



# HINKLE + LANDERS

Certified Public Accountants + Business Consultants

## **MCKINLEY COUNTY**

**REPORT OF INDEPENDENT ACCOUNTANT'S  
FORENSIC AUDIT AND CONSULTING  
ENGAGEMENT OF REHOBOTH MCKINLEY  
CHRISTIAN HEALTH CARE SERVICES**

**For the Period of  
January 1, 2017 Through December 31, 2018**



## TABLE OF CONTENTS

### FORENSIC AUDIT AND CONSULTING ENGAGEMENT OF REHOBOTH MCKINLEY CHRISTIAN HEALTH CARE SERVICES

|   | <u>Page</u> |
|---|-------------|
| TABLE OF CONTENTS   | i           |
| REPORT OF INDEPENDENT ACCOUNTANT'S FORENSIC AUDIT<br>AND CONSULTING ENGAGEMENT OF REHOBOTH MCKINLEY<br>CHRISTIAN HEALTH CARE SERVICES | 1           |
| OBJECTIVE AND SCOPE   | 1           |
| EXECUTIVE SUMMARY   | 2           |
| PURPOSE OF REPORT AND SUMMARY OF ISSUES IDENTIFIED  | 6           |
| FINDINGS, RESPONSES AND RECOMMENDATIONS   | 10          |
| PROCEDURES PERFORMED  | 10          |
| DETAILED FINDINGS, RECOMMENDATIONS AND RESPONSES  | 14          |
| OTHER MATTERS   | 31          |
| EXIT CONFERENCE   | 31          |
| DISCLAIMER  | 32          |
| EXHIBIT 1 (COMMINGLING OF FUNDS)  | 34          |



**REPORT OF INDEPENDENT ACCOUNTANT’S FORENSIC AUDIT AND  
CONSULTING ENGAGEMENT OF REHOBOTH MCKINLEY  
CHRISTIAN HEALTH CARE SERVICES**

To the Board of County Commissioners,  
Mr. Anthony Dimas, County Manager of McKinley County  
Gallup, NM  
and  
Mr. Brian Colón, Esq. CFE,  
New Mexico State Auditor  
Santa Fe, NM

**Subject: Forensic Audit and Consulting Engagement of Rehoboth McKinley  
Christian Health Care Services, Inc. (RMCHCS)**

Dear County Commissioners, County Manager Dimas and Auditor Colón:

Thank you for the opportunity to work with you to complete this forensic audit consulting engagement for Rehoboth McKinley Christian Health Care Services, Inc. (RMCHCS). This report summarizes our procedures, findings, recommendations and responses as it relates to our assistance with your evaluation of RMCHCS related party transactions for the period from January 2017 through December 31, 2018.

**OBJECTIVE AND SCOPE**

We have performed the consulting procedures enumerated below, which were agreed to by McKinley County and the New Mexico Office of the State Auditor (OSA), solely to assist you to gain an in-depth understanding of related party transactions at RMCHCS, including their nature, terms and business purpose (or lack thereof) and whether they were in the best interest of RMCHCS, McKinley County and the surrounding community RMCHCS was created to serve.

This consulting engagement was conducted in accordance with the Audit Act 12-6-6 NMSA 1978, 2.2.2 NMAC Requirements for Contracting and Conducting Audits of State Agencies and Standards for Consulting Services established by the American Institute of Certified Public Accountants. The scope of this engagement is outlined in the body of our report. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the consulting procedures described below either for the purpose for which this report has been requested

or for any other purpose. This audit was requested by McKinley County as is their right per the lease agreement related to the mill levy funds. RMCHCS remains responsible for their accounting records, maintaining effective internal controls over the financial statements and compliance requirements as well as fraud prevention and detection.

Due to the commingling of mill levy funds, the substantial operating losses sustained by RMCHCS and the significant concern over substantial related party activities involving senior management, the County has the authority and the fiduciary responsibility to obtain an in-depth understanding of the significant related party transactions and whether they are properly identified and executed without conflict of interest and in the best interest of the Gallup, McKinley County and the surrounding area.

## **EXECUTIVE SUMMARY**

### **Background—Rehoboth McKinley Christian Health Care Services**

Rehoboth McKinley Christian Health Care Services, Inc. (RMCHCS) operates a 60-bed hospital in Gallup, New Mexico that provides inpatient and outpatient hospital care, emergency care services, physician clinics and home care and hospice services to the residents of Gallup, McKinley County and the surrounding area. It is organized as a New Mexico nonprofit corporation, and according to Internal Revenue Service filings (form 990), it is classified as an Internal Revenue Code §501(c)(3) organization, exempt from federal income taxation, and operated as a public charity (a hospital) in accordance with IRC §170(b)(1)(A)(iii). Pursuant to §501(c)(3), no part of the net earnings may inure to the benefit of any private shareholder or individual.

As a New Mexico nonprofit corporation, RMCHCS is required to have not less than 3 directors (NMSA 1978, §53-8-18). The affairs of a corporation are required to be managed by a board of directors. (NMSA 1978, §53-8-17). The corporation may delegate its management authority to officers or agents, but remains ultimately responsible for the management of the corporation. (NMSA 1978, §53-8-23).

On September 1, 2016, RMCHCS entered into a Management Agreement contract with Healthcare Integrity, LLC (HCI), an organization that was formed in November 2014. David Conejo is identified as the Principal of HCI, and as the Chief Executive Officer and Registered Agent for HCI.

### **Mission and Values of Rehoboth McKinley Christian Health Care Services**

Rehoboth McKinley Christian Health Care Services, Inc. (RMCHCS) states their mission is to serve God by making a profound and lasting difference in the health and quality of life for all

people in the community. According to RMCHCS' website, the organization has adopted Core Values, which include Stewardship and Integrity. The Stewardship value states RMCHCS will use the organization's resources in an essential trust. RMCHCS staff will be responsible stewards of the human, time and financial resources used to fulfill its mission. The Integrity value states RMCHCS will operate according to the highest standards, as befitting the community trust placed in the organization. They state they will hold themselves accountable to do what is right at all times. As McKinley County provides mill levy tax revenue in the vicinity of two million five hundred thousand dollars on an annual basis, it is within their rights and part of their responsibility to ensure the stewardship of their funds are well used for services provided by RMCHCS and are being used in the best interest of its citizens.

### **Federal Compliance Requirements**

In addition to RMCHCS' mission and core values, there are federal requirements for 501(c)(3) hospital charitable organizations. The IRS explains that in order to meet the tax-exempt qualifications under Section 501(c)(3) of the IRS code, "an organization must be organized and operated exclusively for exempt purposes ... and none of its earnings may inure to any private shareholder or individual." To further define "inure," the private inurement doctrine states that the organization's assets must not unduly benefit a person. The organization cannot use its earnings for certain things, such as compensating an insider (i.e. officers, trustees, their businesses and family members) where no upper limit exists, creating a compensation agreement that is performance based, paying more than the fair market value to an insider for goods or services, and several other scenarios.

