

MUSKEGON COUNTY BOARD OF COMMISSIONERS
MUSKEGON COUNTY, MICHIGAN

AGENDA

SPECIAL FULL BOARD

Hall of Justice

990 Terrace, Muskegon, MI

September 6, 2011 - 3:30 PM

Kenneth Mahoney, Chair
I. John Snider, Vice-Chair

-
1. Call to Order
 2. Invocation
 3. Pledge of Allegiance
 4. Roll Call
 5. Approval of Agenda
 6. Public Comment (on an agenda item)
 7. Chairman's Report/Committee Liaison Reports
 8. Administrator's Report
 - Authorize Brookhaven MCF to Enter into a Consulting Agreement with LeaderStat, LLC
 9. Old Business
 10. New Business
 11. Public Comment (on a new topic)
 12. Adjournment

Public Comment

Persons may address the Commission during the time set aside for Public Comment or at any time by suspension of the rules. All persons must address the commission and state their name for the record. Comments shall be limited to **two (2) minutes** for each participant, unless time is extended prior to the public comment period by a vote of a majority of the commission.

AMERICAN DISABILITY ACT POLICY FOR ACCESS TO OPEN MEETINGS OF THE MUSKEGON COUNTY BOARD OF COMMISSIONERS AND ANY OF ITS COMMITTEES OR SUBCOMMITTEES

The County of Muskegon will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities who want to attend the meeting upon 24-hours notice to the County of Muskegon. Individuals with disabilities requiring auxiliary aids or services should contact the County of Muskegon by writing or calling: Administration, 990 Terrace Street, Muskegon, MI 49442 (231) 724-6520

REQUEST FOR BOARD CONSIDERATION-COUNTY OF MUSKEGON

COMMITTEE Full Board		BUDGETED <input type="checkbox"/>	NON-BUDGETED <input type="checkbox"/>	PARTIALLY BUDGETED <input type="checkbox"/>
REQUESTING DEPARTMENT Administration		COMMITTEE DATE September 6, 2011		REQUESTOR SIGNATURE
SUMMARY OF REQUEST (GENERAL DESCRIPTION, FINANCING, OTHER OPERATIONAL IMPACT, POSSIBLE ALTERNATIVES)				
<p>Brookhaven Medical Care Facility requests authorization to enter into an agreement with LeaderStat, LLC, for the purpose of interim administrative services. State Regulations require that the Facility be managed by a licensed administrator at all times. The current administrator's resignation is effective September 9, 2011.</p>				
SUGGESTED MOTION (STATE EXACTLY AS IT SHOULD APPEAR IN THE MINUTES)				
<p>Move to authorize Brookhaven MCF to enter into a consulting agreement with LeaderStat, LLC, for interim administrative services.</p>				
ADMINISTRATIVE ANALYSIS (AS APPLICABLE)				
<u>HUMAN RESOURCES ANALYSIS:</u>		<u>FINANCE & MANAGEMENT ANALYSIS:</u>		
<u>CORPORATE COUNSEL ANALYSIS:</u>		<u>ADMINISTRATOR RECOMMENDATION:</u>		
		<p><i>approval</i> <i>BBA</i></p>		
AGENDA DATE:	AGENDA NO.:	BOARD DATE:	PAGE NO.	

CONSULTING AGREEMENT: INTERIM ADMINISTRATOR

THIS CONSULTING AGREEMENT ("Agreement"), made as of this Second day of September, 2011, by and between Muskegon County & Brookhaven Medical Care Facility, a[n] Michigan nursing home facility ("Operator"), and LEADERSTAT, LLC, an Ohio corporation, ("LeaderStat").

RECITALS:

- A. Operator operates a long term care facility (the "Facility") located at 1890 Apple Avenue, Muskegon, MI 49442; and
- B. LeaderStat is an Ohio corporation which is engaged in the business of providing placement services to long-term health care facilities; and Operator desires to enter into an agreement with LeaderStat for to provide an Interim Administrator for the Facility, and LeaderStat desires to enter into an agreement with Operator to do same.

AGREEMENT

In consideration of the foregoing, and the mutual promises, covenants and agreements herein contained, the parties hereby agree as follows:

1. **Services to be Provided by the Consultant.**

Notwithstanding any provision in the Agreement, this addendum shall set forth exclusively the agreement between the parties relative to the subject matter of this Addendum. In the event of a conflict between the Agreement and this Addendum, the provisions of this Addendum shall control.

