

## **Board of Health Q& A**

December 19, 2011

At the October 19 Metro Louisville Board of Health Community Forum, 192 questions and comments were submitted to the board via email and other channels. Because of the volume, the Board of Health grouped them into eight topic areas and asked the proposed merger partners to respond by topic, rather than trying to address each individual question.

Here are the topics and the responses.

### **1. Reproductive Rights and Ethical and Religious Directives (ERDs)**

There has been a tremendous amount of discussion about the delivery of reproductive health services for women. For the most part, current services will remain unchanged.

Last summer, the University of Louisville announced an enhanced affiliation agreement with Baptist Hospital East. The agreement expands access to UofL obstetricians and gynecologists to both enhance patient care and advance the learning opportunities for future physicians.

For many years, UofL obstetricians and gynecologists admitted patients to Baptist Hospital East, UofL Hospital, Norton Hospital and St. Anthony's Hospital. The enhanced agreement with Baptist Hospital East ensures UofL faculty will continue providing the community with the full range of reproductive services, including tubal ligations.

Through this agreement, all women being seen by University of Louisville faculty physicians will receive their prenatal care at UofL outpatient facilities, just as they do now. In consultation with their physician, they will determine at which hospital they will deliver, dependent upon where the physician has privileges. During these visits and discussions, if any woman expresses her desire to have a tubal ligation immediately following delivery, the physician will discuss the delivery site options, which will include Baptist Hospital East and other facilities for which the physician has privileges and the hospital policies allow tubal ligations. Women will NOT be transferred from one hospital to another immediately following delivery to have a tubal ligation.

Discussions will be held with the mother prior to delivery so that the SINGLE best option for the mother is decided. State law requires that a woman provide a minimum of 24 hours written notice if she wishes to have a tubal ligation.

The uninsured and underinsured live throughout the region, though many are already deciding to have their babies at hospitals on the east side of town. Prenatal care discussions for any woman who is indigent or underinsured, no matter where she lives, will include transportation options to assure the woman is able to get to the hospital she and her doctor have chosen when she begins labor. The transportation policy in place also includes arranging transportation for the mother and infant back to their home and providing an infant car seat.

When any woman enters labor, she will go to the hospital she has chosen in consultation with her physician, just as occurs now. As is the case currently, her medical records will be available at the time of delivery. Following delivery, if the mother is scheduled for a tubal ligation, she will receive the procedure. However, if the delivery is the result of a medical emergency, either for the mother or the infant, standard of care calls for the tubal ligation to be rescheduled at a later date once the emergency has passed. This standard of care is for ANY woman delivering in an emergency situation.

If an infant born at Baptist Hospital East has medical needs that require a Neonatal Intensive Care Unit, the hospital has a Level II unit. If the baby requires a higher level of care than is available, the baby will be transferred to an area hospital that has a Level III unit, just as occurs now at Baptist. Transfers of this nature happen approximately 50 times per year at Baptist.

By contractual agreement, elective sterilizations, elective abortions and euthanasia will not be performed at University Hospital. Elective abortions and euthanasia are not currently performed at University Hospital. Vasectomies are not currently performed at University Hospital, but are performed as outpatient procedures outside of the hospital. This will not change following the merger. Elective sterilizations will remain available at Baptist East or other affiliated hospitals as described previously. If the University reasonably concludes that an activity that it has contractually agreed not to perform at University Hospital is necessary to

maintain a competitive school of medicine or for any other reason, the University has the right to affiliate with other facilities to conduct those activities. If CHI concludes that operations at the teaching hospital facilities reasonably will result in CHI or the Catholic facilities falling out of compliance with the ERDs, CHI's sole remedy is to unwind the merger.

A number of questions have surrounded victims of sexual assault. Consistent with Kentucky state law, rape victims who present to the emergency department are offered the services of a Sexual Assault Nurse Examiner, a credentialed nurse or physician on-call 24/7 to conduct an examination and collect forensic evidence. In addition, law enforcement is notified as indicated. Patients are provided with testing and/or treatment for sexually transmitted diseases, including AIDS, as well as access to follow-up testing. Each patient is given a pregnancy test to rule out the possibility of pregnancy prior to the assault. If she was not pregnant before the assault, a contraceptive is administered to prevent pregnancy. The merger will not change this procedure.

There are numerous drugs appropriate for emergency contraception. The attending physician may choose the best option for each patient; this practice will not change following merger. RU-486 is not currently provided at University Hospital; this practice will not change following merger.

It's important to note that the physician-patient relationship will not change as a result of the merger. University of Louisville Physicians and community physicians will continue to counsel patients about family planning in an office setting.