The other consequences of noncompliance are excess benefit transactions. To promote compliance with the rules and to deter such transactions, excess benefit transactions bring adverse consequences to not only the Organization but to the participating individuals as well. Examples of excess benefit transactions are those that would meet the definition of private inurement as well as improperly documented business expenses including but not limited to travel, meals, gifts, etc.

Violations of private inurement and excess benefit transactions begin with intermediate sanctions on the insider who partakes in excess benefit transactions, and can ultimately lead to the revocation of an organization's exempt status in some circumstances.

### **Background—Healthcare Integrity, LLC**

Healthcare Integrity, LLC is a privately-owned limited liability company. There is little public information available regarding the company. The contract recites that David Conejo began managing RMCHCS, as an employee of another management company, in August 2014. As previously noted, HCI was formed in November 2014. It appears that David Conejo is the sole

member of HCI, and the Secretary of State's website also identifies David Conejo, Principal of HCI, as the Chief Executive Officer and Registered Agent for HCI.

Per our review of financial information and interviews, there is no indication that HCI manages, or has managed, any other hospital or healthcare provider.

**Analysis of Management Agreement Between RMCHCS and HCI.**

The Management Agreement is dated September 1, 2016, and has a five-year term, which automatically renews for four consecutive five-year terms (potentially a 25-year term) unless either party provides notice of termination not less than 90 days before the end of the then existing. The material terms of the contract are as follows:

1. HCI is retained as "the sole and exclusive manager and administrator" of RMCHCS, to perform day-to-day management and administrative services and duties. The contract recites that the Board of Trustees retains "ultimate control and direction of the assets and affairs of the Hospital System." Although David Conejo is identified as the primary reason that RMCHCS is contracting with HCI, there does not appear to be any contractual provision that assures his continued employment by HCI. To the contrary, paragraph 2.5 authorizes HCI to "terminate the employment of an Employee and to hire such additional Employees as Manager determines is reasonably necessary from time to time, subject to consent of Owner."
2. HCI is authorized to perform all aspects of the management and operation of RMCHCS, including hiring and firing of employees, recruiting of personnel, contracting, purchasing, preparation of operating and capital budgets, management of cash flow, billing and collection, control of all bank accounts and investments, and maintenance of all books and records.
3. HCI is authorized to retain a Chief Executive Officer, a Chief Financial Officer, and a Chief Operating Officer, each of whom shall be employees of Manager, but all expenses of employment of these individuals shall be paid by RMCHCS.
4. HCI must be reimbursed all expenses that it incurs in connection with the performance of the Management Agreement, and RMCHCS must indemnify HCI from and against all liability and expense arising from the Management agreement, other than liabilities that result from gross negligence or willful misconduct by HCI or its employees or agents.
5. In addition to payment of all expenses incurred by HCI, including salaries and benefits of its employees, HCI is entitled to receive compensation, on a monthly basis, equal to the greater of:
  - a. \$29,166.67, or

- b. Net Revenues for the month less Cost of Hospital System Operations for the month, principal and interest, and fees and costs on outstanding indebtedness
6. In addition to monthly compensation, the Management Agreement (Exhibit A), stipulates that HCI shall be paid an "Acquisition Fee" if RMCHCS is liquidated and dissolved or sold. The Acquisition Fee appears to be equal to the net assets (fair market value of assets minus liabilities), of RMCHCS. HCI is also entitled to receive a "Termination Fee." The Termination Fee appears to be the balance of any payments that would have been made to HCI over the term of the contract if the contract was not terminated.
7. The contract defines "Events of Default" under the Management Agreement, for both RMCHCS and HCI. However, it does not appear to state any remedy for a default. Exhibit B does state that the Termination Fee is not payable if there is a termination due to an Event of Default. There is no other remedy for a default by HCI.

**Analysis of Compensation of HCI Paid by RMCHCS**

The Management Agreement recites many factors that it contends establish the reasonableness of the compensation paid to HCI and David Conejo. The agreement also provides for a periodic compensation study to assure reasonableness. We do not know if such a study has been conducted by the Board of RMCHCS, but the compensation terms do not appear to have been modified.

The compensation terms raise serious concerns that the Internal Revenue Code prohibitions have been violated for the following reasons:

1. The contract provides for minimum compensation paid to HCI of approximately \$350,000 per year. In addition, RMCHCS must pay all compensation and benefits paid by HCI to David Conejo, and to the chief financial officer and the chief operating officer, who are all employees of HCI. According to the 2017 form 990 that we reviewed, David Conejo was paid \$645,640, William Keifer, the Chief Operating Officer, was paid \$259,804, and John McMullin, Chief Financial Officer, was paid \$189,990. There is no separate disclosure of the payment to HCI on the 2017 form 990, but according to the contract, HCI would have been paid a minimum of \$350,000. The 2018 form 990 reports no compensation paid to David Conejo in the list of highest compensated employees, but a parenthetical note for Part VI, Section A, line 3 states that he was paid \$629,927; William Keifer, the Chief Operating Officer, was paid \$337,041; and Gregg Magers, Chief Financial Officer was paid \$185,000. HCI is reported to have been paid \$305,441. Although the contract states the CFO and COO would be officers of HCI, those positions were never actually part of HCI. Rather, the CFO and COO were direct employees of RMCHCS.



2. In addition to annual payments to David Conejo and his limited liability company as noted above. (not including reimbursements for other employee's wages and costs and expenses), the Management Agreement includes the following terms that are considered extraordinary:
  - a. HCI is entitled to the greater of \$29,166.67 per month, or the equivalent of the net revenue in excess of expenses for the month.
  - b. A "Termination Fee" that would entitle HCI to be paid the balance of the contract amounts due over the remaining term if the contract is terminated for any reason other than a default by HCI.
  - c. An "Acquisition Fee" that appears to be equal to the net assets of the corporation (fair market value of assets, minus liabilities and expenses paid).
  
3. Although the agreement recites that David Conejo has extraordinary management capabilities that have caused RMCHCS to substantially improve its financial condition at the time that the contract was signed, the forms 990 show that RMCHCS had expenses in excess of revenues (a loss) of \$1,419,449 for 2016, and expenses in excess of revenues (a loss) in 2017 of \$3,147,182. The financial condition did improve substantially in 2018, with revenues in excess of expenses of \$9,851,047. The compensation terms, if applied literally, would result in all monthly profits (net revenue in excess of expenses), being paid to HCI, but in months when there are losses, HCI would still receive \$29,166.67. This term provides substantial opportunity for revenue and expense recognition to be manipulated to defer losses or accelerate expenditures to maximize compensation to HCI, even if RMCHCS suffers a loss for the year. The extraordinary compensation paid to David Conejo and his limited liability company certainly give the appearance that the net earnings of RMCHCS are being paid to a private individual, and the payments do not qualify as reasonable compensation. The "termination fee" and "acquisition fee" simply add to the concerns, as they appear to be grossly excessive and atypical. Although an independent compensation study might prove otherwise, we have seen no evidence that such a study has been performed. We also have not seen any evidence that the Board has evaluated the amounts paid to HCI and David Conejo, and determined that the amounts are reasonable. Available public information tends to show that compensation is not reasonable.

### **PURPOSE OF REPORT AND SUMMARY OF ISSUES IDENTIFIED**

The procedures performed in this report were developed with the County to assist the County in determining if related party transactions existed, were properly disclosed, and if unprofessional management practices were occurring for the period from January 1, 2017 through December 31, 2018.

This report is the result of the contract executed on October 30, 2018 approved by the Office of the State Auditor (OSA) based on the concerns reported to McKinley County and ultimately

to the Office of the State Auditor. After coordination with the OSA and its procurement process, the County contracted with Hinkle + Landers, PC for a special audit under the standards for consulting services established by the American Institute of Certified Public Accountants. Due to several delays in receiving initial deliverables, the engagement concluded on August 18, 2020.

We conducted forensic testing, interviews, and obtained financial accounting records and other documents relative to the consulting procedures we were engaged to perform. Based on our review of supporting documentation given to us and the procedures we performed, we noted the following issues:

1. Review of Contract with Healthcare Integrity, LLC (HCI)

- a. The validity of the executed HCI management agreement (contract) is called into question. Although the contract between RMCHCS and HCI was signed and executed, the contract was never officially approved by RMCHCS Board of Trustees, as required.
- b. RMCHCS and HCI were not following the terms of the contract. The compensation amount stated in the contract does not agree with what was actually paid, resulting in a difference of \$5,667.67 per month.
- c. There is a strong disparity in CEO compensation between RMCHCS and hospitals with similar revenues, which puts the hospital at risk of private inurement. While there are several variables to consider such as the geographic region, population, annual revenues, total operating budget and number of employees, our comparison of hospitals with similar amounts of revenue in both rural and urban areas does not compare favorably for the compensation paid to RMCHCS' CEO.
- d. The Management Agreement states that a periodic compensation study would be provided, but there is no evidence the Board evaluated if the CEO received reasonable compensation, yet RMCHCS' Federal Form 990s from 2016 through 2019 report that the board conducts these evaluations.
- e. Certain terms in the contract are very troubling. For instance, if the compensation terms were applied literally, they would result in all monthly profits (net revenue in excess of expenses) being paid to HCI, but in months when there are losses, HCI would still receive \$29,166.67. This term provides substantial opportunity for revenue and expense recognition to be manipulated to defer losses or accelerate expenditures to maximize compensation to HCI, even if RMCHCS suffers a loss for the year.
- f. Another term in the contract that causes concern is, if RMCHCS is sold, merged or liquidated in a manner that terminates HCI' s contract, all of the net assets would be payable to HCI as an "acquisition fee." These terms, if applied, would qualify as extraordinary compensation paid to David Conejo and HCI, which gives the appearance that the net earnings of RMCHCS are being paid to a private individual, and those payments do not qualify as reasonable compensation.

- g. It did not appear that RMCHCS and HCI were following the contract terms. What was actually occurring was HCI was billing a flat fee.
- h. The HCI contract effectively eliminates RMCHCS' key internal controls as virtually all control is placed in the hands of HCI including hiring and firing of employees, recruiting personnel, contracting, purchasing, preparation of operating and capital budgets, management of cash flow, billing and collection, control of all bank accounts and investments, and maintenance of all books and records with minimal oversight by the Board.

See finding "2020-001—Healthcare Integrity Management Contract" for details.

2. Review of Contract with Invictus Healthcare Management, LLC (Invictus)

A hospitalist services agreement was executed between RMCHCS and Invictus Healthcare Management, LLC in August 2018. At the time of the negotiation of the contract, the CEO of Invictus was currently the COO of RMCHCS. One of the primary responsibilities of the COO is to monitor contracts and ensure contractors meet performance requirements. Per review of the contract there appears to be a significant absence of language explaining how payments are linked to service performance and penalties associated with failure to meet any target levels of service. As a result, an unresolved dispute has arisen due to RMCHCS' dissatisfaction with the performance and cost of services. At the issuance of this report, an outside audit report estimates that RMCHCS may have overpaid for services to Invictus by \$754,403.

See finding "2020-002—Invictus Healthcare Management Contract" for details.

3. Several Private Inurement or Excess Benefit Transactions Identified as Follows:

- a. An RMCHCS employee provided services free of charge to HCI in the amount of \$2,175 during an 18-month period.
- b. Compensation was established for the CEO of RMCHCS, who is also the CEO of HCI in the HCI Management Agreement, without evidence of a determination that the compensation for the CEO is fair and reasonable. In fact, it appears not to be reasonable, with amounts of \$629,937 paid in 2018 and \$571,980 paid in 2017, which are not comparable to compensation paid by other hospitals with similar revenue.
- c. Compensation of \$252,822.41 was paid to the Board of Trustees Chair's company, Dallago Corporation. These services were procured without a contract or evidence of competitive bids or quotes from similar type companies, as required by RMCHCS policy and IRS regulations.
- d. The CEO of HCI and RMCHCS signed the HCI Management Agreement and executed the contract even though both parties had significant conflicts of interest (the items above "a" and "b" are in direct conflict) and there is no evidence of Board approval.

- e. The CEO did not report sign off on RMCHCS’ Conflict of Interest Policy even though potential conflicts were identified with RMCHCS vendors
  - o Zoeticx (RMCHCS paid Zoeticx \$88,369.50 in 2017 and 2018) and HCI was paid finder fees for business referrals.
  - o the CEO served on the Board of Directors of Prista Corporation which provided services to RMCHCS and charged \$34,300 in 2017 and 2018.
  - o The CEO loaned \$50,000 from HCI to VIE Diagnostic, who had at \$144,650 contract with RMCHCS. Subsequently, VIE was unable to complete the contract and \$69,518.89 paid to VIE was written off as a loss.
- f. The CEO charged his daily breakfast burrito to RMCHCS.

See finding “2020-003—Private Inurement/Excess Benefit Transactions” for details.

4. Overpayments and Reimbursed for Non-Business Expenses as Follows:

- a. We found several instances of overpayments or reimbursements for non-business-related expenses adding up to \$5,761.36 to David Conejo, William Kiefer and Dallago Corporation.

See finding “2020-004—Testing of Reimbursed Expenses and Credit Card Expenses for David Conejo, William Kiefer and Payments to Dallago Corporation” for details.

5. Deficiencies in Contract Management Formation and Review Procedures

A key part of RMCHCS’ internal controls over contract formation and review procedures is the requirement that contracts need to be routed to the appropriate administrative officials so they can be reviewed for key language, performance requirements, and meeting the required regulations such as licensure, insurance and indemnification, etc. We reviewed 23 significant contracts; 15 had no indication that they were routed or reviewed by appropriate RMCHCS personnel, 14 of those non-routed contracts were signed off on by the CEO of RMCHCS.

See finding “2020-005—Contract Management” for details.

6. Financial Policies, Procedures and Policies

We found that RMCHCS’ financial policies, procedures and processes are considerably weak, especially for an organization with revenues averaging between \$60 to 80 million dollars annually.

See finding “2020-006—Financial Policies, Procedures and Processes” for details.

**FINDINGS, RESPONSES AND RECOMMENDATIONS**

This report includes our findings discovered during test work to accomplish the goals of the forensic examination. We have provided specific recommendations for RMCHCS to strengthen internal controls over the financial statements and compliance in relation to their control environment, and to minimize the risk of fraud and abuse. RMCHCS has provided responses to these findings. A summary of the findings are as follows:

| <b><u>Reference #</u></b> | <b><u>Findings</u></b>   |
|---------------------------|--|
| 2020-001                  | HEALTHCARE INTEGRITY MANAGEMENT CONTRACT   |
| 2020-002                  | INVICTUS HEALTHCARE MANAGEMENT CONTRACT  |
| 2020-003                  | PRIVATE INUREMENT/EXCESS BENEFIT TRANSACTIONS  |
| 2020-004                  | TESTING OF REIMBURSED EXPENSES AND CREDIT CARD EXPENSES FOR DAVID CONEJO, WILLIAM KIEFER AND PAYMENTS TO DALLAGO CORPORATION |
| 2020-005                  | CONTRACT MANAGEMENT  |
| 2020-006                  | FINANCIAL POLICIES, PROCEDURES AND PROCESSES   |

Findings include the elements required by 2.2.2.15 B and 2.2.2.10 I (3) (c) NMAC. The responses to the findings, including the Views of Responsible Officials and the Corrective Action Plans were not audited and were presented verbatim.

Our examination was limited to the areas and periods described and limited to the documents available and the interviews of employees performed. Had we reviewed other periods or areas or documents, other matters may have been identified warranting McKinley County and RMCHCS’ attention.

**PROCEDURES PERFORMED**

**1. Determination of Commingling of Funds**

The consulting engagement was divided into two phases. The initial testing was to review RMCHCS bank accounts to determine if the mill levy funds received by McKinley County had been commingled with other funds. After it was established that commingling had occurred, Phase 2 of the consulting agreement began. See initial report (Exhibit I).

**2. Policies and Procedures:**

We requested RMCHCS’ financial and certain governing policies and procedures. As we tested the records, we also interviewed and discussed the policies of current and past employees in order to become familiar with the organization’s written policies as well its actual practices. RMCHCS does not have their written policies organized in one or two comprehensive documents, rather, there are approximately 46 separate documents. We reviewed those documents that are generally summarized as follows:

August 18, 2020

**Report of Independent Accountant's Forensic Audit  
and Consulting Engagement of Rehoboth McKinley  
Christian Health Care Services, continued**

---

- Financial Accounting
- Purchase and Procurement
- Contract Agreements
- Whistleblower Policies
- Charity Care and Financial Assistance
- Budgeting
- Travel and Reimbursement
- Western Health Foundation Pledges
- Compliance-HIPAA Program
- Code of Conduct

We have reported our results under Schedule of Findings and Responses of this report.

**3. Identify and Analyze Related Party Transactions**

We requested and analyzed the following documents:

- All check registers for the years 2017 and 2018 at the individual transaction level, including but not limited to checks, electronic payments and deposits by date.
- RMCHCS' management contract with Healthcare Integrity LLC in force for the period January 1, 2017 through December 31, 2018.
- RMCHCS employment contract with William Kiefer in force for the period January 1, 2017 through December 31, 2018.
- RMCHCS Hospitalist Service Agreement with Invictus in force during the period January 1, 2017 through December 31, 2018.
- RMCHCS contract with Dallago Corporation (requested but contract did not exist).
- All transactions (payment ledgers) between RMCHCS and the following individuals: David Conejo, William Kiefer, Judy Conejo, Healthcare Integrity, LLC , Invictus, Board Chair David Dallago, and the other board trustees. These transactions included but were not limited to:
  - Payroll transactions
  - Expense transactions and reimbursements
  - Business meals
  - Travel and Entertainment

All transactions (payment ledgers) for the following selected vendors:

- Align
- American Physician Partners
- Accordias
- Conexus
- Ground Control

August 18, 2020

**Report of Independent Accountant's Forensic Audit  
and Consulting Engagement of Rehoboth McKinley  
Christian Health Care Services, continued**

---

- Hartsra
- New Light, LLC
- K & B Company, Inc.
- Prista Corporation
- Murphy Builders
- Luginbuhl, Rev. John
- HHS Culinary and Nutrition Solutions, LLC
- Dallago Corporation
- VIE Health Group – Mobile Health Service
- Health Carousel
- Zoeticx
- PinPoint HC Holdings, LLC

We have reported our results under Schedule of Findings and Responses of this report.

**4. Analyzed Form 990 Information Returns**

We reviewed Form 990 for RMCHCS for years 2017 and 2018 as well as the draft 990 for 2019 and Western Health Foundation Form 990 for the years 2017 and 2018. Some of the key areas we examined were the disclosures of

- Whether the organization had a policy of requiring the directors, or trustees, and key employees to disclose interests on an annual basis that could give rise to conflicts and whether the policy was monitored and compliance was enforced.
- RMCHCS process for determining compensation for the organizations' CEO.
- The top five contractors
- Details of business transactions involving interested persons and related organizations

We reviewed what was disclosed in the Form 990s and compared it to what was actually occurring.

We have reported our results under Schedule of Findings and Responses of this report.

**5. Minutes for 2014 through 2019**

We read the minutes specifically for board approvals and acceptance of significant contracts and contracts with related parties such as HCI, Inc.

**6. Lease Agreement Between RMCHCS and McKinley County in Force During 2017 and 2018**

August 18, 2020

**Report of Independent Accountant's Forensic Audit  
and Consulting Engagement of Rehoboth McKinley  
Christian Health Care Services, continued**

---

We reviewed the lease agreements to determine if RMCHCS was compliant with the lease agreements. It was determined that RMCHCS had been consistently delinquent and therefore not in compliance with the rent payment terms of the agreement.