- A. LeaderStat shall have the LeaderStat Interim Administrator approved by the Operator prior to the placement in the Facility. The LeaderStat Interim Administrator shall report directly to the Operator and shall utilize the Facility's policies and procedures to perform services at the Facility. Upon execution of this Agreement, LeaderStat shall provide the Operator with a copy of the following: Resume, certificate of insurance for professional liability coverage; valid, unrestricted license; criminal background check; OIG exclusion report.
- B. The LeaderStat Interim Administrator shall be placed in the Facility for

a minimum of Forty (40) hours per week and will perform duties as agreed between the Operator, LeaderStat and LeaderStat Interim Administrator, pursuant to the current Facility policies and procedures. Consultant will be responsible for rendering professional administrative services to LeaderStat clients in a diligent manner and in accordance with ethical and professional standards in the nursing profession. Consultant agrees to provide services at such locations as may be reasonably agreed upon between LeaderStat and Consultant. Consultant shall perform duties and responsibilities as mutually agreed between LeaderStat, Consultant and LeaderStat client. Consultant shall provide documentation and/or reporting directly to LeaderStat clients, per LeaderStat clients' instructions and/or policies and procedures, including but not necessarily limited to, a weekly summary of activities, issues and concerns occurring at the LeaderStat client's facility.

C. The LeaderStat Interim Administrator shall comply with applicable laws, rules and regulations that apply to relate to the operation of the Facility.

D. The LeaderStat Interim Administrator shall procure and maintain, at all times during the term of this Agreement and any renewal term hereof, comprehensive professional liability insurance with minimum limits of \$1,000,000 per occurrence and \$3,000,000 in the aggregate.

2. **Term.** The term of this Agreement shall begin on September 07, 2011 (the "Commencement Date") and shall terminate on October 07, 2011 (the "Termination Date").

3. **Compensation.**

(i) For all of the LeaderStat Interim Administrator's services, the Operator shall pay LeaderStat the following: Seventy & 00/100 Dollars (\$70.00) per hour worked, except during federal holidays when the Operator shall pay LeaderStat One-Hundred Five & 00/100 Dollars (\$105.00) per hours worked.

(ii) Mileage at the current Standard IRS rate for business miles driven, limited to one (1) round trip per day from the

LeaderStat Interim Administrator's home to Facility, if within driving distance. Travel time for up to (4) hours of travel time per approved travel day, at half of the regular hourly payment rate. Additionally, other related travel expenses shall be paid to LeaderStat such as airline travel and car rental to allow for reimbursement to the Licensed Administrator.

(iii) Reasonable cost of overnight lodging as approved by the Operator.

(iv) A meal allowance of no more than forty Dollars (\$40) per day shall be allowed for a LeaderStat Interim Administrator that must stay overnight at a remote location away from the LeaderStat Interim Administrator's home.

B. Payment of Compensation is payable to LeaderStat upon receipt of invoice. If Compensation is not paid to LeaderStat within fifteen (15) days, interest shall accrue at the lesser of one and one half percent (1 ½ percent) per month or the maximum amount permitted by law. In addition, if LeaderStat retains the services of a collection agency or an attorney to obtain the payment of amounts due hereunder, LeaderStat shall be entitled to recover from the Operator all collection agency and attorneys' fees, court costs and other collection expenses.

4. **Termination.** Either party to this Agreement may terminate this Agreement, with or without cause, upon fifteen (15) days prior written notice to the other party. LeaderStat may terminate this Agreement effective immediately upon written notice to Operator if Operator fails to pay any invoice within fifteen (15) days of the submission of the invoice by LeaderStat to Operator. Notwithstanding anything set forth in this Agreement to the contrary, if any of the terms of this Agreement are held to be violative of any law or regulation, including, but not limited to, any law or regulation relating to the delivery of and/or reimbursement for health care services, either party may terminate this Agreement effective immediately upon written notice to the other.

5. **Relationship of Parties.** This Agreement does not and shall not be construed to create the relationship of agent, employee, corporation, joint venture or association between the parties, but is an agreement by and between two independent contractors. Neither party has the authority to bind the other to any third party or otherwise to act in any way as the representative of the other, unless expressly agreed to in writing signed by both parties hereto.

6. **Representations and Warranties of LeaderStat.** LeaderStat hereby represents and warrants to the Operator that, as of the date of this Agreement, and for the entire term and any renewal term hereof that the LeaderStat Interim Administrator is duly licensed under the laws of the State of Michigan as Licensed Nursing Home Administrator and currently possesses a full and unrestricted license.

7. **Access to Financial Information.** If this Agreement is determined to be subject to the provisions of Section 952 of P.L. 96-499, which law governs access to books and records of subcontractors of services to Medicare providers where the cost or value of such services under a contract exceeds Ten Thousand Dollars (\$10,000.00) over a twelve (12) month period, then LeaderStat shall permit representatives of the Secretary of the Department of health and Human Services and of the Comptroller General, in accordance with criteria and procedures contained in applicable federal regulations, to have access to LeaderStat's books, documents and records as necessary to verify the cost of Services provided under this Agreement.

