

**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**THE DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**  
**AND**  
**GROUP HOSPITALIZATION AND MEDICAL SERVICES, INC.**  
**REGARDING IMPLEMENTATION OF HEALTH EQUITY FUND**

This Memorandum of Understanding (“Memorandum”) is entered into by and between the District of Columbia Department of Insurance, Securities and Banking (“DISB”) and Group Hospitalization and Medical Services, Inc. (“GHMSI”) as of the 3rd day of November, 2021. The District and GHMSI are individually referred to as a “Party” and are collectively referred to as the “Parties” in this Agreement.

**RECITALS**

WHEREAS, the DISB, is a subordinate agency of the Government of the District of Columbia, which is a municipal corporation and the local government for the territory constituting the permanent seat of government of the United States; and

WHEREAS, GHMSI is a nonprofit corporation chartered by the United States Congress in 1939 and licensed and regulated by the DISB as a hospital and medical services corporation; and

WHEREAS, on March 19, 2021, the DISB and GHMSI executed a Consent Order that, subject to the satisfaction of certain conditions set forth in the Order, would resolve all litigation related to review by DISB of GHMSI surplus under D.C. Code § 31-3506(e) for 2011 and any prior years (“the 2011 Surplus Litigation”); and

WHEREAS, on November 3, 2021, after satisfaction of the enumerated conditions, the DISB and GHMSI entered a Final Consent Order (“the Final Order”) resolving the 2011 Surplus Litigation; and

WHEREAS, among other things, the Final Order provides for the contribution by GHMSI of \$95,000,000 to a Health Equity Fund, which shall be used to fund grants for community health initiatives under terms set forth in paragraphs 13(a)(i) to (iv) of the Final Order:

- i. A donor-advised Health Equity Fund will be created, which shall be managed by the Health Equity Committee. The Health Equity Committee (“Committee”) may administer the Health Equity Fund through no more than three (3) District-based foundations, which shall be selected by the Committee within three (3) months from the effective date of this Consent Order. GHMSI will provide Ninety-Five Million Dollars (\$95,000,000.00) to the Health Equity Fund. The provision of funds to the Health Equity Fund by GHMSI is and shall be considered Community Health Reinvestment under D.C. Code § 31-3505.01 et seq., and the parties agree that the Community Health Reinvestment shall not be considered a gift to the government of the District of Columbia. Upon request of the Health

Equity Committee, GHMSI shall administer the Health Equity Fund. GHMSI will not seek reimbursement of its own expenses. If the Health Equity Fund is administered by one or more foundations those administrative costs shall be paid out of the Fund. Except as otherwise set forth in this Order, the full Community Health Reinvestment will be provided by GHMSI within 40 days of the final entry of this Order.

ii. The Committee shall be created within two months (2) months from the date of execution of this Consent Order, consisting of seven (7) members. Three (3) members will be appointed by the Office of the Mayor. Three (3) members will be appointed by GHMSI. One (1) member will be a representative of the community, to be selected jointly by GHMSI and the Office of the Mayor. No appointee to the Committee will be an elected official, or an employee or representative of any District agency that regulates GHMSI or an affiliate of GHMSI. The Committee shall develop procedures within three (3) months from the effective date of this Consent Order that govern the process of awarding grants from the Health Equity Fund. The Committee will be responsible for monitoring and overseeing the use of funds.

iii. The purpose of investments to be made from the Health Equity Fund will be to improve the health and health equity of residents of the District of Columbia. The District of Columbia and GHMSI will enter a memorandum of understanding as to the processes to be used by the Committee when seeking, reviewing, and deciding upon specific requests for funding by the community. All funds will be disbursed within 5 years of receipt by the foundations. Costs for management of the Health Equity Fund and monitoring distributions and evaluating results will be paid from the Fund.

iv. The Committee shall distribute Four Hundred Thirty-Two Thousand Dollars (\$432,000.00) to DC Appleseed, which funds shall be used by DC Appleseed to improve the health and health equity of residents of the District of Columbia.

