ACGME accreditation as a new family medicine residency program;
 - Require one-year hiatus between the existing program and the new program;³
 - Require all new residents;
 - Require all new faculty; and
 - Require a new program director.

² An “appropriate accrediting body” is defined in 42 CFR 415.150 as including ACGME and AOA.

³ The parameters of the one-year lapse have not been specified by CMS, but it could extend from the date that the last resident ends the existing program and the date that the first resident begins the new program.



Except for ACGME accreditation under Option Two, none of the criteria specified by CMS staff under Option Two for “new” program accreditation is required by Medicare program regulations:

- Each of the other criteria under Option Two, as well as Option One, lacks a regulatory basis.
- CMS has issued no written guidance on these factors it is employing to assess whether a program is “new.”
- CMS has not issued any proposed revisions to the governing regulations, although the expansion of the requirements to be recognized as a “new program” manifestly alter the regulatory requirements and clearly are a substantial change in policy requiring notice and comment under the Administrative Procedure Act.
- The imposition of the one-year hiatus requirement, as well as the need for any hiatus, would negatively impact on the new program’s ability to attract high caliber residents or program faculty; the requirement appears to be arbitrary, without any factual support or adopted as a regulation in accordance with the APA process.

As a result, if the Consortium obtains accreditation from ACGME as a “new” family medicine program, CMS must recognize the program for GME and IME payments.

We hope that this summary is useful and we appreciate your consideration of the issues related to the proposed residency program Consortium for Stanislaus County.

Very truly yours,

Davis Wright Tremaine LLP

M. Steven Lipton

Enclosure

cc: Members, Board of Supervisors
Rick Robinson
Jack Doering
Elizabeth Moeller

STANISLAUS COUNTY – RESIDENCY PROGRAM CONSORTIUM

Background and History

The County of Stanislaus, Health Services Agency has been the long time Sponsoring Institution for its well respected Family Medicine residency program. A variety of environmental factors have created an opportunity for the County to consider other organizational models for 1) the continued nurturing and sustaining of the Family Medicine residency program and 2) addressing the physician shortage that exists currently and is projected to worsen during the next fifteen years. The County embarked on a process of looking at the assets in the region, some of which are listed below:

- A well-respected Family Medicine residency program that graduates 9 residents per year and has demonstrated success in regional retention of those residents
- Hospitals in the region with a GME cap of zero
- Opening of Kaiser-Modesto
- Creation of County FQHC (look a like)
- Plans for UC Merced School of Medicine

Planners recognized that in order to establish resident FTE caps at Doctors Medical Center (DMC), Kaiser Modesto (Kaiser), and Memorial Medical Center (Memorial), “New Program” designation from ACGME and/or AOA was required for all programs. County officials spoke with CMS representatives and received some initial feedback regarding what CMS considered to constitute a new program.

Because of the CMS feedback, the County of Stanislaus began a process of listing every requirement that they could find for “New Program” designation. This includes notes from multiple discussions with CMS representatives, discussions with the ACGME, a memo from the AOA, and the “new program” definition provided in the Federal Register. Table 1 details those items and appears below. Included is a column that details how the planning to date has addressed the recommendation and/or requirement.

STANISLAUS COUNTY – RESIDENCY PROGRAM CONSORTIUM

Table 1

Recommendation	Source	How Achieved
"Receive initial accreditation by appropriate accrediting body"	42 CFR 413.79(l)	Will submit Program Information Form to ACGME for Review and Approval of New Program status
Change specialty accreditation to AOA	CMS	Family Medicine program to be dually accredited by ACGME and AOA
Pool cap between Tenet hospitals or surrounding MSAs	CMS	Not feasible
Place program in rural MSA	CMS	Not feasible
Top to bottom change	CMS	<ul style="list-style-type: none"> • New Sponsoring Institution • Additional Program Director • Reduction in allopathic residents • Addition of osteopathic residents • Change in curriculum to incorporate two additional hospitals, one of which will be a major participating institution. • Reduction of resident FTEs at DMC from 27 to approximately 9 • Addition of FQHC as family practice center • New faculty members, including osteopathic physicians and community based physicians • Addition of new academic partner due to osteopathic training components
New Sponsoring Institution	CMS	New non-profit consortium being formed to sponsor multiple residency programs, including Family Medicine
Significant changes in teaching, venues, major participating institution	ACGME	<ul style="list-style-type: none"> • New Sponsoring Institution • Additional Program Director • Reduction in allopathic residents • Addition of osteopathic residents • Change in curriculum to incorporate two additional hospitals • Addition of FQHC as family practice center • New faculty members, including osteopathic physicians and

