COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20004

DAVID A. CATANIA
Councilmember, At-Large
Chairperson
Committee on Health

Committee Member
Consumer & Regulatory Affairs
Judiciary

January 27, 2006

Mayor Anthony Williams
District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

and

H. Patrick Swygert, President
Howard University
2400 Sixth Street, NW
Washington, DC 20059

Dear Mayor Williams and President Swygert:

On January 5, 2006, my office received the signed Exclusive Rights Agreement (ERA) between the District of Columbia and Howard University for the National Capital Medical Center (NCMC). As you both know, the Committee on Health, which I chair, held three oversight hearings on this project in 2005. In anticipation of receiving the final legislative package for the NCMC soon, I am submitting a set of questions raised by the ERA. I anticipate that your offices will provide a coordinated response to these questions.

Given the Mayor's request for expedited action on this matter, I am requesting a response by Monday, February 20, 2006. If you have any questions or concerns pertaining to this request, please contact Ben Young of my staff at (202) 724-8170 or at byoung@dccouncil.us. Thank you in advance for your assistance.

Sincerely,

David A. Catania
Councilmember, At-Large
Committee on Health, Chair

cc: Robert Bobb, City Administrator
Hassan Minor, Senior Vice President, Howard University

NCMC Exclusive Rights Agreement Questions

Commitment to the Uninsured and Underinsured

1. Please explain what constitutes "comparable" fee schedules for uninsured individuals and private third party payers as referenced in section 4.3.4 (C) of the Exclusive Rights Agreement (ERA) for the National Capital Medical Center ("NCMC"). Please provide the Committee on Health ("Committee") copies of Howard University Hospital's ("HUH") existing fee schedules for uninsured/underinsured individuals and individuals with third party payers.

2. Please elaborate on the following from section 2.2.3 of the ERA:

"The District acknowledges that NCMC Hospital is not intended to be and shall not be the sole healthcare provider responsible for all uninsured, underinsured, and/or publicly insured patients in the District."

3. What will be the *"proportionate share of public health services for the underserved"* of the NCMC according to section 2.2.3? Who will determine what constitutes "proportionate?" Please define the term "underserved."

4. According to section 2.2.3, *"such obligation [for the underserved] shall remain the shared obligation of all health care facilities in the District."* Why shouldn't the District expect to see a greater return, in terms of care to the uninsured, on its $212 million investment (not including land and infrastructure improvements) than the amount currently required of all hospitals in the District?

5. Please provide the Committee copies of the specific language, documents, and/or sections of the following, as referenced in section 4.3.4 (C):

- Federal healthcare law;
- Current best practices of charitable healthcare organizations; and
- IRS community benefit standards.

6. According the District's Home Rule Charter:

"The Council shall have no authority to pass any act contrary to the provisions of this chapter except as specifically provided in this chapter, or to:...(2) lend the public credit for support of any private undertaking"; [D.C. Official Code § 1-206.02. (a)(2)]

As proposed in sections 2.2.3 and 4.3.4. (C) of the ERA, there will be no demonstrable increase in the level of public benefit (i.e., care for the uninsured) offered by the NCMC over the amount currently being provided. Has the District's Office of the Attorney General offered an opinion

as to whether or not the current proposal constitutes a public or private venture and if the proposal, as presented, is legal under the Home Rule Charter? If so, please provide a copy of this opinion to the Committee.

Certificate of Need

7. Section 6.1 of the ERA conditions Howard University's ("Howard") obligation to undertake the project on the Council's waiver of the Certificate of Need ("CON") process. Will Howard proceed with the project if the Council does not exempt the project from the CON process?

8. According to section 2.1.3(v) an FHA feasibility study will be performed. Historically, these studies have been commissioned by states where there was no established CON process and paid for by the hospital seeking financing or through mortgage proceeds. In essence, as proposed in the ERA, the District would be exempting the project from the CON process only to commission a study intended to achieve the same results. What is the rationale behind taking this step?

9. According to the Hospital Mortgage Insurance Act of 2003 (P.L. 108-91), as a requirement to obtain financing under the HUD 242 program:

"The Secretary shall establish the means for determining need and feasibility for the hospital, if the State does not have an official procedure for determining the need for hospitals. If the state has an official procedure for determining the need for hospitals, the Secretary shall require that such procedure be followed before the application for insurance is submitted, and the application shall document that need has also been established under that procedure."

What evidence is there that the HUD will approve an application for a hospital in a jurisdiction that maintains a CON process but waived this requirement specifically for the hospital for which financing is being requested? Please provide the name and position of any HUD officials with whom either the Mayor or Howard have consulted about the likelihood of such approval.

10. To obtain financing through the HUD 242 program, a hospital's average operating margin for the preceding three fiscal years must have been equal to or greater than 0.00. What was the HUH's net operating margin for Fiscal Years 2003, 2005, and 2005? Is it Howard's expectation that the HUH's annual federal subsidy be included in the calculation of this margin for the purposes of applying for HUD 242 financing?

11. Is Council approval of the ERA required to apply for the HUD 242 program?

12. How long will it take to complete the application, feasibility study, and receive approval from HUD?

Costs and Financing

13. An analysis by Stroudwater Associates in February 2005 found that under two of three different scenarios the NCMC would run operating deficits through year five. Under the only scenario to show a small profit in year five, the HUH would need to close completely and the

totality of HUH's federal subsidies ($30 million annual subsidy, plus all Disproportionate Share (DSH) payments) would have to be transferred to the NCMC. However, the July 12, 2005 submission to the Committee and the ERA, neither of which contemplates the complete closure of HUH, each forecast operating deficits for only two years, followed by profits in years three through five. Has the District retained Stroudwater or any other expert to analyze the actual likelihood of achieving a profit in years three through five under the scenario proposed in the ERA?

14. Does HUH intend to transfer all or part of its annual federal subsidy (approximately $30 million) to the NCMC? If a portion of the subsidy will be transferred, what will this amount be? What impact will the plan to reduce services at the HUH, as proposed in the ERA, have on this subsidy? Has Howard received assurances from Congressional appropriators that it will continue to receive this subsidy in lieu of these service reductions?

15. What payer mix was used in calculations showing a profit in year three at the NCMC?

16. What is the estimated number of discharges per bed, average length of stay per bed, and net revenue per bed assumed in the calculations showing a profit by year three? What is the current number of discharges per bed, average length of stay, and net revenue per bed at HUH and for each District hospital and Prince George's County Hospital? By what percentage does the estimated net revenue per bed for the NCMC exceed or trail that of each District hospital and the Prince George's County Hospital?

17. In the October 27, 2005 submission to the Committee by the Mayor and Howard, contingency costs for the project were estimated to be 10 percent of the total project. In the ERA, this amount has doubled from $21,200,000 (or $10,600,000 per partner) to $42,400,000 (or $21,200,000 per partner). Please explain the reason for this increase?

18. On December 2, 2005, the *Washington Times* reported that HUH planned approximately 125 layoffs in the coming days. How many employees have been laid off since that time? Which positions were cut, and how much does the university plan to save through these measures? Please provide a full accounting of these layoffs including the rationale and future plans for the work done by these positions.

19. Were the Medicaid reimbursement rates used in the financial calculations contained in the Mayor/Howard's July 12, 2005 submission to the Committee on Health the same as HUH's current rates?

20. Please elaborate on the following from section 5.1.1 of the ERA:

"The Grant Agreement shall acknowledge that a portion of Howard's share of the funding of the project Costs may be contributed by third parties and/or Howard University donations of services, equipment, and supplies, including HUH Assets transferred to the NCMC Hospital Site. The Grant Agreement shall provide that other HUH Assets transferred to NCMC may be approved as a contribution by Howard, with the approval of the District.

Does this mean that Howard plans to finance a portion of it's $212 million obligation by transferring services from HUH? Who are the third parties? What services, equipment, and supplies will be donated by HUH? How much will these donations account for? How much of Howard's obligation will be fulfilled by transferring services from Georgia Avenue to Reservation 13?

Also, please elaborate on the following from the same section:

Further, the Grant Agreement shall specify the value of such donations of services, equipment, and supplies shall be determined and apportioned by mutual agreements between the parties."

Does this mean that the Grant Agreement will specify a dollar amount of services that HUH plans to dedicate towards its $212 million obligation, or that the such an amount may be agreed upon at some future time?