**7. Conducted Title Search for property Owned by David Conejo, William Kiefer and RMCHCS in McKinley County**

We searched the county for properties owned by David Conejo, William Kiefer and RMCHCS and followed up to determine if those properties were involved in any undisclosed unrelated party transactions. None were noted.

**8. Benchmark Comparisons Between RMCHCS and Similar Hospitals**

We reviewed the form 990s of three other hospitals with similar revenues and in rural and non-rural settings and compared the compensation of the CEO or equivalent of those hospitals to RMCHCS' CEO.

See our findings, recommendations and responses in this report.

*Hinkle & Landers, P.C.*

Hinkle + Landers, PC  
Albuquerque, NM  
August 18, 2020



DETAILED FINDINGS, RECOMMENDATIONS AND RESPONSES

2020-001—HEALTHCARE INTEGRITY, LLC MANAGEMENT CONTRACT

**Statement of Condition**

A management contract was signed and executed on September 1, 2016 between Rehoboth McKinley Christian Health Care Services, Inc. (RMCHCS) and Healthcare Integrity, LLC (HCI). David Dallago, Chairman of the Board of RMCHCS and David Conejo, President and CEO of HCI were the signers of the contract. The following issues were noted concerning the contract:

1. Per review of the Board of Trustee minutes, we noted the following timeline related to establishing the contract between RMCHCS and HCI, but found no evidence the contract was officially approved by the Board of Trustees.

**A. Timeline**

**July 28, 2016**—Closed session—Motion made that RMCHCS Board of Trustees will contract with HCI as management company upon the expiration of the contract with NewLight Healthcare, LLC (NewLight).

|                                    |  |  |
|------------------------------------|--|--|
| <p>Closed Session<br/>(cont'd)</p> | <p>Second item concerned the expiration of the management contract with NewLight Healthcare, LLC</p> | <p><b><u>ACTION: A motion is made and seconded that the RMCHCS Board of Trustees contract with HealthCare Integrity (HC) as a management company upon the expiration of the contract with NewLight Healthcare, LLC. This is subject to review by the County attorneys, RMCHCS' attorney and HCI attorneys.</u></b></p> |
|------------------------------------|--|--|

**September 22, 2016**

Transition from NewLight to HCI mentioned in the minutes.

**December 28, 2016**

1. **ACTION: A motion was made and seconded to authorize David Dallago to negotiate the Management Agreement between RMCHCS and HealthCare Integrity. Motion is passed unanimously.**

No other evidence was found that the contract was approved by the Board.

2. The terms of compensation stated per the contract do not agree to what was actually paid. Per the contract, the management fee was to be at least \$29,166.67 per month and the amount actually invoiced was \$23,500, a difference of \$5,667.67 per month.
3. Although there are references in the 2014 Board of Trustee’s minutes that the CEO salary will be based on the market rate, no documentation could be found for such an analysis. In addition, the CEO receives two different forms of compensation, a management fee and compensation for CEO services. The management fee does not appear to cover any significant costs. On the contrary, per the contract HCI must be reimbursed all expenses that it incurs in connection with the performance of the Management Agreement, and RMCHCS must indemnify HCI from and against all liability and expense arising from the Management Agreement, other than liabilities that result from gross negligence or willful misconduct by HCI or its employees or agents.

Per the contract, in addition to payment of all expenses incurred by HCI, including salaries and benefits of its employees, HCI is entitled to receive compensation equal to the greater of:

- a. \$29,166.67 per month or
- b. Net Revenues for the month less Cost of Hospital System Operations for the month, principal and interest, and fees and costs on outstanding indebtedness.

The management fee plus the CEO salary amounted to \$629,927 in 2018 and \$571,980 in 2017. The management fee and the salaries added together do not appear comparable to expected CEO compensation for a hospital of similar size and location. Based on available public information we have gathered; it appears to show that compensation is not reasonable.

For comparison purposes, we obtained data for CEO compensation from hospitals with similar revenues based on their filed Form 990s as follows:

|         | Sidney Health Center<br>(Montana) |               | Howard Brown Health Center<br>(Chicago) |               | Taos Health Systems, Inc.<br>(New Mexico) |               | RMCHCS<br>(New Mexico) |               |
|---------|-----------------------------------|---------------|---|---------------|---|---------------|------------------------|---------------|
|         | 2018                              | 2017          | 2018                                    | 2017          | 2019                                      | 2018          | 2018                   | 2017          |
| Revenue | \$ 71,255,856                     | \$ 64,915,753 | \$ 110,958,739                          | \$ 80,723,468 | \$ 69,738,013                             | \$ 60,833,158 | \$ 84,923,824          | \$ 68,758,076 |
| CEO     | \$ 278,539                        | \$ 283,985    | \$ 268,659                              | \$ 254,466    | \$ 318,055                                | \$ 309,443    | \$ 629,927             | \$ 571,980*   |

\*In 2017, HCI received a 1099 for \$633,203.08, of that amount, \$61,222.77 was itemized for a Network Engineer and his reimbursements. The remaining \$571,980 was compensation for David Conejo.

As can be seen above, none of the CEOs shown above receive compensation anywhere near what the CEO of RMCHCS received through his management company. Although reasonable

compensation for services rendered is not considered private inurement, regulations stipulate that compensation based on comparison to organizations that are not similarly situated because they serve substantially larger geographic regions with more diverse populations and are larger in terms of annual revenues, total operating budget, number of employees, and number of patients served, may not be reasonable.

To further illustrate the disparity of compensation for a CEO of a hospital the size of RMCHCS, it is reported that Paul Roth, M.D., former Chief Executive Officer of UNM Hospital and Health Services and Dean of the School of Medicine, was paid \$676,000 annually. UNM is the largest hospital in the state of New Mexico with 628 licensed beds, while RMCHCS has approximately 60 beds.

Per our request from management, we did not receive any evidence the Board evaluated the agreed upon compensation paid to HCI and David Conejo to determine if the amounts were fair and reasonable.

4. Per our review of the compensation terms, if applied literally, these would result in all monthly profits (net revenue in excess of expenses) being paid to HCI. Additionally, HCI would receive a minimum of \$29,166.67 monthly even if losses were incurred. These terms provide substantial opportunity for revenue and expense recognition to be manipulated to defer losses or accelerate expenditures to maximize compensation to HCI, even if RMCHCS suffers a loss for the year. The extraordinary compensation paid to David Conejo and his limited liability company certainly give the appearance that the net earnings of RMCHCS are being paid to a private individual. This level of payment does not qualify as reasonable compensation. Although this is what is stated in the contract, it did not appear that HCI was following the contract terms. What was actually occurring was HCI was billing a flat fee.
5. In regard to RMCHCS' internal controls, the way David Conejo's HCI contract is written effectively eliminates key RMCHCS' internal controls because virtually all management and control is place in the hands of HCI, with only minimal oversight by the Board. Because the CEO was not considered an employee of RMCHCS it appears that he was not required to complete and sign off on the following:
  - Conflict of interest policy
  - Code of conduct

Per our request to management for the CEO's signed conflict of interest disclosure and acceptance of the code of conduct, we were informed RMCHCS did not require the CEO to complete the disclosure because he was not a direct employee.