STANISLAUS COUNTY – RESIDENCY PROGRAM CONSORTIUM

Recommendation	Source	How Achieved
		community based physicians
Characterization of old and new hospital	AOA	<ul style="list-style-type: none"> • Hospitals offer greater diversity in training • Residents will now be exposed to a richness of healthcare models, including the HMO setting, for profit setting, and not-for profit setting
Relationship of old and new hospitals	AOA	No prior relationships
Existence of communication between old and new hospitals	AOA	None
Were residents transferred to new program?	AOA	Residents will be given the opportunity to apply to the new program as well as informed of other open slots available at other residency programs within California.
New Program Director	CMS 3.4.09	There will now be two Program Directors – one allopathic and one osteopathic
New Faculty	CMS 3.4.09	Additional osteopathic faculty will be recruited as well as community based faculty at each of the two new participating hospitals
New Residents	CMS 3.4.09	<ul style="list-style-type: none"> • There will be a reduction in allopathic residents. • Existing residents will be given the option of applying for the new program or applying to open training slots in other programs in California

A New Model of Post Graduate Training in Stanislaus County

- Hospital CEOs now are meeting regularly with the County Health Services Agency, including FQHC Look-Alikes, and the FM Residency Program
- The planning group took Table 1 to heart and designed a model for post graduate education that would incorporate each applicable item in the table.
- Together, they have initiated the design of a new model of postgraduate training, which calls for the following:

STANISLAUS COUNTY – RESIDENCY PROGRAM CONSORTIUM

- Creation of a nonprofit consortium to be the Sponsoring Institution of the Family Medicine residency program and other training programs identified in the community.
- Sunset of current 9-9-9 family medicine residency program
- Application for two new family medicine programs.
 - A smaller ACGME program (8-8-8) with the Major Participating Institution(s) anticipated to be Memorial (approx 20 FTEs) and DMC (a reduction from 27 FTEs to approximately 9 FTEs)
 - An Osteopathic Program (2-2-2) with new Program Director who is an osteopath.
 - The Consortium anticipates having a relationship with Kaiser for a modest number of rotations
 - The Family Practice Center for both programs will now be an FQHC lookalike that was granted FQHC status in September, 2007.
- With the creation of a foundation for Osteopathic training through the Family Medicine program, the following Osteopathic programs will also be developed, based on the workforce needs of the region:
 - OB-Gyn, the majority of which is based at Memorial
 - Emergency Medicine, primarily based at DMC
 - General Surgery, based primarily at Memorial, and
 - General Internal Medicine – with a focus on hospitalist care, based primarily at Memorial.

Many of the aforementioned programs will also participate in rotations at Kaiser and the FQHC Look-Alike
- With the creation of a foundation for Allopathic Family medicine, the following Allopathic programs will be developed:
 - OB-Gyn Family Medicine Fellowship based primarily at DMC
 - Psychiatry, based primarily at Doctors Behavioral Health Center
- It is anticipated that the two Family Medicine programs will begin in July, 2010 after obtaining new program status from their respective accrediting agencies
- It is anticipated that the additional programs will begin in 2011 after obtaining new program accreditation from their respective accrediting agencies.

The Federal Regulations regarding New Residency Programs

The regulations regarding Graduate Medical Education can primarily be found in CFR 42 413.79(1). Although Table 1 above details **fourteen** recommendations, only one of those is detailed in the CFR as a requirement for new program status. That sole requirement is:

“a new medical residency training program means a medical residency that receives initial accreditation by the appropriate accrediting body or begins training residents on or after January 1, 1995.”

As is demonstrated in Table 1, the new program that is currently being planned by the Consortium greatly exceeds this sole requirement.

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March 16, 2009

The Honorable George Radanovich
2410 Rayburn House Office Building
Washington, D.C. 020515

Re: Residency Program Consortium for Stanislaus County

Dear Representative Radanovich:

On behalf of Stanislaus County, this letter summarizes the existing criteria required for consideration under existing Medicare regulations for a proposed consortium of providers within the County to obtain approval from the Centers for Medicare & Medicaid Services (CMS) for "new" medical residency training programs that include family medicine. As discussed in this letter, it is respectfully submitted that CMS has proposed additional criteria for the family medicine program that are not set forth in CMS regulations or published guidelines.

BACKGROUND

The County of Stanislaus Health Services Agency is the Sponsoring Institution of an existing Family Medicine Residency Program that is centered at Doctors Medical Center (DMC) for inpatient training and the County's FQHC Look-Alikes for ambulatory care training. The Family Medicine Residency Program is the heart of the safety net indigent health care system in Stanislaus County, especially for children, pregnant women and other vulnerable populations.

The County, along with DMC, the FQHC Look-Alikes, Memorial Medical Center and Kaiser Foundation Hospitals are designing a new, nonprofit consortium (Consortium) that will become the Sponsoring Institution of residency programs in the community.

It is proposed that the participants in the Consortium will establish a nonprofit, tax-exempt entity that will sponsor residency training programs, in addition to promotion of other health education and research activities that will benefit the residents of Stanislaus Counties and the surrounding areas (many of which are rural communities with limited health care resources). The Consortium will seek "initial accreditation" from the Accreditation Council for Graduate Medical Education



(ACGME) and American Osteopathic Association (AOA) for the residency programs to be sponsored by the Consortium.

As discussed in the attached report on the Consortium, there will be substantial changes from the existing Family Medicine Residency Program, including:

- A new Sponsoring Institution
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CMS STANDARDS FOR RESIDENCY PROGRAMS

Representatives of the County have met on several occasions with CMS staff to discuss the establishment of the Consortium. These discussions have included the development of new residency programs for the community and the proposed changes to the Family Medicine Residency Program that are contemplated under Consortium sponsorship.

CMS staff have been receptive to the Consortium proposal, and, with one exception, provided initial positive feedback for the Consortium model and the residency programs in specialties other than the critical component of the family medicine training program (which is the foundation of the Consortium-sponsored residency programs and the community safety net). As to the proposed changes to the Family Medicine Residency Program, CMS has stated that, in addition to ACGME approval of a new family medicine residency program, the program must meet additional criteria proposed by CMS.

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We hope that this summary is useful and we appreciate your consideration of the issues related to the proposed residency program Consortium for Stanislaus County.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink that reads "M. Steven Lipton".

M. Steven Lipton

Enclosure

cc: Members, Board of Supervisors
Rick Robinson
Jack Doering
Elizabeth Moeller

STANISLAUS COUNTY – RESIDENCY PROGRAM CONSORTIUM

Background and History

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STANISLAUS COUNTY – RESIDENCY PROGRAM CONSORTIUM

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STANISLAUS COUNTY – RESIDENCY PROGRAM CONSORTIUM

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LAWYERS



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March 16, 2009

The Honorable Barbara Boxer
United States Senate
112 Hart Senate Office Building
Washington, D.C. 020510

Re: Residency Program Consortium for Stanislaus County

Dear Senator Boxer:

On behalf of Stanislaus County, this letter summarizes the existing criteria required for consideration under existing Medicare regulations for a proposed consortium of providers within the County to obtain approval from the Centers for Medicare & Medicaid Services (CMS) for "new" medical residency training programs that include family medicine. As discussed in this letter, it is respectfully submitted that CMS has proposed additional criteria for the family medicine program that are not set forth in CMS regulations or published guidelines.

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(ACGME) and American Osteopathic Association (AOA) for the residency programs to be sponsored by the Consortium.

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CMS STANDARDS FOR RESIDENCY PROGRAMS

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CMS staff have been receptive to the Consortium proposal, and, with one exception, provided initial positive feedback for the Consortium model and the residency programs in specialties other than the critical component of the family medicine training program (which is the foundation of the Consortium-sponsored residency programs and the community safety net). As to the proposed changes to the Family Medicine Residency Program, CMS has stated that, in addition to ACGME approval of a new family medicine residency program, the program must meet additional criteria proposed by CMS.

CMS is required by its regulations to abide by the determinations made by national accrediting organizations.¹ In Section 413.79(l), CMS defines a “new medical residency training program” as follows:

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This definition is straightforward and establishes a sole criterion for “new” program status: a letter from the appropriate accrediting body granting a residency program initial accreditation suffices to satisfy the regulatory requirements, without more. The accreditation approval or training of residents (once such approval is secured) are the only requirements for “new” program status defined in the Medicare regulations.

As noted above, the Consortium has proposed to seek “new” program status for all of its residency programs, including the restructured family medicine program. If ACGME approves the Consortium’s family medicine program as a “new” program, the family medicine program must be considered as a “new” program under the Medicare regulations for GME and IME payments.

Notwithstanding the limited criterion in the Medicare regulations, representatives of CMS have implied that there is discretion on the part of the Medicare program to impose additional criteria for “new” program, none of which are set forth in the Medicare regulations. These include two options offered by CMS staff in order to obtain GME/IME funding:

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 - Establish a new family medicine residency program accredited by AOA and terminate the existing ACGME accredited family medicine program.

The proposed Consortium intends to pursue AOA accreditation for a new family medicine residency program, but not as the sole option for providing family medicine residency training in the County.

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Except for ACGME accreditation under Option Two, none of the criteria specified by CMS staff under Option Two for “new” program accreditation is required by Medicare program regulations:

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- CMS has not issued any proposed revisions to the governing regulations, although the expansion of the requirements to be recognized as a “new program” manifestly alter the regulatory requirements and clearly are a substantial change in policy requiring notice and comment under the Administrative Procedure Act.
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As a result, if the Consortium obtains accreditation from ACGME as a “new” family medicine program, CMS must recognize the program for GME and IME payments.

We hope that this summary is useful and we appreciate your consideration of the issues related to the proposed residency program Consortium for Stanislaus County.

Very truly yours,

Davis Wright Tremaine LLP

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M. Steven Lipton

Enclosure

cc: Members, Board of Supervisors
Rick Robinson
Jack Doering
Elizabeth Moeller

STANISLAUS COUNTY – RESIDENCY PROGRAM CONSORTIUM

Background and History

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- A well-respected Family Medicine residency program that graduates 9 residents per year and has demonstrated success in regional retention of those residents
- Hospitals in the region with a GME cap of zero
- Opening of Kaiser-Modesto
- Creation of County FQHC (look a like)
- Plans for UC Merced School of Medicine

Planners recognized that in order to establish resident FTE caps at Doctors Medical Center (DMC), Kaiser Modesto (Kaiser), and Memorial Medical Center (Memorial), “New Program” designation from ACGME and/or AOA was required for all programs. County officials spoke with CMS representatives and received some initial feedback regarding what CMS considered to constitute a new program.

Because of the CMS feedback, the County of Stanislaus began a process of listing every requirement that they could find for “New Program” designation. This includes notes from multiple discussions with CMS representatives, discussions with the ACGME, a memo from the AOA, and the “new program” definition provided in the Federal Register. Table 1 details those items and appears below. Included is a column that details how the planning to date has addressed the recommendation and/or requirement.

STANISLAUS COUNTY – RESIDENCY PROGRAM CONSORTIUM

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Change specialty accreditation to AOA	CMS	Family Medicine program to be dually accredited by ACGME and AOA
Pool cap between Tenet hospitals or surrounding MSAs	CMS	Not feasible
Place program in rural MSA	CMS	Not feasible
Top to bottom change	CMS	<ul style="list-style-type: none"> • New Sponsoring Institution • Additional Program Director • Reduction in allopathic residents • Addition of osteopathic residents • Change in curriculum to incorporate two additional hospitals, one of which will be a major participating institution. • Reduction of resident FTEs at DMC from 27 to approximately 9 • Addition of FQHC as family practice center • New faculty members, including osteopathic physicians and community based physicians • Addition of new academic partner due to osteopathic training components
New Sponsoring Institution	CMS	New non-profit consortium being formed to sponsor multiple residency programs, including Family Medicine
Significant changes in teaching, venues, major participating institution	ACGME	<ul style="list-style-type: none"> • New Sponsoring Institution • Additional Program Director • Reduction in allopathic residents • Addition of osteopathic residents • Change in curriculum to incorporate two additional hospitals • Addition of FQHC as family practice center • New faculty members, including osteopathic physicians and

STANISLAUS COUNTY – RESIDENCY PROGRAM CONSORTIUM

Recommendation	Source	How Achieved
		community based physicians
Characterization of old and new hospital	AOA	<ul style="list-style-type: none"> • Hospitals offer greater diversity in training • Residents will now be exposed to a richness of healthcare models, including the HMO setting, for profit setting, and not-for profit setting
Relationship of old and new hospitals	AOA	No prior relationships
Existence of communication between old and new hospitals	AOA	None
Were residents transferred to new program?	AOA	Residents will be given the opportunity to apply to the new program as well as informed of other open slots available at other residency programs within California.
New Program Director	CMS 3.4.09	There will now be two Program Directors – one allopathic and one osteopathic
New Faculty	CMS 3.4.09	Additional osteopathic faculty will be recruited as well as community based faculty at each of the two new participating hospitals
New Residents	CMS 3.4.09	<ul style="list-style-type: none"> • There will be a reduction in allopathic residents. • Existing residents will be given the option of applying for the new program or applying to open training slots in other programs in California

A New Model of Post Graduate Training in Stanislaus County

- Hospital CEOs now are meeting regularly with the County Health Services Agency, including FQHC Look-Alikes, and the FM Residency Program
- The planning group took Table 1 to heart and designed a model for post graduate education that would incorporate each applicable item in the table.
- Together, they have initiated the design of a new model of postgraduate training, which calls for the following:

STANISLAUS COUNTY – RESIDENCY PROGRAM CONSORTIUM

- Creation of a nonprofit consortium to be the Sponsoring Institution of the Family Medicine residency program and other training programs identified in the community.
- Sunset of current 9-9-9 family medicine residency program
- Application for two new family medicine programs.
 - A smaller ACGME program (8-8-8) with the Major Participating Institution(s) anticipated to be Memorial (approx 20 FTEs) and DMC (a reduction from 27 FTEs to approximately 9 FTEs)
 - An Osteopathic Program (2-2-2) with new Program Director who is an osteopath.
 - The Consortium anticipates having a relationship with Kaiser for a modest number of rotations
 - The Family Practice Center for both programs will now be an FQHC lookalike that was granted FQHC status in September, 2007.
- With the creation of a foundation for Osteopathic training through the Family Medicine program, the following Osteopathic programs will also be developed, based on the workforce needs of the region:
 - OB-Gyn, the majority of which is based at Memorial
 - Emergency Medicine, primarily based at DMC
 - General Surgery, based primarily at Memorial, and
 - General Internal Medicine – with a focus on hospitalist care, based primarily at Memorial.

Many of the aforementioned programs will also participate in rotations at Kaiser and the FQHC Look-Alike
- With the creation of a foundation for Allopathic Family medicine, the following Allopathic programs will be developed:
 - OB-Gyn Family Medicine Fellowship based primarily at DMC
 - Psychiatry, based primarily at Doctors Behavioral Health Center
- It is anticipated that the two Family Medicine programs will begin in July, 2010 after obtaining new program status from their respective accrediting agencies
- It is anticipated that the additional programs will begin in 2011 after obtaining new program accreditation from their respective accrediting agencies.

The Federal Regulations regarding New Residency Programs

The regulations regarding Graduate Medical Education can primarily be found in CFR 42 413.79(l). Although Table 1 above details **fourteen** recommendations, only one of those is detailed in the CFR as a requirement for new program status. That sole requirement is:

“a new medical residency training program means a medical residency that receives initial accreditation by the appropriate accrediting body or begins training residents on or after January 1, 1995.”

As is demonstrated in Table 1, the new program that is currently being planned by the Consortium greatly exceeds this sole requirement.

✓ BOARD OF SUPERVISORS



Davis Wright Tremaine LLP

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March 16, 2009

The Honorable Dennis Cardoza
United States Senate
1224 Longworth Building
Washington, D.C. 020515

Re: Residency Program Consortium for Stanislaus County

Dear Representative Cardoza:

On behalf of Stanislaus County, this letter summarizes the existing criteria required for consideration under existing Medicare regulations for a proposed consortium of providers within the County to obtain approval from the Centers for Medicare & Medicaid Services (CMS) for "new" medical residency training programs that include family medicine. As discussed in this letter, it is respectfully submitted that CMS has proposed additional criteria for the family medicine program that are not set forth in CMS regulations or published guidelines.

BACKGROUND

The County of Stanislaus Health Services Agency is the Sponsoring Institution of an existing Family Medicine Residency Program that is centered at Doctors Medical Center (DMC) for inpatient training and the County's FQHC Look-Alikes for ambulatory care training. The Family Medicine Residency Program is the heart of the safety net indigent health care system in Stanislaus County, especially for children, pregnant women and other vulnerable populations.

The County, along with DMC, the FQHC Look-Alikes, Memorial Medical Center and Kaiser Foundation Hospitals are designing a new, nonprofit consortium (Consortium) that will become the Sponsoring Institution of residency programs in the community.

It is proposed that the participants in the Consortium will establish a nonprofit, tax-exempt entity that will sponsor residency training programs, in addition to promotion of other health education and research activities that will benefit the residents of Stanislaus Counties and the surrounding areas (many of which are rural communities with limited health care resources). The Consortium will seek "initial accreditation" from the Accreditation Council for Graduate Medical Education



(ACGME) and American Osteopathic Association (AOA) for the residency programs to be sponsored by the Consortium.

As discussed in the attached report on the Consortium, there will be substantial changes from the existing Family Medicine Residency Program, including:

- A new Sponsoring Institution
- An additional Program Director
- A reduction in allopathic family medicine residents
- The addition of osteopathic residents in family medicine
- A change in curriculum to incorporate two additional hospitals, one of which will be a major participating institution (both of which are nonprofit)
- The reduction of resident FTEs at DMC from 27 to approximately 9
- The addition of the FQHC Look-Alikes as a family medicine center for the residency programs
- The addition of new faculty members, including osteopathic physicians and community based physicians
- The addition of a new academic partner for osteopathic training components

CMS STANDARDS FOR RESIDENCY PROGRAMS

Representatives of the County have met on several occasions with CMS staff to discuss the establishment of the Consortium. These discussions have included the development of new residency programs for the community and the proposed changes to the Family Medicine Residency Program that are contemplated under Consortium sponsorship.

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A New Model of Post Graduate Training in Stanislaus County

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STANISLAUS COUNTY – RESIDENCY PROGRAM CONSORTIUM

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Stanislaus Family Medicine Residency Program

March 24, 2009

Residency Program – Physician Training

- Critical component of safety net health care access
- Vital source of physicians for community
- A collaborative program between Doctors Medical Center (DMC) and the County Health Services Agency
- Inpatient Training at DMC
- Outpatient Training in County Clinics
- County Clinics serve over 230,000 patient visits annually

Problem Identified – Efforts to Resolve

- Summer 2008 – DMC alerted County of Centers for Medicare & Medicaid Services (CMS) questioning of federal residency program reimbursement
- DMC and County have aggressively sought a positive solution
- Engaged Legal and Residency experts and Legislator support
- Direct discussions with CMS

CMS Recoupment - 2009

- Despite these efforts, CMS has recouped \$19,274,099 from DMC for years 2001 – 2008
- CMS has halted all current (2008-2009) and future (2009-2010 and beyond) payments
- Appeal has been filed by DMC

Why does County owe money?

- Amended Affiliation Agreement with DMC – 2000
- County and DMC agreed to equally share in the operating shortfall
- Historically split 50/50 = approximately \$750,000 annually
- With no Graduate Medical Education (GME) funding, shortfall becomes the entire Program budget

Calculations & Proposed Loan (Note)

County Share of Recoupment to be Paid to DMC for 2001 – 2008	\$9,637,050
Estimated Cost for Fiscal Year 08/09	739,000
Fiscal Year 09/10	<u>\$ 764,000</u>
Total Amount of Proposed Secured Loan	\$11,140,050

How will loan payments be funded?

Proposed that the County continue to dedicate 80% of Securitized Tobacco Settlement Fund Interest Earnings for loan payments to pay back the County Treasury

Present Note (past HSA deficit) through ~2018

New Loan Extend Payments through ~2026

** Dates are approximate due to future Interest Rates which will determine the value of 80% Interest Earnings*

Efforts to Restore Federal Funding

- Appeal CMS decision
- Engaged Legislative Representatives
- Engaged Several Key Organizations
- Initiate Consortium planning to preserve and expand physician training program
- County and DMC commit to continued interim funding

What is a Residency Program?

- Trains Physicians who have graduated from Medical School
- Residency Programs are by Specialty
Ours is a Family Medicine Program
- National standards dictate the length
Family Medicine is three years
- Completion enables physician to take exam for Board Certification
- Programs must be accredited to receive federal funding

Stanislaus Family Medicine Residency Program

- Grew from a General Medicine program that started in the 1930s
- Became an Accreditation Council for Graduate Medical Education (ACGME) Accredited Family Medicine Residency Program in 1975 affiliated with UC Davis Medical School
- Was originally based at the County hospital and clinics

Physician Workforce – A Community Asset

- Trains 27 physicians per year
 - First year = 9
 - Second year = 9
 - Third year = 9
- Since 1975, has graduated 232 physicians
- 30% remain in Stanislaus County
- 30% of Family Medicine physicians practicing locally have graduated from the program