University physicians with staff privileges at University Hospital will continue to be able to provide a full range of family planning counseling. Prescriptions for birth control pills will not be filled in hospital pharmacies. University of Louisville physicians and community physicians who are not part of the merged entity will continue to be able to prescribe oral contraceptives, and these prescriptions may be filled in the commercial pharmacy of the patient's choice.

Miscarriage and ectopic pregnancy management will continue to be provided. Operations, treatments, and medications that have as their direct purpose the cure of a serious pathological

condition of a pregnant woman are permitted when they cannot be safely postponed until the unborn child is viable, even if they will result in the death of an unborn child.

## **2. Merger Structure/Finances**

### Structure

This merger brings together Jewish Hospital & St. Mary's HealthCare (JHSMH), Saint Joseph Health System (SJHS) and University of Louisville Hospital | James Graham Brown Cancer Center (referred to as UMC, for University Medical Center).

The sponsors of these entities are Jewish Hospital HealthCare Services (JHHS), Catholic Health Initiatives (CHI) and University of Louisville (UofL).

The merger does not include the University of Louisville School of Medicine, University of Louisville Physicians, or assets outside the corporate entities such as the new University of Louisville Health Care Outpatient Center on Chestnut Street in Louisville. It does not include other Catholic Health Initiatives facilities or operations in other states. It also does not include community physicians who currently are independent of the partners.

This merger will double the size of the academic medical center, increasing its ability to broaden the range of our clinical care, grow existing services and provide greater access to the leading edge treatment available through faculty physicians. In addition, the merger puts all the partner facilities in a better position to address the challenges of health care reform in an organization that has both size and scope.

The new organization will be governed by a community board made up of 18 trustees. The trustees will oversee the new system once all regulatory and church approvals are complete. Until then it will have an important role in the planning process

### Unwind

The potential partners and sponsors have studied and learned from other organizations that have attempted similar partnerships, identifying common themes to success: commitment to full integration and alignment of strategic plans. The parties are committed to the success of the merger, but have identified certain “triggers” that could potentially lead to an unwind of the merged entity.

An Academic Oversight Committee will be responsible for reviewing the budget and making recommendations associated with the Academic Medical Center (including the current University of Louisville Hospital | James Graham Brown Cancer Center, Jewish Hospital, and Frazier Rehab Institute). One of the committee’s primary responsibilities is ensuring the UofL School of Medicine maintains full accreditation of its programs. Putting an accreditation in jeopardy is one example of a potential trigger for unwind.

In the unlikely event of an unwind, the sponsors would have the opportunity to withdraw from the merged entity. For instance, if the University of Louisville chose to withdraw, it would have the option to purchase the University of Louisville Hospital. This event would require that the parties hire an independent appraiser to establish the fair market value of the University Hospital at the time of withdrawal. The University would receive a credit for any assumed liabilities and for its percentage ownership in the merged entity based on the appraisal. The University would have to pay the merged entity for the value of the assets that they would acquire.

### Financial Arrangements

As a part of our partnership, we’ve agreed that Catholic Health Initiatives will invest \$320 million to launch the new network. The three potential partners forming the new organization have committed to investing \$200 million in the Louisville Academic Medical Center and \$100 million for technology and other investments from revenue generated in the first three years of operation. An additional \$100 million will be invested in the network outside the Louisville Academic Medical Center to support facility, technology and programmatic upgrades.

UofL is leading an effort to collect ideas for the program investments in the Louisville Academic Medical Center that would benefit the community most.

### Board

The definitive agreement specifies that the 18 member board of directors will be appointed by the sponsors, with the number of members appointed in proportion to the value each sponsor brings to the new network.

- University of Louisville will appoint four members
- Jewish Hospital HealthCare Services will appoint four members
- Catholic Health Initiatives will appoint 10 members

Of the current 18 board members, 17 live in Kentucky. Eleven of them are from Louisville.

### Academic Freedom

Neither the University of Louisville nor its faculty is merging. The merger will not affect the academic activities of the university.

### Why merge?

Without the merger, University of Louisville Hospital | James Graham Brown Cancer Center will increasingly be unable to subsidize care for the uninsured, resulting in further rationing of services to the underserved. Some of the thousands of people from Jefferson County cared for in 2010 – 3,900 inpatient cases and 50,000 outpatient cases – will not be served, further reducing the health care safety net for the poor and risking the curtailment of trauma and other vital medical services.

JHSMH has had an operating margin of 1% or less for the last several years, despite eliminating over \$70 million in one-time and recurring costs. This financial situation does not allow for needed capital investment. Unless the merger goes forward, patients who count on the JHSMH system will be impacted.