8. **Restrictive Covenant & Placement Fee.** Operator acknowledges that the LeaderStat Interim Administrator and all of LeaderStat's employees, independent contractors and agents ("LeaderStat Affiliate") are subject to a restrictive covenant for a period of twenty-four (24) months after the termination of the relationship with LeaderStat, the LeaderStat Affiliate shall not engage, in any capacity whatsoever, whether as a proprietor, partner, investor or shareholder, director, officer, employee, consultant, independent contractor, co-venturer, financier, employer, agent, representative or otherwise, engage, directly or indirectly, in services provided to any LeaderStat client. A placement fee ("Placement Fee") will be paid to LeaderStat, if the Operator or any corporation affiliated, owned in part or whole by the Operator directly or indirectly employs the LeaderStat Interim Administrator during a period of two (2) calendar years following from the

Termination Date of this Agreement. The Placement Fee shall be twenty percent (20%) of the LeaderStat Interim Administrator's full time salary for the first year. Such Placement Fee shall be due and payable to LeaderStat within thirty (30) days of the hire date of the LeaderStat Licensed Nurse by the Operator and/or related corporation. The Operator also acknowledges that if the LeaderStat Affiliate breaches the restrictive covenant provision and/or does not pay the Placement Fee, LeaderStat will have the right to enforce any legal or equitable remedy (including temporary or permanent injunctive relief) that may be available to it.

9. **Confidentiality.**

A. LeaderStat acknowledges that, as a result of LeaderStat's performance under this Agreement, LeaderStat and its employees, independent contractors and agents, will be exposed to confidential information relating to the operation and business of the Operator, affiliates of the Operator clinical records, customer lists, client lists, supply lists, advertising, marketing and other promotional materials, pricing data, personnel data and other information of like nature which constitute trade secrets and confidential information of the Operator (collectively, "Confidential Information"). LeaderStat agrees that, except as otherwise set forth in this subparagraph (a):

(i) LeaderStat shall not disclose, transfer or otherwise make available any item of Confidential Information to any person or entity not employed by the Operator, however, that this prohibition shall not apply to any item of Confidential Information which is otherwise publicly available;

(ii) LeaderStat shall not use or knowingly allow the use by any third party of any item of Confidential Information other than in furtherance of the Operator's business.

B. To the extent required by any applicable HIPAA laws and regulations, LeaderStat agrees to enter into a Business Associate Agreement with the Operator necessary to protect the privacy of "Protected Health Information" as defined by HIPAA. Operator agrees to take all necessary actions to fully comply with any applicable HIPAA laws and regulations.

10. **Notices.** All notices, approvals or other communications the Operator or

LeaderStat may desire or be required to give to the other party under the terms of this Agreement shall be in writing and shall be deemed to have been properly given, served and received (1) if delivered by messenger, when delivered, (ii) if mailed in the United States certified or registered mail, postage prepaid, return receipt requested, on the third (3rd) business day after mailing, or (iii) if delivered by reputable express carrier, freight prepaid, the next business day after delivery to such carrier, addressed to such party as follows:

If to LeaderStat addressed as follows:

LeaderStat LLC
1322-B Manning Parkway
Powell, OH 43065

If to the Operator, addressed as follows:

Brookhaven Medical Care Facility
1890 Apple Avenue
Muskegon, MI 49442

Any party may change the address or party to which notices may be sent by notice to the other party or parties as provided herein.

11. **Compliance with and Governing Law.** The Operator and LeaderStat hereby agree to comply with all laws applicable to their respective duties and obligations under this Agreement. This Agreement shall be governed by the internal laws (and not the conflict laws) of the State of Ohio.
12. **Assignment.** Neither party shall assign, directly or indirectly, any of its rights, duties or obligations under this Agreement in whole or in part without the prior written consent of the other party.
13. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter contemplated hereby and supersedes all previous and contemporaneous oral or written negotiations, agreements, arrangements and understandings relating to the subject matter hereof. There have been no representations or

statements, oral or written, that have been relied on by either party hereto, except those expressly set forth in this Agreement.

14. **Amendment.** This Agreement shall not be amended, supplemented or modified except by an instrument in writing signed and delivered by each of the parties thereto.

15. **Counterparts.** This Agreement may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts put together shall constitute but one and the same Agreement.

16. **Waiver.** No failure to delay on the part of either party hereto in the exercise of any power or right, and no cause of dealing between the Operator and LeaderStat shall operate as a waiver of such power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power or right. No waiver by a party hereto of any condition or of any breach of any term contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other term.

17. **Headings.** The headings preceding the text of Sections of this Agreement are provided for convenience and reference only and should not be used in construing this Agreement.

18. **Remedies Cumulative.** No remedy set forth in this Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available hereunder, at law or in equity to any party, but the same shall be distinct, separate and cumulative and may be exercised from time to time as often as occasion may arise or as may be deemed expedient.

19. **Severability.** If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, it shall be ineffective to the extent of such invalidity, illegality or unenforceability, and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

20. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

21. **Consent.** Except as otherwise set forth in this Agreement, any consent or approval required under this Agreement shall not be unreasonably withheld.

22. **Non-Discrimination.** All services provided under the Agreement shall be provided without regard to the race, color, creed, sex, age, handicap status, payor source or national origin of the patient requiring such services. LeaderStat agrees to comply with all applicable laws prohibiting discrimination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered as of the date first above written.

"LeaderStat"

LEADERSTAT, LLC,
an Ohio corporation

By: _____

Title: President

By: _____

Title: