000001

PHILL KLINE
ATTORNEY GENERAL

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-3751 • FAX (785) 291-3699
CONSUMER HOTLINE (800) 432-2310
WWW.KSAG.ORG

March 13, 2006

[redacted]

RE: Charity Care of Non-Profit Hospitals in Kansas

Dear [redacted]:

The undersigned are, pursuant to the directives of Attorney General Phill Kline, establishing a task force dedicated to inquiring into the billing, "charity care" and collection practices of non-profit hospitals in the State of Kansas. The immediate goal of this task force is to selectively audit the largest non-profit hospitals in the state and thus better understand how billing and debt collection practices impact the uninsured and the under insured of Kansas.

According to K.S.A. 50-629, the Attorney General has the authority and responsibility to make inquiry into economic patterns and practices that visit negative consequences upon Kansas consumers. Recent studies reveal health care costs to be a major cause of personal bankruptcies and family indebtedness. Complaints filed with the Consumer Protection Division of the Office of Attorney General reveal debt collection issues to be one of the fastest growing areas of concern among Kansas consumers. Both national debate and the complaints of Kansas residents thus well recommend an inquiry into the genesis of medical debt, "charity care" systems and medical debt collection practices among the non-profit hospitals of Kansas.

The Office of Attorney General has previously worked with the Kansas Hospital Association (KHA) toward the goal of surveying the KHA's 121 non-profit members. The survey was helpful and the role that the KHA played in that survey was greatly appreciated.

The facts gathered in the informal KHA survey have recommended a more formal process. The enclosed subpoena has been delivered to a subset of Kansas' 122 non-profit hospitals to afford our task force a better understanding of how billing, "charity care" and debt collection practices are managed at some of the larger non-profit hospitals of Kansas. The responses to the enclosed will also serve as an audit of those same processes.

While this inquiry is mandatory by operation of K.S.A. 50-631, we invite [redacted] to seize this imitative as an opportunity to willingly work with the Office of

Attorney General toward the goal of defining the best practices that should be utilized in Kansas regarding medical billing, "charity care" and debt collection. It is the hope of our task force that our audit and inquiry accrues to the benefit of both those with medical debt and those seeking remuneration for services rendered.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE

Bryan J. Brown
Deputy Attorney General

ATTORNEY GENERAL OF THE STATE OF KANSAS
CONSUMER PROTECTION DIVISION

In the Matter of Medical Costs & Collection Practices in Regard to the Uninsured & Underinsured	))))

SUBPOENA DUCES TECUM

TO: [redacted]

Pursuant to K.S.A. 50-631 and KSA 50-629, you are hereby DIRECTED to FORTHWITH furnish and identify to the undersigned, a duly appointed, qualified and acting Deputy Attorney General of the State of Kansas, Consumer Protection/Antitrust Division, 120 S.W. 10th Avenue, 2nd Floor, Topeka, Kansas, 66612-1597, the subject matter and evidence requested. You are to identify each answer and/or document by corresponding question number.

DEFINITIONS

As used in these Interrogatories, the following terms have the meanings described below:

1. "Hospital" shall refer to [redacted] and when used in either format shall mean all of the hospitals, clinics, divisions, and subdivisions, including any merged or acquitted predecessors, successors, subsidiaries, affiliates or other organizations in which [redacted] has a managing or controlling interest.

2. "Identify" when referring to a *person* shall be deemed a request to include the full legal name, title, position or relationship to the business and telephone number where that person can be reached during normal business hours, in addition to a home address.

3. "Identify" when referring to any *non-person entity*, shall be deemed a request to include the full legal name of the entity, a description of the type of entity (i.e., whether a partnership, corporation, L.L.C, etc.), a complete and current address, and a telephone number that may be used to contact a representative of the entity. A telephone number that is answered by an electronic, digital or other artificial voice, or does not permit direct access to a live person, is not a sufficient response.

4. "Identify" when referring to a *document* shall be deemed a request for a true and accurate copy of the document itself, and a request to identify the custodian of the document.

5. "Tender" shall mean to produce a copy in written or electronic format.

6. "Document" shall be deemed to include any means of storing, displaying or recording the subject matter being sought in the request, whether such subject matter is on paper, or in any other format, to include, but not be limited to, digital, magnetic or electronic formats.

7. "Relating to" or "regarding" shall mean referring, discussing, referencing, concerning or pertaining in any way, directly or indirectly.

8. "Agreement" or "contract" shall mean any oral or written contract, arrangement or understanding, whether formal or informal, between or among two or more persons, together with all modifications or amendments thereto.

9. "Charity Care" shall mean the programs and policies affording

discounted medical care to the uninsured and/or underinsured as defined against the backdrop of Section I of Schedule C, Form 1023, of IRS Code 501(C)(3).

General Interrogatories and Requests for Production

1. Identify the individual providing answers and/or documents in response to the following: including name, title or position held, address and telephone number.

2. Provide the full legal name of the hospital and the address and telephone number of the principle place of business.

3. What is [redacted] mission statement?

4. Tender a corporate organizational chart documenting all of [redacted] entities, divisions and subdivisions as of December 31, 2005.

5. Tender a corporate organizational chart documenting all of [redacted] entities, divisions and subdivisions on January 1, 2003.

6a. Who was on the [redacted] Board of Directors in 2005?
6b. Who was on the [redacted] Board of Directors in 2004?
6c. Who was on the [redacted] Board of Directors in 2003?

7a. On what dates did the Board of Directors meet in 2005?
7b. On what dates did the Board of Directors meet in 2004?
7c. On what dates did the Board of Directors meet in 2003?

8a. What was [redacted] total revenue for 2005.
8b. What was [redacted] total revenue for 2004.
8c. What was [redacted] total revenue for 2003.
8d. What is [redacted] total revenue projected for 2006?

9a. What was [redacted] net income for 2005.
9b. What was [redacted] net income for 2004.
9c. What was [redacted] net income for 2003.
9d. What is [redacted] net income projected for 2006?

10a. List the top ten (as to dollars processed on behalf of [redacted] patients) insurance programs with which [redacted] contracted in 2005.

10b. List the top ten (as to dollars processed on behalf of [redacted] patients) insurance programs with which [redacted] contracted in 2004.

10c. List the top ten (as to dollars processed on behalf of [redacted] patients) insurance programs with which [redacted] contracted in 2003.

11a. List the top ten (as to gross revenue) insurance companies with which [redacted] contracted in 2005.

11b. List the top ten (as to gross revenue) insurance companies with which [redacted] contracted in 2004.

11c. List the top ten (as to gross revenue) insurance companies with which [redacted] contracted in 2003.

General Cost Interrogatories and Requests for Production

12. List the top 25 CPT codes that [redacted] billed in 2005.

13. What is [redacted] standard charge for:
    a. a semi-private room.
    b. a private room.

14. What is [redacted] standard surgical center charge per hour for:
    a. an appendectomy.
    b. a c-section.
    c. hip replacement surgery.
    d. gall bladder surgery.
    e. heart bypass surgery.

Charity Care Interrogatories and Requests for Production

15. Define and describe [redacted] Charity Care program.

16. In which Board meeting minutes since January 1, 2003 is found record of the Board addressing [redacted] Charity Care program?

17. Attach any and all documents tendered to the Internal Review Service since January 1, 2003 describing [redacted] Charity Care program.

18a. How did [redacted] publish and/or promote its Charity Care policy in 2005?
18b. How did [redacted] publish and/or promote its Charity Care policy in 2004?
18c. How did [redacted] publish and/or promote its Charity Care policy in 2003?

19a. How many accounts were paid-in-full in 2005 under [redacted] Charity Care program?
19b. How many accounts were paid-in-full in 2004 under [redacted] Charity Care program?
19c. How many accounts were paid-in-full in 2003 under [redacted] Charity Care program?

20a. How many accounts were paid-in-part in 2005 under [redacted] Charity Care program?
20b. How many accounts were paid-in-part in 2004 under [redacted] Charity Care program?
20c. How many accounts were paid-in-part in 2003 under [redacted] Charity Care program?

21a. How much in revenue was "charged off" in 2005 under [redacted] Charity Care program?
21b. How much in revenue was "charged off" in 2004 under [redacted] Charity Care program?
21c. How much in revenue was "charged off" in 2003 under [redacted] Charity Care program?

22a. What policies and/or procedures did [redacted] utilize in 2005 to identify the amount of benefit that qualifying patients could receive through [redacted] Charity Care program?
22b. What policies and/or procedures did [redacted] utilize in 2004 to identify the amount of benefit that qualifying patients could receive through [redacted] Charity Care program?
22c. What policies and/or procedures did [redacted] utilize in 2003 to identify the amount of benefit that qualifying patients could receive through [redacted] Charity Care program?

23a. Provide copies of all reports provided to [redacted] Board of Directors regarding the operation of the Charity Care program in 2005.

23b. Provide copies of all reports provided to [redacted] Board of Directors regarding the operation of the Charity Care program in 2004.

23c. Provide copies of all reports provided to [redacted] Board of Directors regarding the operation of the Charity Care program in 2003.

24a. What policies and/or procedures did [redacted] utilize in 2005 to identify the amount of patients who qualified for Charity Care benefits any qualifying patient was to receive?

24b. What policies and/or procedures did [redacted] utilize in 2004 to identify the amount of patients who qualified for Charity Care benefits any qualifying patient was to receive?

24c. What policies and/or procedures did [redacted] utilize in 2003 to identify the amount of patients who qualified for Charity Care benefits any qualifying patient was to receive?

25a. What documents, resources and/or programs did [redacted] utilize to train those who assessed patients for the Charity Care program in 2005?

25b. What documents, resources and/or programs did [redacted] utilize to train those who assessed patients for the Charity Care program in 2004?

25c. What documents, resources and/or programs did [redacted] utilize to train those who assessed patients for the Charity Care program in 2003?

26a. Provide the application and documents that a patient seeking Charity Care from [redacted] had to fill out and was expected to read in 2005.

26b. Provide the application and documents that a patient seeking Charity Care from [redacted] had to fill out and was expected to read in 2004.

26c. Provide the application and documents that a patient seeking Charity Care from [redacted] had to fill out and was expected to read in 2003.

27a. What did [redacted] report to the IRS in 2005 in response to the IRS's requirement that Charity Care policies actually yield significant health care services to the indigent?

27b. What did [redacted] report to the IRS in 2004 in response to the IRS's requirement that Charity Care policies actually yield significant health care services to the indigent?

27c. What did [redacted] report to the IRS in 2003 in response to the IRS's requirement that Charity Care policies actually yield significant health care services to the indigent?

28a. What amount of Charity Care did [redacted] report to governmental authorities in 2005?

28b. What amount of Charity Care did [redacted] report to governmental authorities in 2004?

28c. What amount of Charity Care did [redacted] report to governmental authorities in 2003?

Debt Collection Interrogatories and Requests for Production

29a. What policies and/or procedures did [redacted] have in place in 2005 governing the placing of accounts with debt collection agencies and/or non-staff attorneys who are not directly employed by [redacted]?

29b. What policies and/or procedures did [redacted] have in place in 2004 governing the placing of accounts with debt collection agencies and/or non-staff attorneys who are not directly employed by [redacted]?

29c. What policies and/or procedures did [redacted] have in place in 2003 governing the placing of accounts with debt collection agencies and/or non-staff attorneys who are not directly employed by [redacted]?

30a. List all [redacted] employees charged with managing the outsourcing of accounts to debt collection agencies and/or non-staff attorneys in 2005.

30b. List all [redacted] employees charged with managing the outsourcing of accounts to debt collection agencies and/or non staff attorneys in 2004.

30c. List all [redacted] employees charged with managing the outsourcing of accounts to debt collection agencies and/or non staff attorneys in 2003.

31a. Tender the written policy that [redacted] had in place in 2005 regarding the filing of debt collecting litigation against patients of [redacted].

31b. Tender the written policy that [redacted] had in place in 2004 regarding the filing of debt collecting litigation against patients of [redacted].

31c. Tender the written policy that [redacted] had in place in 2003 regarding the filing of debt collecting litigation against patients of [redacted]

32a. Who at [redacted] was authorized to make the decision to file debt collecting litigation against patients of [redacted] in 2005?

32b. Who at [redacted] was authorized to make the decision to file debt collecting litigation against patients of [redacted] in 2004?

32c. Who at [redacted] was authorized to make the decision to file debt collecting litigation against patients of [redacted] Center in 2003?

33a. Tender any and all written contracts or agreements addressing debt collection that [redacted] entered into with debt collection agencies and/or non-staff attorneys in 2005.

33b. Tender any and all written contracts or agreements addressing debt collection that [redacted] entered into with debt collection agencies and/or non-staff attorneys in 2004.

33c. Tender any and all written contracts or agreements addressing debt collection that [redacted] entered into with debt collection agencies and/or non-staff attorneys in 2003.

34a. Tender any and all written reports or accountings addressing debt collection that were tendered to [redacted] by debt collection agencies and/or non-staff attorneys in 2005.

34b. Tender any and all written reports or accountings addressing debt collection that were tendered to [redacted] by debt collection agencies and/or non-staff attorneys in 2004.

34c. Tender any and all written reports or accountings addressing debt collection that were tendered to [redacted] by debt collection agencies and/or non-staff attorneys in 2003.

35a. List all of the debt collection agencies and/or non-staff attorneys who were authorized to collect on more than $1000 in patient debt by [redacted] in 2005.

35b. List all of the debt collection agencies and/or non-staff attorneys who were authorized to collect on more than $1000 in patient debt by [redacted] in 2004.

35c. List all of the debt collection agencies and/or non-staff attorneys who were authorized to collect on more than $1000 in patient debt by [redacted] in 2003.

36a. For each debt collection agency listed above for year 2005, reveal the amount of the monies collected by each entity on behalf of [redacted]

36b. For each debt collection agency listed above for year 2004, reveal the amount of the monies collected by each entity on behalf of [redacted]

36c. For each debt collection agency listed above for year 2003, reveal the amount of the monies collected by each entity on behalf of [redacted]

37a. What is the total number of accounts turned over to debt collection agencies and/or non-staff attorneys in 2005?

37b. What is the total number of accounts turned over to debt collection agencies and/or non-staff attorneys in 2004?

37c. What is the total number of accounts turned over to debt collection agencies and/or non-staff attorneys in 2003?

38a. What is the total amount of billing, excluding any collection fees, that [redacted] sought to have collected by debt collection agencies and/or non-staff attorneys in 2005?

38b. What is the total amount of billing, excluding any collection fees, that [redacted] sought to have collected by debt collection agencies and/or non-staff attorneys in 2004?

38c. What is the total amount of billing, excluding any collection fees, that [redacted] sought to have collected by debt collection agencies and/or non-staff attorneys in 2003?

39a. What is [redacted] internal procedure and/or policy for determining the debts that are referred to collections?

39b. How was this policy developed?

39c. What internal oversights are employed to ensure compliance with this policy?

40a. What is the total amount of money that [redacted] actually realized as a result of the efforts of debt collection agencies and/or non-staff attorneys in 2005?

40b. What is the total amount of money that [redacted] actually realized as a result of the efforts of debt collection agencies and/or non-staff attorneys in 2004?

40c. What is the total amount of money that [redacted] actually realized as a result of the efforts of debt collection agencies and/or non-staff attorneys in 2003?

41a. How much did [redacted] pay debt collection agencies and/or non-staff attorneys in 2005 for the debt collection efforts?

41b. How much did [redacted] pay debt collection agencies and/or non-staff attorneys in 2004 for the debt collection efforts?

41c. How much did [redacted] pay debt collection agencies and/or non-staff attorneys in 2003 for the debt collection efforts?

42a. List the defendants named in all debt collecting litigation filed by [redacted] in 2005.

42b. List the defendants named in all debt collecting litigation filed by [redacted] in 2004.

42c. List the defendants named in all debt collecting litigation filed by [redacted] in 2003.

43a. Identify, by amount per each account and the purchaser, any and all patient accounts or debt [redacted] sold or otherwise alienated in 2005.

43b. Identify, by amount per each account and the purchaser, any and all patient accounts or debt [redacted] sold or otherwise alienated in 2004.

43c. Identify, by amount per each account and the purchaser, any and all patient accounts or debt [redacted] sold or otherwise alienated in 2003.

44a. How much debt did [redacted] "write off" as uncollectible in 2005?

44b. How much debt did [redacted] "write off" as uncollectible in 2004?

44c. How much debt did [redacted] "write off" as uncollectible in 2003?

45a. How many written complaints did [redacted] receive regarding its debt collection efforts, either in-house or outsourced, in 2005?

45b. How many written complaints did [redacted] receive regarding its debt collection efforts, either in-house or outsourced, in 2004?

45c. How many written complaints did [redacted] receive regarding its debt collection efforts, either in-house or outsourced, in 2003?

46a. Tender any and all written policies that [redacted] had in 2005 regarding the discussion of patient accounts after the accounts had been outsourced for debt collection activity.

46b. Tender any and all written policies that [redacted] had in 2004 regarding the discussion of patient accounts after the accounts had been outsourced for debt collection activity.

46c. Tender any and all written policies that [redacted] had in 2003 regarding the discussion of patient accounts after the accounts had been outsourced for debt collection activity.

47a. Tender any and all internal or external audits of [redacted] debt collecting activity completed in 2005.

47b. Tender any and all internal or external audits of [redacted] debt collecting activity completed in 2004.

47c. Tender any and all internal or external audits of [redacted] debt collecting activity completed in 2003.

48a. Tender the policy that [redacted] had in place in 2005 addressing debt collection on accounts that were denied by an insurance carrier due to [redacted] untimely tendering of the necessary documents to the insurance provider.

48b. Tender the policy that [redacted] had in place in 2004 addressing debt collection on accounts that were denied by an insurance carrier due to [redacted] untimely tendering of the necessary documents to the insurance provider.

48c. Tender the policy that [redacted] had in place in 2003 addressing debt collection on accounts that were denied by an insurance carrier due to [redacted] untimely tendering of the necessary documents to the insurance provider.

49a. Tender the policy that [redacted] had in place in 2005 addressing debt collection on accounts that were denied by an insurance carrier due to patients untimely tendering of the necessary documents or information to the insurance provider.

49b. Tender the policy that [redacted] had in place in 2004 addressing debt collection on accounts that were denied by an insurance carrier due to patients untimely tendering of the necessary documents or information to the insurance provider.

49c. Tender the policy that [redacted] had in place in 2003 addressing debt collection on accounts that were denied by an insurance carrier due to patients untimely tendering of the necessary documents or information to the insurance provider.

Identify specifically the answer or documents by corresponding question number.

All requests to identify documents are intended to include documents for which a claim of privilege or confidentiality is asserted. As to any such document, please provide sufficient information so that the identity of the document can be determined for purposes

of in camera inspection and include a full statement of the factual and legal basis for the asserted privilege or confidentiality.

You are not to disclose the existence of this directive except to any attorney you may consult or retain to represent you. Any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.

Any questions pertaining to the subpoena should be called to the attention of Natalie Hogan, Special Agent, Joseph N. Molina, Assistant Attorney General, or Bryan J. Brown, Deputy Attorney General, Consumer Protection/Antitrust Division, Office of the Attorney General, 120 S.W. 10th Avenue, 2nd Floor, Topeka, Kansas, 66612, (785) 296-3751.

FAILURE TO COMPLY with this subpoena within thirty (30) days may make you liable for such penalties as are provided by law.

WITNESS MY HAND at Topeka, Kansas, this 13th day of March, 2006.

Bryan J. Brown

Bryan J. Brown, #17634
Deputy Attorney General
Office of the Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

CERTIFICATE OF MAILING

I hereby certify that the above and foregoing document was sent by U.S. Mail, certified, return receipt requested, postage prepaid, on the 13TH day of March, 2006, addressed to:

[redacted]

Natalie Hogan

Natalie Hogan, Special Agent
Consumer Protection Division

ANDREW RAMIREZ
(913) 451-5113
EMAIL: ARAMIREZ@LATHROPGAGE.COM
WWW.LATHROPGAGE.COM

BUILDING 82, SUITE 1000
10851 MASTIN BOULEVARD
OVERLAND PARK, KANSAS 66210-1669
(913) 451-5100, FAX (913) 451-0875

May 1, 2006

Hon. Robert T. Stephan, Special Assistant Attorney General
Bryan J. Brown, Deputy Attorney General
Consumer Protection Division
Office of the Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612-1597

Re: Subpoena Duces Tecum

Dear Attorneys General:

You met with us on April 17, 2006 to explore the possibility of a studied and collaborative approach to accomplish your stated objective of establishing best billing and collection practices (the "Policy") for all Kansas hospitals versus the adversarial and resource intensive course that is presented by the formal subpoena process. We appreciated your willingness to set aside the subpoena and sit down and discuss the best questions to ask our respective hospital clients to establish the Policy. The purpose of this letter is to outline our understanding of the process that we agreed to follow and to present to you our initial thoughts on providing you with the data necessary to achieve this goal.

In our meeting you suggested that we should tell you what is relevant and what is not. Responding to your leadership we met with a number of our hospitals' financial administrators and representatives of the Kansas Hospital Association ("KHA") on April 25, 2006 to get to the information that is readily available and relevant to a meaningful discussion of the stated goal. We have attached a Memorandum of Voluntary Production which sets forth the results of our clients' efforts to outline the materials which would be useful in developing the Policy.

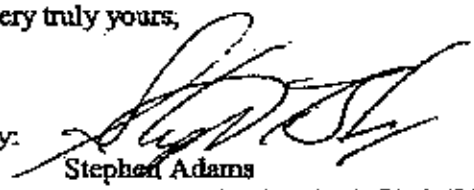
You indicated in our meeting that the responses to the subpoena would be stayed until after Memorial Day, which we understood to mean May 30, 2006. You expected a good faith effort on the part of the hospitals to get meaningful data to you before then. The hospitals that received your subpoena will respond by voluntarily producing

information necessary to formulate the Policy pursuant to the terms of the attached Memorandum of Understanding. Given the disparity in the size of the facilities that received the subpoena some of the hospitals are more readily able to provide information than others. Some will produce information within the next two (2) weeks while others will need at least thirty (30) days to produce all of the information set forth in the Memorandum of Voluntary Production. We believe however that once you see the direction and scope of information/materials produced under this voluntary process you will be satisfied with the effort. We trust that if this effort is satisfactory you will withdraw the subpoena altogether.

We believe that the Kansas Hospital Association ("KHA") has a unique role in this effort. KHA will by separate letter explain the efforts that it will take on behalf of all of the one hundred twenty-one (121) not-for-profit community based member hospitals to immediately form a working group to develop the Policy. KHA will continue to work with its legal counsel, Reid Holbrook.

We have requested that Dick Hay act as the hospitals' personal contact with you to coordinate our efforts. We appreciate your thoughtful consideration of this matter.

Very truly yours,

By: 

Stephen Adams
BLACKWELL SANDERS PEPER MARTIN LLP
on behalf [redacted]

By: [redacted]
Murray E. Anderson
on behalf of [redacted]

By: [redacted]
Gary L. Ayers
FOULSTON SIEFKIN LLP
on behalf of [redacted]

By: [redacted]
Edward L. Barker
[redacted]
on behalf of [redacted]

By: [redacted]
Charles R. Hay
GOODELL, STRATTON, EDMONDS & PALMER, L.L.P.
on behalf of [redacted]

[redacted]

By:
Gary E. Knight, Vice President of Legal Affairs and

General Counsel,
[redacted]
on behalf of [redacted]

By:
David B. Pursell
SHUGHART, THOMSON & KILROY
on behalf of [redacted]

By:
Jeffrey O. Ellis
LATHROP & GAGE L.C.
on behalf of [redacted]

By:
Andrew R. Ramirez
LATHROP & GAGE L.C.
on behalf of [redacted]

By:
G. Mark Sappington
KUTAK ROCK LLP
on behalf of [redacted]

nb

cc: Tom Bell, Kansas Hospital Association
Reid F. Holbrook, Esq.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered into effective the ____ day of May, 2006, by and among the Attorney General of the State of Kansas ("AG"), and the [redacted] (collectively referred to as the "Hospitals").

Recitals

WHEREAS, the AG has caused the issuance of subpoenas to the Hospitals; and

WHEREAS, the AG's stated main purpose in issuing the subpoenas to the Hospitals is to secure the data necessary to arrive at "the goal of defining the best practices that should be utilized in Kansas regarding medical billing, 'charity care' and debt collection" (the "Policy") before September 1, 2006; and

WHEREAS, the Hospitals believe that responding to the subpoenas would generate unnecessary work for the Hospitals and would not further the goal of establishing the Policy; and

WHEREAS, it is the desire of the Hospitals to provide the AG relevant information in an orderly and timely manner; and

WHEREAS, the AG has agreed to stay the subpoenas in order to allow the AG and the Hospitals to collaborate.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereby agree as follows:

Covenants

1. **Purpose.** The purpose of the MOU is set forth in the recitals, which are incorporated herein.

2. **Voluntary Production.** The Hospitals will disclose the information set forth in the Memorandum of Voluntary Production, dated May 12, 2006 within the times specified in that document. If necessary, the Hospitals will continue to collaborate with the AG in producing relevant information by agreed written addendum to the Memorandum of Voluntary Production.

3. **Staying the Subpoenas.** The AG does hereby stay the subpoenas issued to the Hospitals and reserves the right to lift said stay in the future if the data provided under the Memorandum of Voluntary Production is insufficient to meet the stated goal of establishing the Policy.

4. **Reservation of Rights.** The Hospitals reserve the right to challenge the subpoenas now or in the future.

5. **Use of Information, Confidentiality.** The AG agrees that the non-public information produced pursuant to the Memorandum of Voluntary Production will only be used for

the purposes stated herein. Certain information provided may be proprietary or confidential to the Hospitals and public disclosure thereof will not be made nor disseminated among the individual hospitals but will be maintained as confidential. Upon the AG's completion of the purposes stated here the voluntarily produced information will be returned to the attorney representing the individual hospital that provided the information to the AG, with no copies or generated reports remaining in the files of the AG. This memo shall remain in all files and be subject to disclosures made under the Kansas Open Records Act.

6. **Settlement.** The AG and Hospitals agree that the procedures implemented by this MOU shall be regarded as settlement negotiations. Any communication, written or verbal, relating to the subject matter of the MOU made during this process by any participant or any other person shall be regarded as confidential communication. No admission, representation, statement or other confidential communication made in implementing the MOU, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery in accordance with either K.S.A. 60-452a or Rule 408, Fed. R. Evid.

7. **Patient Privacy.** The AG and the Hospitals acknowledge an ongoing legal and ethical requirement to maintain the privacy rights of patients. No information will be provided to the AG in violation of patients privacy rights. If in the opinion of the a Hospital's counsel it becomes necessary to secure a Qualified Protective Order or secure such other authorizations required by law to facilitate the voluntary production of information the AG and the Hospitals will work together to secure a Qualified Protective Order or such other authorizations required by law.

Date:_____

ATTORNEY GENERAL OF THE STATE OF KANSAS

By:

Deputy Attorney General Bryan J. Brown

By:
Jeffrey O. Ellis
LATHROP & GAGE L.C.
on behalf of [redacted]

By:
Andrew R. Ramirez
LATHROP & GAGE L.C.
on behalf of [redacted]

By:
Gary L. Ayers
FOULSTON SIEFKIN LLP
on behalf [redacted]
and [redacted]

By:
Murray E. Anderson
on behalf of [redacted]

By:
Thomas G. Kokoruda
SHUGHART THOMSON & KILROY
on behalf of [redacted]

By:
David B. Pursell
SHUGHART, THOMSON & KILROY
on behalf of [redacted]

By: Edward L. Barker
[redacted]
on behalf of [redacted]

By: G. Mark Sappington
G. Mark Sappington
KUTAK ROCK LLP
on behalf of [redacted]

By: Charles R. Hay
GOODELL, STRATTON, EDMONDS & PALMER, L.L.P.
on behalf of [redacted]

By: Gary E. Knight, Vice President of Legal Affairs and General Counsel, [redacted] on behalf of [redacted]

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MEMORANDUM OF VOLUNTARY PRODUCTION

TO: Kansas Attorney General

FROM: Counsel Defending AG Subpoena

DATE: May 12, 2006

On April 25, 2006, representatives from the Kansas Hospital Association and representatives from the hospitals and healthcare systems that received subpoenas issued pursuant to the Kansas Consumer Protection Act and their counsel met. They discussed the data to be produced to your office that would address the goals expressed by the Attorney General and lead to the development of best practices in patient billing and collection to be implemented in the state of Kansas. This memorandum is intended to identify the data to be provided to your office within 30 days of signing a Memorandum of Understanding to assist in this effort regarding:

(a) Use of the information;
(b) Protection of patient privacy;
(c) Confidentiality regarding not sharing the information with competitors.

I. Notebook with recent literature/materials re: billing and collection practices.

II. Subpoena topic: financial performance.

1. Net Operating Revenue of each hospital.

2. Each hospital's Mission Statement.

III. Subpoena topic: debt collection.

1. Each hospital will prepare a notebook containing a narrative of how debt collection took place in 2005 (and how it takes place today, if different) from date of service through collection or write off. Each hospital will supplement the narrative with supporting exhibits. The narrative or exhibits will include:

   a. Policies and written procedures regarding debt collection practices.

   b. Collection notifications, letters, payment agreements and other standard written collection communications.

   c. Contracts with collection agencies and with law firms performing collection services.

d. Payment plan information.

e. Charity care policy statement(s).

f. Amount of charges written off as bad debt.

g. Amount of charges attributable to charity care, not paid from any source, but not written off as bad debt.

h. Amount of charges discounted for self-pay patients (not received by hospital, not attributable to charity care, and not written off as bad debt) (e.g., self-pay discount, prompt pay discount).

i. Amount of unreimbursed costs from Medicare and Medicaid.

2. Number of patient admissions and out-patient visits in 2005. This same data is prepared and submitted each year to the KDHE.

3. Number of patients (or accounts) sent to collection in 2005; raw number; percentage.

4. Comparison between number of visits or number of patients and number of patients from whom collected, or number of accounts collected, in 2005.

5. Fees paid to third-parties to qualify patients for public assistance in 2005.

6. Number of patients (or dollars) who/that qualify for public assistance in 2005.

7. Number of patients (or dollars) who/that qualified for charity care in 2005.

IV. Litigation/Bankruptcy

In addition to the above, the Hospitals that have the existing capability to track and generate the information will provide data regarding patient bankruptcy. To the extent capable, these hospitals will also show a total number of accounts that have been written off due to bankruptcy being filed and a percentage of these claims that were $1,000 or under.

V. Insurance Reimbursement for Certain Procedures

A. The Hospitals will provide the following information for claims related to Diagnosis Related Group (DRG) Code number 391 (Normal Newborn), DRG 089 (Simple Pneumonia and Pleurisy) and DRG 127 (Heart Failure and Shock) for the

months of January and July 2005. The data may be provided in the standard UB-92 claim form and/or such other format as is available to the Hospitals under their respective coding and accounting systems:

1. the total charge related to the DRG for each patient account;

2. the total dollar amount that was reimbursed by any third party payor for each patient account;

3. the name of the third party payor to whom the amount in 2 above was submitted and reimbursed;

4. the amount that was the responsibility of each patient after reimbursement from third party payors; and

5. the status of each of those patient bills as of May 1, 2006.