The ability of the three prospective partners to provide community benefit at their historic levels – more than \$270 million combined in 2009 – will be at significant risk without the new investment available through the merge.

### **3. Public Institution/Church State Separation**

Neither the University of Louisville nor physicians associated with its School of Medicine will lose independence. Neither the University, the School of Medicine, UMC, nor University Hospital will be bound by the Ethical and Religious Directives for Catholic health care or other religious directives and teachings. Health care decisions will continue to be made solely by the patient and his or her physician.

UMC will continue to manage a secular teaching hospital not bound by faith-based principles and has agreed, by contract, not to perform certain procedures at UMC's facilities—notably, elective abortions and euthanasia (both of which state law already prohibits performing on state property); tubal ligations; and the dispensing of certain drugs for sole use as contraceptives. However, there is no restriction on UofL faculty physicians' ability to perform these procedures elsewhere or the dispensing of these drugs for other medical reasons or at other locations. If CHI concludes that operations at the teaching hospital facilities reasonably will result in CHI or the Catholic facilities falling out of compliance with the ERDs, CHI may propose changes to the activities that, by contract, will not be performed at the teaching hospital facilities. If proposed changes to the contract are not agreed to, then CHI's sole remedy is to unwind the merger.

The "establishment clause" of the First Amendment to the United States Constitution will not be violated by the merger—UMC is not a "state actor" (governmental body or official) and, even if it were, the merger does not endorse religion and there is no "excessive governmental entanglement with religion."

In the unlikely event that the merger proves problematic to the University or the Commonwealth, due to breach by any of the parties, the transaction may be unwound. The price of such an unwind is fair, affordable and financeable.

#### **4. End-of-Life Care**

Physicians will continue to inform patients of all available options for end-of-life care, including hospice, palliative (sometimes referred to as terminal) sedation and palliative care. “Do Not Resuscitate” (DNR) orders will be followed.

In the vast majority of cases, patients’ advance directives (i.e. living wills, health care surrogate designations, durable powers of attorney) will be honored. There may be a rare situation, such as a patient in a persistent vegetative state who is not in the dying process, in which the patient makes a request or has an advance directive that is not consistent with hospital policy and/or contractual agreement. In these few cases, the facility would not be able to comply. In consultation with the patient’s family, the patient would be transferred to another facility or to home under Hospice or family care. Because most patients in such a condition are in long-term care facilities, not in acute-care hospitals, this situation would be extremely rare in one of the hospitals in the new network. Across its more than 70 hospitals, Catholic Health Initiatives has had only one case like this since 2009. In that case, the patient was transferred home under the care of Hospice and family.

#### **5. Same-Sex Visitation**

All of the potential merger partners honor the visitation wishes of their patients.

#### **6. Employee Benefits**

Currently, employees of the Catholic facilities within Jewish Hospital & St. Mary’s HealthCare (Sts. Mary & Elizabeth Hospital and Our Lady of Peace) as well as employees of Saint Joseph Health System, do not have insurance coverage for specific reproductive services or prescription medications. This will not change in the new organization.

Senior leaders at JHHS and UMC have assured that their employees will continue to have access to full medical coverage in 2012, including reproductive services.

## **7. Access to Care/Indigent Care**

Caring for the uninsured is core to the missions of all three organizations. All partner hospitals will continue to care for uninsured patients in their communities. The potential merger partners seek to increase access to care, not limit it.

Their commitment includes care for the poor, the at-risk and the uninsured. The depth of this commitment is evident in year-over-year increases in the levels of quantifiable community benefit, which includes charity care, by all of the potential merger partners. Together, the three provided more than \$270 million in community benefit, including indigent care, in 2009. UMC is the largest provider of indigent care in the state.

UMC and Jewish Hospital & St. Mary's HealthCare for years have sacrificed much needed capital reinvestment in their facilities so that each could continue its mission of serving those who cannot afford care. This has taken its toll on both organizations. Without sufficient capital, the growth of UMC and JHSMH – in terms of physical plant, equipment and the increasingly sophisticated services the community demands – will be limited and current levels of service may not be available.

If the merger does not go forward, the prospective partners will lose out on the opportunity for capital investment that has been delayed for years as both UMC and JHSMH have fought to continue caring for the indigent and providing training opportunities for future generations of health care providers.

## **8. Research/Academic Questions**

The merger will not affect academic research. University faculty, physicians and researchers are not part of the merged entity. Clinical trials involving adult stem cell therapies can continue.