Locally Practicing Grads

Banuelos, Dr. Jose

Belissary, Dr. Nicole

Bratcher, Dr. Carla

Brockman, Dr. Tracy

Broderick, Dr. Peter

Chan, Dr. Edward

Cohen, Dr. Mitch

Collins, Dr. Jack

Crews, Dr. Amanda

Cronin, Dr. Kathie

Daley, Dr. Jeff

Del Valle, Dr. Juan Jorge

Diego, Dr. Silvia

Diep, Dr. Daniel

Emery, Dr. James

English, Dr. John

Farley, Dr. Joy

Flaim Jr., Dr. Francis

Forester, Dr. Robert

Gaines, Dr. Peter

Locally Practicing Grads

Gil, Dr. Lisa

Goodreau, Dr. Scott

Gray, Dr. Thomas

Harris, Dr. Mattice

Heck, Dr. Richard

Hedden, Dr. Laurie

Howe, Dr. Donald

Hunt, Dr. Bernard

Joe, Dr. Douglas

Kassa, Dr. Yewondwossen

Khanna, Dr. Vikram

Kiesel, Dr. Erin

Kim, Dr. Eugene

Kraus, Dr. James

Lopez-Solorza, Dr. Juan

Maclaren Jr., Dr. James

Magee, Steven

Marles, Dr. Steve

Mazon, Dr. Sergio

Mesches, Dr. Jeremy

Montalvo, Dr. Raul

Locally Practicing Grads

Murrieta, Dr. Paulo
Myers, Dr. Danielle
Raible, Dr. Lyn
Ramos, Dr. Adrian
Redula, Dr. James
Rodriguez, Dr. Jose
Rutgers, Dr. William
Schoor, Dr. Phyllis
Seng, Dr. Seang
Shergill, Dr. Manmeet
Shiovitz, Dr. James

- Sood, Dr. Taneja Shashi
- Terzo, Dr. Todd
- Vang, Dr. Sa
- Veerappa, Dr. Nandeesh
- Warwick, Dr. John
- Webb-Kummar, Dr. Gretchen
- Wenstrup, Dr. Susie
- Wenstrup, Dr. Tom
- Whipkey-Olson, Dr. Elizabeth
- Young, Dr. Rei

Program Status

Stanislaus Family Medicine Residency Program
has been accredited by ACGME since 1975
and remains fully accredited today!

Current Problem is about Funding,
not Accreditation.

Accreditation v. Funding

Accrediting is granted through one or both of two federally recognized bodies

1. Accreditation Council for Graduate Medical Education (ACGME)
2. American Osteopathic Association

Graduate Medical Education (GME) Funding is through the Federal Government's Medicare Program to Hospitals