**Criteria**

1. The management agreement hiring the CEO of RMCHCS, the highest-ranking administrative official of RMCHCS, is required to be approved the Board of Trustees and documented in the Board minutes.
2. The terms of the contract should be followed, or the contract should be amended to agree with mutually agreed upon terms between the two parties.
3. The IRS permits tax-exempt organizations to pay executives “fair and reasonable” compensation. Every exempt organization that compensates its leaders must determine appropriate salary and benefits packages based on the following considerations:
  - Charities can pay their executives market rate.
  - Market rate is determined by researching what someone in a similar position would earn at an organization that is of the same size and has a similar mission or field of activity.
  - Charities can look at for-profit compensation when determining market rate, as long as the job, organization size, and organization mission/purpose are comparable.
4. The terms laid out in the contract do not appear to qualify as reasonable compensation and would be considered a violation of the private inurement regulations.
5. RMCHCS is expected to have sound internal controls, and a management agreement should not be allowed to override its established controls.

**Effect**

1. The following risks exist:
  - The contract may not be legally valid.
  - The contract is so one-sided in favor of HCI that it does not appear to have been properly reviewed and accepted by those with the fiduciary duty to do so, and the terms of the contract are not in the best interest of RMCHCS.
2. Compensation paid may not be correct.
3. The following risks exist:
  - If the IRS determined the violations were egregious enough, RMCHCS runs the risk of revocation of its tax-exempt status.
  - The IRS may determine the CEO was a “disqualified person,” whose compensation is unwarranted. As such, the entire amount of his paid salary along with other personal benefits noted in this report, could be classified as excess benefit and subject to an excise tax equal to 25% of this amount which could be assessed. In addition, organization managers including board members may be subject to an excise tax equal to 10% of the excess benefit for participating in the excess benefit transactions.
4. Same as #3 above.

5. Because the CEO is not subject to key internal controls, RMCHCS' internal control structure has effectively been compromised.

### **Recommendation**

1. Significant improvements of RMCHCS' policies and procedures related to contract management should be implemented. Areas where improved controls are necessary include but are not limited to:
  - a. Contract formation, review and approval.
  - b. Post-award contract monitoring.
  - c. Closeout requirement and procedures.
  - d. Change orders-scope and cost alterations.
  - e. General Counsel review of contracts, when applicable.
  - f. Policies and procedures governing competitive bidding, selection and evaluation criteria.

In addition, specific language in the policies should address the following:

- Establishing contracts with parties that are current and former officers, board members and employees.
  - Awarding contracts without a bidding process.
  - Awarding contracts to vendors that are not well-known.
2. Improved post-award contract monitoring is recommended.
  3. RMCHCS should adopt a compensation policy which should include IRS rules related to avoiding private inurement.
  4. Contract formation, review and approval processes including ensuring that the risk of private inurement and excess benefit transactions are avoided are recommended.
  5. Same as what was noted in #1 above.

### **View of Responsible Officials and Corrective Action Plan**

Policies have been updated and implemented to address all recommendations. The Contracts Policy establishes processes for contract review and approval, including the use of General Counsel, Board approval requirements and an annual evaluation process. Contract software is in the final stages of being implemented to allow proper tracking of all agreements/contracts. This will also be used as a tool to monitor and complete annual evaluations of all contracted partners. This evaluation process provides documentation holding to quality and service components of the contract, as an example. The software implementation will be completed and the evaluation process will be underway by October 1<sup>st</sup> and will be completed annually going forward. The conflict of interest policy for Board members, hospital executives, staff and medical staff has been updated and annual attestations will be required. The contract management software will be set up to identify potential conflicts that will be reviewed to eliminate the risk associated with contracts to

related parties. This is the responsibility of the RMCHCS CEO and has already implemented unless otherwise noted.

**2020-002—INVICTUS HEALTHCARE MANAGEMENT CONTRACT**

**Statement of Condition**

The design and implementation of the Hospitalist Services Agreement between Invictus Healthcare Management, LLC (Invictus) and Rehoboth McKinley Christian Health Care Services (RMCHCS) appears problematic. The Hospitalist Services Agreement was in place for approximately 5 months (August 1<sup>st</sup> through December 31, 2018). Concerns arose about whether the contract services were being met, and RMCHCS ordered an audit of the agreement by an outside party.

The Hospitalist Services Agreement (Agreement) specified that Invictus will provide staffing for 24 hours of continuous on-site coverage each day to be provided by MDs for the day shift and mid-level providers for the night shift. In addition, the contract stated Invictus would solely be responsible for billing and collections for services it provides and would bear the cost of such billing and collections. The following issues were found by the audit:

1. There was no actual mid-level night shift staffing provided by Invictus. The cost for mid-level night shift expenses not covered by Invictus amounted to \$210,808, which was paid for by RMCHCS.
2. MDs were used for 2,019.41 hours in excess of the hours prescribed for the 5-month period from August 1 through December 31, 2018. The excess hours were paid for by RMCHCS, but should have been paid for by Invictus. The estimated cost associated with the excessive MD hours was \$482,602.
3. RMCHCS was also billed for 267.80 mid-level provider hours of overtime. The estimated costs paid by RMCHCS for the excessive mid-level hours over the 5-month period was \$37,993.
4. Lastly, denied charges worth approximately \$23,000 of lost reimbursements were borne by RMCHCS.

The table below summarizes the amount that RMCHCS appears to have overpaid.

|   |                   |
|---|-------------------|
| Excess MD hours                               | \$ 482,602        |
| Excess mid-level hours                        | 37,993            |
| Mid-level night shift hours                   | 210,808           |
| Lost reimbursements related to billing issues | <u>23,000</u>     |
|   | <u>\$ 754,403</u> |

August 18, 2020

**Forensic Audit and Consulting Engagement of  
Rehoboth McKinley Christian Health Care Services,  
Exit Conference and Disclaimer**

---

In addition, under 5.5 “Medical Center Support to Medical Services,” Item A, third paragraph, the agreement states that:

“In the event the parties mutually agree that locum tenens or contract coverage is needed, Medical Services Provider shall provide such locum tenens/contract coverage by contracting for the locum tenens or contracted provider. Medical Center shall reimburse Medical Services Provider for the direct daily fee required to secure the services of any such locum tenens provider or contractor, including, but not limited to, any reasonable expenses for food, lodging, travel and/or rental car related to that locum tenens/contractor provider.”