WHEREAS, to promote the effective operation of the Health Equity Committee (“the Committee”) and distribution of the Health Equity Fund (“the Fund”), this Memorandum sets forth governance principles that each Party agrees that it will follow in exercising its responsibilities under the Final Order; and

WHEREAS, to promote the effective operation of the Committee and distribution of the Fund, this Memorandum also sets forth governance principles that the Parties recommend to the Committee for its adoption.

NOW, THEREFORE, based upon the foregoing premises and in accordance with their stated purpose, the Parties agree as follows:

## **INTRODUCTION**

1. This Memorandum is organized into three sections: (1) Appointment of Health Equity Committee Members (“HEC Members”), (2) Rules that the Parties will request that the

Health Equity Committee adopt following its formation, and (3) Termination of the Health Equity Fund. This document does not modify or replace the Final Order or any term therein, and to the extent of any conflict between any provision in this Memorandum and any term of the Final Order, the terms of the Final Order will control. The Parties may alter, amend, rescind or replace this Memorandum in a written document executed by both Parties.

## I. Appointment of Health Equity Committee Members

2. **Composition.** The Committee will consist of three (3) HEC Members appointed by the Office of the Mayor (“Mayor Appointees”), three (3) HEC Members appointed by GHMSI (“GHMSI Appointees”), and one (1) HEC Member who is a consumer representative and who will be selected and mutually agreed to by the Mayor and GHMSI.

3. **Eligibility.** In selecting Mayor Appointees and GHMSI Appointees, each Party agrees that it will only select appointees who meet the criteria set forth in this Section I. Original and replacement appointees are equally subject to the requirements set forth in this Section.

4. **Qualifications.** Mayor Appointees and GHMSI Appointees must each have an in-depth understanding of the healthcare landscape in the District of Columbia and at least five (5) years of experience in two (2) or more of the following areas:

- a. Philanthropy
- b. Social determinants of health (“SDOH) and health disparities
- c. Access to and delivery of healthcare
- d. Diversity, equity and inclusion (“DEI”) issues
- e. Healthcare costs and financing
- f. Health Policy systems and environmental change
- g. Healthcare data analysis
- h. Government and private healthcare payment systems

5. **Committee Balance.** In selecting each Mayor Appointee and GHMSI Appointee, the Mayor and GHMSI will consider whether the Committee has sufficient expertise in each of the areas above, and will strive to appoint HEC Members such that all of the above areas of expertise are represented.

6. **No Personal Benefit.** All HEC Members shall agree to serve without compensation and shall receive no personal benefit as a result of their service on the Committee.

7. **No Conflicts.** HEC Members may not be: (1) registered lobbyists in the District of Columbia, (2) elected officials or employees or representatives of any agency that regulates GHMSI or its affiliates, (3) employees, board members, or representatives of any entity eligible to receive funding from the Fund, or (4) employees or representatives of any company that competes with GHMSI or its affiliates in the District.

8. **Appointment of New HEC Members.** The Mayor may remove and replace a Mayor Appointee, and GHMSI may remove and replace a GHMSI Appointee. If a Mayor Appointee resigns or is removed by the Committee, a replacement will be appointed by the Mayor. If a GHMSI Appointee resigns or is removed by the Committee, a replacement will be appointed by GHMSI. If an Appointee who is selected by the Mayor and GHMSI resigns or is removed, his or her replacement shall be selected by mutual agreement of the Mayor and GHMSI.

9. **Terms.** HEC Members will serve for three-year terms, and a may be reappointed by the Party that originally appointed them. Where an HEC Member resigns or is removed prior to completion of their term, a replacement HEC Member will be appointed for the remainder of the term, and may be reappointed thereafter.

10. **Indemnification.** Except for an HEC Member's gross negligence or willful misconduct, the Fund shall indemnify, protect, defend and hold harmless the HEC Member from and against any and all claims, losses, damages, liens, judgments, attorneys' and expenses and/or liabilities arising out of, involving, or in connection with, their participation as an HEC Member. The HEC Member shall cooperate with the Parties in such defense. The HEC Member need not have first paid any such claim in order to be defended or indemnified. The Government of the District of Columbia and GHMSI do not assume any liability for and shall not indemnify or provide a defense for any of Members of the Committee. The Chairperson of the Committee shall notify the Parties immediately upon receipt of a request for indemnification. The Vice-Chairperson shall provide the notice required in this section if the Chairperson is seeking indemnification.

## **II. Health Equity Committee Policies and Rules**

11. **Purpose of this Section.** Consistent with the rules applicable to donor-advised funds, the Committee serves in an advisory role. In that capacity, the Committee will recommend expenditures from the Fund. The Committee will adopt rules and policies that govern its operation. The Parties agree that, upon the formation of the Committee, the Parties will recommend that the Committee adopt the following rules and policies, in addition to others deemed appropriate by the Committee.

12. **Governance Policies.** The Committee shall adopt the following policies related to governance of the Committee:

- a. No HEC Member or immediate family member will receive compensation for the HEC Member's service on the Committee or any private or personal benefit as a result of service on the Committee.
- b. Each HEC Member will complete an initial and an annual conflict of interest disclosure, identifying personal interests of themselves and immediate family members that may be affected by the work of the Committee.
- c. Each HEC Member will comply with a conflict of interest policy adopted by the Committee (the "COI Policy").
  - i. The COI Policy will require (1) that an HEC Member must recuse themselves from any vote that may involve a personal interest of (i) the HEC Member, (i) an immediate family member of an HEC Member, or

- (iii) an employer of the HEC Member or an immediate family member of an HEC Member or (2) otherwise create an appearance of impropriety or personal gain.
- ii. The COI Policy will require an HEC Member to resign if they are no longer qualified for appointment under the criteria in Section I of this Memorandum.
- d. In appointing the consumer representative, the Mayor Appointees and GHMSI Appointees shall select a person who meets the qualifications and criteria for appointment set forth in Section I of this Memorandum.
- e. The Committee shall prescribe rules that set forth minimum standards for attendance and participation by HEC Members (“Participation Rules”).
- f. The Committee shall remove HEC Members from the Committee for violation of the COI Policy and Participation Rules, and may remove members for violation of other policies and rules prescribed by the Committee.
- g. Actions by the Committee shall require a unanimous affirmative vote of a quorum of its members. A quorum shall consist of all members of the Committee, but in no instance shall a quorum consist of less than five (5) members.
- h. The Committee shall ensure that any Foundation engaged by the Committee to administer the Health Equity Fund has adopted a governance policy that includes a Conflicts of Interests Policy, and the Committee shall be responsible for monitoring compliance with such Policy.

13. **Funding Eligibility.** The Committee adopt the following minimum requirements that an entity must meet in order to be eligible to be recommended to receive a distribution from the Health Equity Fund:

- a. The entity must be either: (i) a charitable organization exempt from federal income tax under 26 U.S.C. § 501(c)(3) and classified as a public charity under 26 U.S.C. § 509(a)(1), (2), or (3); or (ii) an entity described in 26 U.S.C. § 170(c)(1).
- b. Consistent with the rules applicable to donor-advised funds and the advisory role of the Committee as set forth in Article 10, any recommendations for distributions from the Fund will be subject to the approval of the charitable organization (the “Foundation”) managing the Fund.
- c. The entity must be financially sound and capable of performing the program and/or activities for which the distribution of funds is made.
- d. The entity must agree that any distributed funds will be spent solely for the purposes for which the distribution is made, and shall agree to provide periodic and concluding reports and other information as determined by the Committee and the Foundation.