B. Each Hospital will list the top ten (10) third party payors and the total amount of payments received by the top ten (10) third party payors for all claims in 2005.

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KANSAS HOSPITAL ASSOCIATION

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DRAFT

Recommended Billing, Financial Assistance and Collection Practices

Endorsed by the
Kansas Hospital Association

PREAMBLE

Kansas hospitals exist to provide essential health care services for their communities, twenty-four hours a day, every day of the year. These essential services are provided regardless of a person's ability to pay; however, individuals have an obligation to pay for the services they receive or seek financial assistance when needed. It is the duty of hospitals to collect from those who have the ability and the resources to pay using ethical collection practices that are allowed under Kansas and federal laws. Financial assistance programs offered by the hospital should not lessen the need to find solutions to expand access to appropriate health care coverage for all persons.

I. Guiding Principles

The following principles and guidelines should be used to develop hospital billing, financial assistance and collection practices:

A. Access to Health Services. A responsible party's inability to pay should not be a barrier to receiving essential health services. The inability to pay a hospital bill should never prevent any Kansan from seeking necessary health services. The hospital should communicate this message to all responsible parties and local health and community service organizations.

B. Mission and Values. The hospital should have billing, financial assistance and collection policies that are consistent with the mission and values of the hospital. These policies, which should be broadly communicated, should reflect a commitment to provide financial assistance to patients who cannot pay for part or all of the care they receive.

C. Communication. The hospital should communicate all billing, financial assistance and collection policies in a manner that is clear, understandable, respectful and in language(s) appropriate to the communities, patients and/or responsible parties served.

D. Legal Compliance. The hospital is responsible for communicating its collection policies and practices to both relevant hospital staff and to its internal collection departments. These policies should be respectful and comply with all applicable state and federal laws.

E. Personal Responsibility. Financial assistance and collection policies are not substitutes for personal responsibility. Eligible responsible parties may be expected to access public or private insurance options in order to qualify for financial assistance. All responsible parties are expected to contribute to the cost of care based on their ability to pay. Responsible parties should comply with the application requirements, including the production of necessary information to determine financial assistance eligibility.

II. Financial Assistance

The hospital's board of directors should adopt financial assistance policies consistent with the hospital's mission and values as well as local community standards. Hospitals should develop policies to aid those individuals who do not otherwise have the ability to pay in a timely manner for health care services received. Hospitals should review and evaluate all financial assistance policies on a regular basis. Hospital financial assistance is not a substitute for employer-sponsored, public, private or individually purchased insurance.

Hospitals should consider the following when adopting financial assistance policies:

A. Communication. The hospital should maintain understandable, written financial assistance policies for low income and uninsured patients. The hospital should provide financial assistance counseling in a clear and concise manner to all responsible parties without regard to race, ethnicity, gender, religion or national origin. The hospital should communicate these policies in a manner that is respectful and in language(s) appropriate to the communities, patients and/or responsible parties served. Attachment A is an example of such communication.

The hospital should post and/or distribute financial assistance information or literature. If posted, these notices should be placed in visible locations throughout the hospital such as admitting/registration, billing office and emergency department. Financial assistance applications should be readily available to responsible parties, and should clearly state the eligibility criteria and the process used by the hospital to determine whether a patient is eligible for financial assistance.

B. Financial Assistance for Low-Income Individuals. The hospital should establish criteria to provide financial assistance to low income and uninsured patients using guidelines such as the Federal Poverty Level (FPL). The hospital should base the amount of the assistance on the demographics of the patient population served by the hospital, and the hospital's financial ability to provide the assistance. These criteria should be evaluated on an annual basis to determine the appropriate level of assistance available.

C. Financial Assistance for Self-Pay Individuals. Uninsured patients should not be charged at a rate exceeding the maximum rate that the hospital actually bills any insurance company for the same product or service. The hospital should be encouraged to provide a self-pay discount. The hospital should base the amount of the assistance on the

demographics of the patient population served by the hospital, and the hospital's financial ability to provide the assistance.

D. Financial Evaluation. The hospital should consider the responsible party's assets in determining eligibility. In addition to the hospital's standard financial assistance evaluation process, the hospital should take into consideration various financial factors, including all outstanding medical bills of the patient at that hospital. The hospital should also evaluate the responsible party's prior hospital accounts to determine if financial assistance was previously authorized, and if so, attempt to utilize the financial information previously provided by the responsible party. The hospital should also access the responsible party's financial situation utilizing the information the responsible party can reasonably provide.

E. Extraordinary Circumstances. **The hospital should identify, on a case-by-case basis responsible parties whose medical expenses, in relationship to their income, would make them medically indigent if they were forced to pay full charges. For the purposes of these guidelines, "medically indigent" shall mean patients whose resources, including any health insurance coverage, do not provide full coverage for all of their medical expenses and that their medical expenses, in relationship to their income and other assets, would make them indigent if they were forced to pay full charges for their medical services.**

III. Billing and Collection Policies – Hospital Responsibilities

Hospitals should consider the following when adopting billing and collection policies:

A. Communication. **The hospital should provide information about the availability of financial assistance to responsible parties. The hospital is responsible for providing its financial assistance policy to all relevant hospital staff and third-party collection agencies engaged in the collection of debts.**

When sending any statement to a patient, hospitals should include (1) a statement indicating that if the responsible party meets certain requirements the responsible party may be eligible for financial assistance from the hospital; and (2) a statement providing the patient with a telephone number the department or office from which the patient may obtain information about the hospital's financial assistance policies and how to apply for such assistance.

B. Timely Filing. **The hospital should timely file insurance claims, provided the responsible party timely provides the hospital with proof of insurance and any other additional information necessary to file the claim. If a claim is denied based on improper insurance information, the hospital should attempt to resubmit the claim with the appropriate insurance information. When possible, the hospital should reference patient billing information previously obtained to determine the proper insurance information. If the hospital bears responsibility for the untimely filing of a claim, the hospital should attempt to collect from the responsible party only that portion which would have been owed had the party's insurance claim been timely filed.**

C. Payment Plans. The hospital should counsel the responsible party in an effort to develop a payment plan, which allows the party to pay the account over a reasonable amount of time based on the party's ability to pay. The hospital should provide an agreed upon payment plan to the responsible party in writing. Any interest rate charged should be clearly stated.

D. Retroactive Financial Assistance When attempting to collect on any open account, the hospital should allow financial assistance to be applied if it is deemed a responsible party would have qualified for previously undetermined financial assistance when services were rendered.

E. Collection Agents. The hospital should define the policies and practices to be used by outside collection agents acting on the hospital's behalf, and require such agents to agree to these standards in writing. The hospital should make reasonable efforts to contact a responsible party regarding payment options prior to assigning the account to a third party collection agency. Hospitals should develop fair and consistent written policies regarding when and under whose authority patient debt is referred for external collection. The hospital should encourage all third-party collection agencies to include notice regarding the hospital's financial assistance programs on all written communications to responsible parties.

F. Collection Terms and Reporting. No hospital should enter into any contracts with debt collectors that include bonuses, contingencies or any other incentives that are paid out against a temporal deadline.

All hospitals should publish to the community, on an annual basis, the identity of all collection firms or attorneys, the amounts collected by each, and the fees paid to each by the reporting hospital.

G. Legal Action. The hospital should require written approval by the hospital's Chief Financial Officer, or his/her designee, before legal action is commenced against a responsible party. A collection agent should not be allowed to file a lawsuit against a responsible party without the hospital's prior written consent.

IV. Responsible Party Obligations

The responsible party is expected to cooperate with the hospital by:

A. Communication. Responsible party should inform the hospital of the need for financial assistance as soon as the need is identified.

B. Pre-designation. When possible, the patient should clearly pre-designate the responsible paying party at the time of initial treatment or admission.

When possible, the patient should clearly pre-designate all authorized visitors for inpatient stay. For the purposes of visitation eligibility and visitors hours, 'family' refers to persons who play a significant role in the patient's life. This may include a person(s) not legally related to the patient. Decisions concerning visitation rights and privileges

should be made by the patient or the patient's chosen designate. Patients should be encouraged to designate those persons who should be granted primary visitation rights and any persons who should not be granted visitation rights before or during the admission process. Hospitals are encouraged to educate the community on this pre-designation process and the benefits of such legal instruments as durable powers of attorney. The above provision is subject to all demands of federal and state law and does not apply to hospital staff.

C. Timely Application. When possible, the responsible party should make a timely application to the hospital if financial assistance is needed.

D. Asset and Financial Disclosure. When available, the responsible party should provide requested information in a timely manner such as available income and assets, household size and other pertinent data in order to establish a workable payment plan with the hospital. If required, the responsible party will provide the hospital with any and all financial and other information needed to enroll in a publicly or privately sponsored program (e.g., Medicaid, Health Wave, MediKan, private grants or SCHIP).

E. Notification of Changes. When possible, the responsible party should inform the hospital regarding any change in their financial situation that may impact their ability to pay their hospital bill or to honor the provisions of their payment plans.

F. Payment. The responsible party should honor any mutually agreed upon payment plan established with the hospital.

V. Implementation

In order to properly implement financial assistance policies, the Kansas Hospital Association recommends that hospitals identify and educate appropriate hospital personnel to administer the policies.

SUMMARY

Kansas hospitals are committed to providing the best possible health care services for the citizens of their communities regardless of their ability to pay. But, because of the growing number of uninsured and underinsured in the state, it is becoming an ever greater financial challenge to assist patients with limited financial resources. The Kansas Hospital Association encourages hospitals to use this document as a guide to build upon their current financial assistance practices and policies.

The Kansas Hospital Association and its member hospitals are committed to working with federal and state government, payers, businesses and consumer groups to address the underlying problems caused by the lack of health insurance coverage. Further, we would encourage other providers of health care such as surgical centers, imaging centers and other health care providers in the state to adopt similar patient-centered billing and collection practices.

Sample Patient Notice of Financial Assistance
(Developed by the Kansas Hospital Association)

[NAME OF HOSPITAL] is proud of its mission to provide quality care to all who need it. If you do not have health insurance or are concerned that you may not be able to pay in full for your care, we may be able to help. **[NAME OF HOSPITAL]** provides financial assistance to responsible parties based on their level of income, assets, and needs. In addition, we may be able to help you identify other available resources or work with you to arrange a manageable payment plan. It is important that you let us know if you will have trouble paying your bill. Federal law requires hospitals to apply their billing and collection criteria consistently to all. Unpaid bills may ultimately be turned over to a collection agency, which could affect your credit status. For more information, please contact **[NAME OF PERSON]** in our financial counseling office at **[PHONE NUMBER]**. We will treat your questions with confidentiality and courtesy.