We noted that the Hospitalist contract was discussed in closed session on July 26, 2018. Although it is not clear whether or how the two parties agreed RMCHCS would pay for the additional services based on the paragraph above, the addition of this paragraph does not appear to have been in the best interest of RMCHCS. Another apparent shortfall in the agreement is the absence of any penalty for poor or nonperformance by Invictus short of termination of the contract. The last item of note is the contract does not appear to have been reviewed by the proper responsible officials as required by RMCHCS’ policies and procedures.

**Criteria**

Significant contracts such as the Hospitalist Services Agreement should be properly designed and monitored by RMCHCS’ responsible officials, whom in this case would normally have been the CEO and the COO. However, because in this instance the COO of RMCHCS was also the contractor, mitigating controls should have been put in place.

**Effect**

The establishment of the Invictus Hospitalist Agreement set up the opportunity for the COO to take advantage of RMCHCS as there were no mitigating controls to timely identify and prevent what appears to be overcharging RMCHCS.

Although it is not clear whether Invictus and RMCHCS mutually agreed that additional staffing expense was to be reimbursed by RMCHCS as no documentation for this was found, RMCHCS was billed for and paid this expense. In addition, the MDs worked additional hours beyond what was specified, which at their higher rate meant that RMCHCS footed significant additional expenses.

**Cause**

It is questionable such a contract arrangement should have been allowed. Implementing a Hospitalist Services Agreement with the COO of RMCHCS does not appear to be in the best interest of RMCHCS. One of the primary responsibilities of the COO is to monitor contracts and ensure contractors meet performance requirements. This is akin to “putting the fox in charge of the hen house.” The COO received a personal benefit by keeping Invictus expenses

low and shifting additional expenses to RMCHCS; if locum tenens or if additional contract coverage was needed, Invictus could simply contract for these services and bill RMCHCS for reimbursement.

### **Recommendation**

It is recommended that contract arrangements with such obvious flaws not be implemented. In general, related party transactions should be minimized whenever possible because there are more opportunities for abuse to take place. In this case, the Hospitalist Agreement was one of RMCHCS' larger contracts. If such a contract was considered to be in RMCHCS' best interest despite the obvious inherent risk of the opportunity the contractor had to abuse the relationship, strong mitigating controls would have to be put in place to ensure that services were properly performed. This would include assigning responsible officials who are independent in actuality as well as in appearance to monitor the transactions, and also would include tracking of overtime for employees such as physicians and locum tenens expenses against budget. This would enable budget variances that indicate problems or concerns to be timely and effectively addressed.

### **View of Responsible Officials**

The revised contract policy requires all contracts be reviewed by the Administrative Council team of RMCHCS. This was not always completed under past administration but is now required by policy and will be followed going forward. The revised policy also has established the process including involvement of General Council. Policy also calls for additional scrutiny in the event of any actual or perceived related party conflict of interest to not be entered into or to provide termination language to the benefit of the hospital. The Contracts Policy changes and annual evaluation provides review of the key expectations for each contract relationship. This is the responsibility of the RMCHCS CEO and has already been implemented.

## **2020-003—PRIVATE INUREMENT/EXCESS BENEFIT TRANSACTIONS**

### **Statement of Condition**

The following issues are considered potential violations of private inurement and/or at the very least, excess benefit transactions.

1. HCI was provided with financial administrative services by a RMCHCS employee and RMCHCS paid for these services. The estimated time and payroll expense, including benefits, was 58 hours over an 18-month period and \$2,175, respectively.
2. Lack of documentation of the process for determining fair and reasonable compensation for the CEO, including a review and approval by independent persons, data showing comparability to similar organizations, and contemporaneous substantiation of the deliberation and decision could not be found although the 2018 Form 990 Information



Return indicated that the organization did conduct the determination. David Conejo, CEO was paid \$629,927 in 2018 and \$571,980 in 2017. Additional information related to establishing a determination of fair and reasonable compensation is found in finding 2020-002—Healthcare Integrity, LLC Contract.

3. RMCHCS' Board of Trustees Chair owns a construction company that conducted significant business with RMCHCS. These services were procured without a contract or evidence of competitive bids or competitive quotes from other similar type companies as is required per RMCHCS policy. For the years reviewed, 2017 and 2018, \$252,822.41 was paid to Dallago Corporation.
4. RMCHCS' Board of Trustees Chair was authorized to negotiate the management agreement between RMCHCS and HCI even though he has a conflict of interest because of his company's \$252,822.41 in payments for services rendered received from RMCHCS as noted in #3 above. This negotiation has the appearance of a quid pro quo transaction, compounded by the fact there is no evidence the Board of Trustees approved the contract.
5. The CEO did not sign RMCHCS' Conflict of Interest Policy and report conflicts of interest. It was reported that he was not required to since he was not a direct employee of the organization even though the 2017 and 2018 Form 990s represent that officers of RMCHCS annually disclose interests that could give rise to conflicts.
6. CEO, David Conejo charged his daily breakfast (breakfast burritos) to RMCHCS per inquiry with two separate sources.
7. HCI had a relationship with Zoetix in which it received finder fees for business referrals. This was based on when Zoetix received referred hospital business from David Conejo. We reviewed an email dated 12/2/17 from a Zoetix official to David Conejo requesting a W-9 for HCI so they could send the referral fees. Zoetix had approximately 8 contracts with RMCHCS in 2017 and 2018 and \$88,369.50 is reported as paid to Zoetix.
8. David Conejo served on the Board of Directors of Prista Corporation, which provides services to RMCHCS through the ActionCue application. Payments in 2017 and 2018 to Prista Corporation by RMCHCS were \$17,100 and \$17,200, respectively, but this was not disclosed on the appropriate form 990 schedules nor in the notes to the audited financial statements.
9. RMCHCS reimbursed \$2,326.09 in costs for meals that included David Conejo, William Kiefer, and their wives while participating in multiple events out of state. The wives' expenses did not appear to be business related.

10. RMCHCS reimbursed William Kiefer \$159.09 for movie rentals at hotels.
11. Overpayments for reimbursements to David Conejo, William Kiefer and Dallago Corporation for \$477.41, \$2,292.77 and \$506.00, respectively, as noted in finding 2020-004.
12. The CEO of RMCHCS loaned \$50,000 from his company, HCI, to VIE Diagnostics (VIE) on April 24, 2019 with an interest rate of 10% per annum. The CEO also signed VIE to a contract with RMCHCS on December 21, 2018, to construct a custom built mobile medical clinic designed to deliver high-quality medical services to rural communities on the Navajo Reservation. RMCHCS' 2018 or 2019 Form 990 did not disclose this interested party transaction nor was it disclosed as a related party note in the 2018 or 2019 audit reports as it should have been.