Accreditation

Accreditation Council for
Graduate
Medical Education

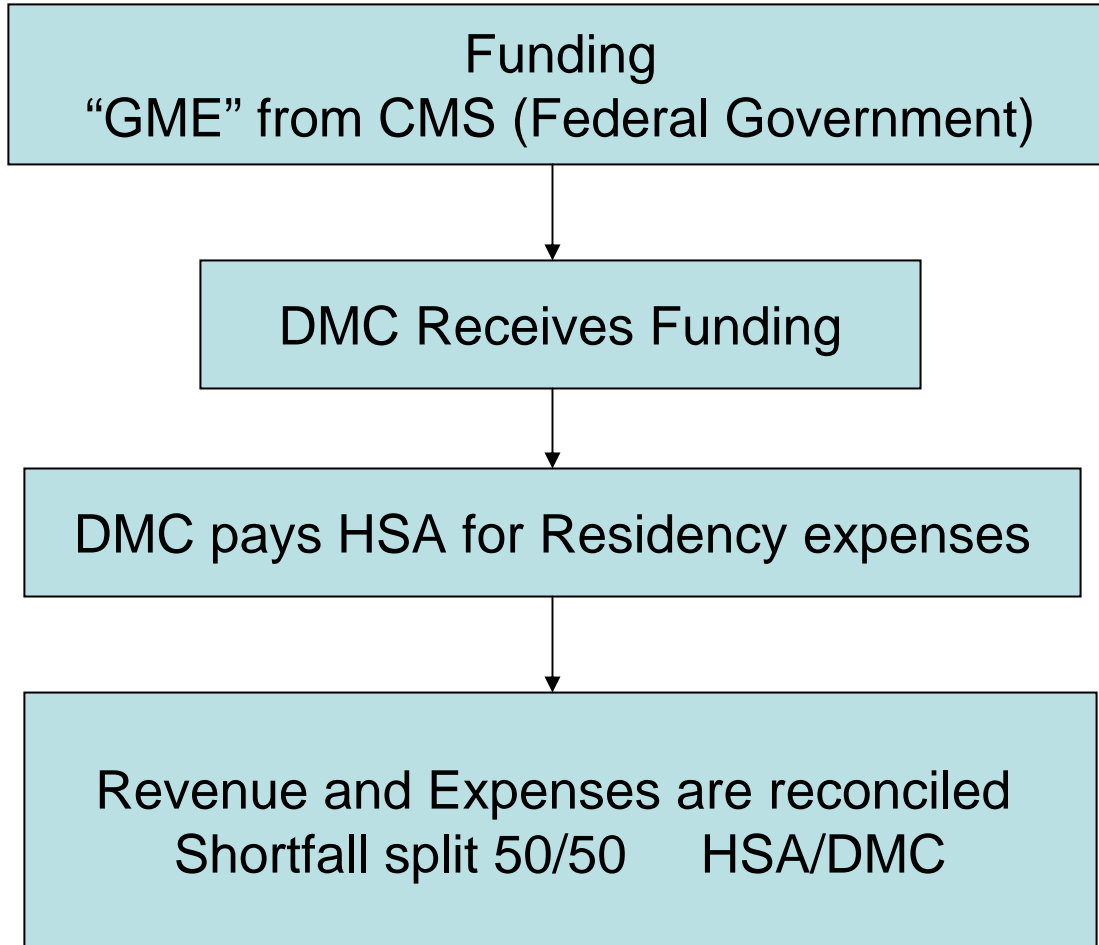
Funding

US Dept of
Health & Human Services

Centers for
Medicare &
Medicaid Services

Medicare –
Hospital Cost Report
Reimbursement

Financial Structure



How the federal money flows

- CMS contracts with a Fiscal Intermediary (FI)
- The FI carries out CMS' rules
- The FI sends interim payments to the hospitals.
- The FI later receives hospitals' annual Medicare Cost Report, completes an analysis, makes adjustments and reconciles the interim payments with the hospitals
- The FI or CMS can reconsider payment up to three years after the final adjusted cost report and reconciliation

Major Events

- Inpatient training and reimbursement claiming transferred to DMC – November 1997
- Congress enacted the Balanced Budget Act of 1997
- DMC first cost report with Residents submitted in 1998

Major Events ... Continued

- FI reviewed the Cost Report
- FI determined it to be a “New” Program
- FI rebased the per Resident amount
- Was ~\$115,000, reduced to ~\$70,000
- DMC filed an appeal on a FI adjustment related to the Residency

Multiple Reviews over the years

- Appeals are determined by the Provider Reimbursement Review Board (PRRB)
- PRRB determined the payment amount was correct, stated it as a “New” Program
- Review by FI in 2005 of all residency programs, adjusted the # of residents each could have, and adjusted our program’s





Current CMS Actions

- January 2009 – Notification of ineligibility determination
- February 2009 – DMC files an Appeal
 - Expedited Appeals can take 3 -4 years
- February 2009 – CMS recoups \$19.3 M
 - GME paid from 2001 – 2008
 - Stops current & future funding
- March 2009 – DMC invoices County

New Program Planning - Consortium

- Evaluated other residency models, CMS requirements to preserve Family Medicine and expand graduate medical education
- Initiated discussions with DMC, other hospitals and the Community Health Center Board (County FQ clinics):
 1. To develop new program options
 2. Position our community for additional residency training and future UC Merced Medical School students and graduates

Consortium – What's different?

- Sponsorship – County  Consortium (non-profit)
- Accreditation - Single  Dual for Family Medicine
 - ACGME and AOA
- Specialties – One  Multiple – possibilities:
 - Family Medicine
 - Emergency Medicine
 - General Surgery
 - Internal Medicine – Hospitalist focused
 - Others
- Participating Facilities
 - DMC  DMC and additional area hospitals

Consortium Prospects

CMS roadblocks – no written rules

- CMS has verbally expressed interest in the Consortium, but for Family Medicine says program must close for one year, have new program director, new faculty, new residents to be considered “New”
- County actively seeking assistance from Legislative Representatives for the “go forward” plan

Staff Recommendations..summarized

- Approve Issuance of a Note “Secured” by Tobacco Securitization Fund not to exceed \$11,140,050
- Authorize the Treasurer-Tax Collector and Chairman of BOS to sign loan agreement
- Authorize payment to DMC in amount not to exceed \$9,637,050
- Approve county’s support of appeal of the Recoupment by Tenet to CMS/FI
- Direct CEO and HSA to continue Residency Program Master Planning efforts