- e. All distributions shall be limited to non-profit organizations based in the District of Columbia that have as its primary mission to provide health care treatment and health-related services to residents of the District of Columbia.
- f. The Health Equity Fund shall not support organizations that discriminate on the basis of age, sex, race, religion, national origin, sexual orientation, disability, political affiliation or immigration status.
- g. Requests from religious organizations for sectarian purposes shall not be considered. A health care organization that is sponsored by or receives donations from a religious organization will be considered (e.g., health care clinic).
- h. A non-profit organization may not apply for and the Committee shall not approve a request for funding that exceeds Five Million Dollars (\$5,000,000.00) per application. A non-profit organization shall be permitted to submit additional applications for funding after successfully fulfilling all of the requirements of previously approved applications.
- i. In order to promote diversity, equity and inclusion, (a) the Committee shall promote participation in funding by organizations with a diverse leadership, including diversity of age, sex, race, religion, national origin, sexual orientation, disability, political affiliation or immigration status; (b) the Committee shall provide a robust outreach and information campaign to ensure awareness of the funding; and (c) the Committee shall make resources available to provide technical assistance for organizations in need of guidance or resources.
- j. In addition to other requests seeking to improve the health and health equity of residents of the District of Columbia, the Committee may consider: (i) Requests from organizations that have a record of successfully addressing social and environmental issues that have an impact on healthcare of District residents that go beyond traditional programs that address access to healthcare and health insurance; (ii) Requests from applicants that include nontraditional factors such as education, employment, income, housing, transportation, food environment, medical care, outdoor environment, and community safety shall be eligible for funding if the applicant can demonstrate to the satisfaction of the Committee that the proposal will have a positive impact on healthcare outcomes for District residents.

14. **Administration.** The Committee shall have the authority to:

- a. Hire employees, enter into contracts and retain professionals as are necessary to further the purposes of the Fund.
- b. To sue on behalf of the Fund and defend against lawsuits filed against the Fund or a Member of the Committee.

15. **Grant-Making Procedures.** The Parties will recommend that the Committee adopt and follow best practices in philanthropy for developing a well-balanced and diverse portfolio of grants and other distributions that meet the health and health equity needs of the citizens of the District of Columbia.

16. **Post-award monitoring and evaluation.** The Parties will recommend that the Committee adopt and follow best practices for monitoring, reporting, and evaluation of distributions from the Fund, and that the Committee develop requirements for long-term tracking, evaluation and reporting of the results from projects supported by the Fund.

17. **Annual Budget and Financial Report.** The Committee shall prepare and adopt an annual budget to provide for the reasonable expenditures necessary to administer the Fund. The Committee shall prepare an annual financial statement prepared in accordance with the generally accepted accounting principles established by the Government Accounting Standards Board. The Committee shall file the annual financial statement with the DISB and GHMSI on or before April 1 of each year for the preceding year ending on December 31<sup>st</sup>.

18. **Oversight.** GHMSI and the DISB shall retain the following oversight authority over the Committee and the Fund.

- a. The DISB shall have the authority to examine the financial activities of the Fund pursuant to D.C. Official Code § 31-3506.01.
- b. The Parties may engage auditors, consultants or attorneys, the costs of which shall be borne by the Fund, to examine the financial affairs, governance or other activities of the Fund or the Committee.

### **III. Termination of the Health Equity Fund**

19. **Term.** Within five (5) years after its operations begin (“the Fund Period”), the Committee will distribute all monies in the Fund. Upon distribution of the monies in the Fund, the Committee will cease operations except for final evaluation and reporting.

20. **Termination.** The Parties, upon mutual agreement may, at any time without prior notice to or consent from the Committee, terminate or restructure the Committee or repurpose any or all of the funds in the Fund for any purpose that is consistent with the terms of the Consent Agreement executed by the Parties.

21. **Post-Termination Funds.** If there are any remaining monies in the Fund at the end of the Fund Period, the Committee will recommend that such monies will be transferred to a nonprofit, charitable organization for use solely for the purposes of improving the health and health equity of residents of the District of Columbia.

22. **Final Report.** Following the Fund Period, or earlier if all monies are distributed prior to the end of the Fund Period, the Committee will produce a final report assessing the results of the distributions provided from the Fund.

23. **Advisory Support.** Following the Fund Period, upon the request of the Mayor and GHMSI, the Committee may continue in an advisory role to receive information pertaining to distributions and provide reports on distributions and the results pertaining to projects supported by the Fund.

CONTACT INFORMATION:

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IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute and deliver this Agreement as of the day and date set forth in the opening paragraph, above.

GROUP HOSPITALIZATION AND  
MEDICAL SERVICES, INC.

By:   
\_\_\_\_\_  
Brian D. Pieninck, President & CEO

DEPARTMENT OF INSURANCE  
SECURITIES AND BANKING

By:   
\_\_\_\_\_  
Karima M. Woods, Commissioner