21. Please explain the following project costs as defined in section 4.5.2:

"capital costs relating to the relocation of certain services from HUH to NCMC Hospital..."

Should the Committee interpret this to mean that future renovations, build-outs, or other capital improvements made to HUH will be included in Howard's $212 commitment for the NCMC? What services does Howard intend to move from the HUH?

22. Please explain the following project costs as defined in section 4.5.2:

"or the placement of certain public health services of NCMC at HUH..."

How should the Committee interpret this?

<u>NCMC Corporation</u>

23. According to section 2.1.3(iv), the Project Steering Committee is relegated to an advisory role to the Board of Directors of the NCMC Corporation after that corporation is officially formed. How will the District ensure that it does not lose representation on the construction and planning of the NCMC after that time?

24. How will this corporation be structured?

25. How will the NCMC Corporation be capitalized? Will the District be required to contribute? Will this come from the $212 million obligation?

26. If NCMC Corporation borrows funds, will the District be required to guarantee funds? Will there be a tax exempt bond issue or other form of financing from the District to capitalize the NCMC Corporation?

Remedies

27. What remedies would the District have in the event of default on the part of Howard?

28. What remedies would Howard have in the event of default on the part of the District?

29. If, according to section 2.2.5, Howard is not subject to legal and financial exposure for the ongoing operations of the NCMC, who will be responsible for these risks?

30. If Howard's share of the NCMC is financed through an FHA loan, and the District's share is contributed through a grant(s) to Howard, the FHA will retain the lien on the NCMC in the event of a default by the NCMC Corporation. Will the District have any recourse to its $212 million investment in this event or will the federal government own the entire hospital?

Miscellaneous

31. The HUH currently maintains a number of collective bargaining units. Will these bargaining agreements be transferred to the NCMC?

32. Please provide the Committee copies of fiscal year audits performed for both Howard and HUH for the past five fiscal years?

33. Please provide the accreditation status since 2000, including periods of probation, for each department within the Howard University Hospital as determined by the American Council for Graduate Medical Education, Joint Commission on Accreditation of Healthcare Organizations, and other accrediting organizations.

34. Please define "mental health and substance abuse intake" as used in section 4.3.4 of the ERA. Does this mean that there will be a defined number of beds for substance abuse in the NCMC? If so, how many?

35. Will the District's Detoxification Unit and Sexually Transmitted Disease Clinic, both of which currently reside on Reservation 13, be incorporated into the NCMC?

36. Why is it necessary to specify that information related to the project, including plans and financial projections, is proprietary and not available for public scrutiny as is done in section 2.1.3 (ii)? What is the precedent for stipulating this, especially as it pertains to large-scale public projects?

37. Will the Grant Agreement specify precisely what liabilities and assets Howard intends to transfer from HUH to NCMC? Why would liabilities need to be transferred?

38. At the Committee's three hearings on the NCMC in 2005, the City Administrator said:

- *"Over the course of the next several months, I plan to work with Howard to finalize these arrangements so that we can bring the entire package to Council by this summer."* [February 17, 2005]

- *"By this Fall, the Mayor will introduce legislation for Council action."* [July 13, 2005]

- *"We will introduce this ERA to Council once it has been approved by Howard's Board of Trustees. The Board is set to meet on November 18th, and the Mayor will introduce legislation shortly thereafter."* [October 28, 2005]

The Council received a signed copy of the ERA Thursday, January 5, 2006. To date, however, no legislative package has been submitted to the Council. Who are the individuals, in both the District government and at Howard, responsible for completing this agreement, drafting the legislation, and submitting the final package to the Council?

39. According to Title IV of the ERA, even after Council approval of the initial legislative package (i.e., the ERA, Grant Agreement, Ground Lease, and CON exemption) no less than five additional plans would need to be agreed upon after Council approval of ERA in 120 days

1. NCMC Governance Plan [4.3.1]
2. Project Business Plan [4.3.3]
3. Hospital Space Plan [4.3.4 (I)]
4. NCMC Hospital Services and Plan [4.3.4 (ii)]
5. HUH Services and Plan [4.3.4 (iii)]

What happens if the 120-day deadline for the completion of all five of these plans is missed? Will these plans be submitted to the Council for its review and approval? If not, why not?