VIE was unable to complete the project but was paid of the contract. The contract called for payments of \$131,500 plus a 10% equipment purchase fee for an approximate total cost of \$144,650. RMCHCS then contracted companies Hartsra Manufacturing and Ground Control to complete the trailer satellite installation. Per RMCHCS' records, the cost charged to complete the trailer was \$139,516. Whatever work was done by VIE was not recoverable and the \$69,518.89 was considered a write-off.

### **Criteria**

#### **Private Inurement**

Private inurement is when an individual who has significant influence over the organization enters into an arrangement with a nonprofit organization and receives benefits greater than he or she provides in return. Organizations seeking tax-exemption under IRC Sec. 501(c)(3), must be organized and operated so that no part of their net earnings inure (i.e., accrue) to the benefit of any private shareholder or individual [e.g., see IRC Sec. 501(c)(3) and Reg. 1.501(c)(3) 1(c)(2)]. The phrase *no part* means the level of inurement is not material. Therefore, any inurement (regardless of the amount) could endanger an organization's tax-exempt status.

For these purposes, a private shareholder or individual is defined as a person who has a personal and private interest in the activities of the organization (i.e., an insider) [Reg. 1.501(a)-1(c)]. Organization insiders are normally in control of the decisions of the entity and can include trustees, directors, officers, members, founders, and even major contributors or other third parties. Whether there is private inurement depends on the economic reasonableness of transactions between the organization and insiders. Insiders cannot receive a distribution of funds from the organization except as reasonable payment for goods and services (Rev. Rul. 76-441).

Organizations have lost their exempt status because of private inurement related to unreasonable compensation, unreasonable fringe benefits, improper (generally personal) use of an organization's assets, forgiveness of indebtedness owed by insiders, personal expenses being paid by the organization (see Association for Honest Attorneys and Ltr. Ruls. 201804009 and 201245026), low-interest or unsecured loans to insiders, unreasonable housing allowances, other than arm's-length purchases, sales, or property rental between the organization and insiders (e.g., see Variety Club Tent No. 6 Charities, Inc., TC Memo 1997-575), organization's purpose to overturn legislation benefitting primary donor with only incidental community benefit (Ltr. Rul. 201411039) and benefits available only to those participating in the organization's fundraising programs. In addition, exempt status will be denied to an organization that is operated primarily to serve an individual's private interests (see The Council for Education). An example of this is a church organization that uses its revenue to lease church service space from one of the organization's officers (Ltr. Rul. 201411037).

#### Excess Benefit Transactions (Tax on Disqualified Persons)

An excess benefit transaction (EBT) occurs when the economic benefit provided, *either directly or indirectly*, by an applicable tax-exempt organization to or for the use of a disqualified person exceeds the value of the consideration received [IRC Sec. 4958(c)(1)(A)]. To determine whether an EBT has occurred, all consideration and benefits exchanged between a disqualified person and the applicable tax-exempt organization, and all entities it controls, are considered. In determining the value of economic benefits, the value of property received (including the right to use the property) is its fair market value on the date of receipt. Common examples of an EBT include:

- the payment of unreasonable compensation to a disqualified person,
- a sale of property by an applicable tax-exempt organization to a disqualified person for less than fair market value,
- a sale of property by a disqualified person to an applicable tax-exempt organization for more than fair market value,
- an expense reimbursement under a nonaccountable plan [within the meaning of Reg. 1.62-2(c)(3)] that is not treated as compensation,
- the payment of the personal expenses of a disqualified person, and embezzlement by a disqualified person.

#### **Effect**

The override of existing policies or the absence of appropriate policies and procedures has led to apparent violations of private inurement rules and/or excess benefit transactions, and activities inconsistent with RMCHCS' exempt status. Whether a particular policy, procedure, or practice should be adopted by an organization may depend upon the organization's size,

type, and culture. Accordingly, it is important that each organization consider the governance policies and practices that are most appropriate for that organization in assuring sound operations and compliance with the tax law.

### **Cause**

RMCHCS has not effectively required its CEO to disclose all related party transactions nor considered the implications of its policies and procedures on the risk of private inurement and/or excess benefit transactions.

### **Recommendation**

Private inurement and/or excess benefit transactions, transactions with the organization's insiders that even remotely appear to unreasonably benefit the insider should be avoided. This does not prohibit an organization from transacting business with members of its board of trustees or paying competitive salaries. Instead, it means that certain guidelines should be applied, and all transactions should be properly documented before relationships with insiders are formed. Consider the following ideas to minimize the possibility of private inurement or private benefit.

1. Form a compensation committee of members of the governing body unrelated to and not controlled by the disqualified person to review the compensation packages of the highest-ranking officers of the organization. Careful documentation of job duties and special skills can help establish proper compensation levels and deflect IRS criticism that the organization has paid excessive compensation. To the extent the information is available, comparing compensation packages of other similarly situated (size and mission) organizations can provide an additional tool for determining the reasonableness of an organization's compensation levels.
2. Actively solicit competitive bids from suppliers of the goods and services needed by the organization.
3. Review every financial relationship with an insider for reasonableness (there is no de minimis rule for the prohibition against private inurement and/or excessive benefit transactions).

### **View of Responsible Officials**

The RMCHCS Board of Trustees began the process of evaluating CEO compensation for FMV in early 2020 but the process was put on hold due to the COVID-19 pandemic. The Board will be working with the Gallagher Company or another independent group for fair market value analysis of the new CEO compensation prior to hiring. The Contracts Policy now includes language requiring competitive bid criteria. Due to the specialized needs within healthcare and the remote location of Gallup and especially during this COVID-19 pandemic, competitive bids may not be available, but documentation of efforts to obtain bids will be required. The revised policies will require conflict of interest checking and restrictions on

August 18, 2020

**Forensic Audit and Consulting Engagement of  
Rehoboth McKinley Christian Health Care Services,  
Exit Conference and Disclaimer**

related party transactions. This is the responsibility of the RMCHCS Board of Trustees and will be completed prior to the start date of the new CEO.

**2020-004–TESTING OF REIMBURSED EXPENSES AND CREDIT CARD EXPENSES FOR DAVID CONEJO, WILLIAM KIEFER AND PAYMENTS TO DALLAGO CORPORATION**

**Statement of Condition**

We reviewed reimbursed expenses and corporate credit card used for meals and entertainment per RMCHCS’ general ledger and credit cards statements for David Conejo and William Kiefer. In addition, we reviewed payments by RMCHCS to Dallago Corporation and noted the following:

1. **David Conejo and William Kiefer Reimbursements and Credit Card Used for Meals and Entertainment:**

|                                     | <b>William Kiefer</b> |              |             |              | <b>David Conejo</b> |             |             |             |
|-------------------------------------|-----------------------|--------------|-------------|--------------|---------------------|-------------|-------------|-------------|
|                                     | <b>2017</b>           |              | <b>2018</b> |              | <b>2017</b>         |             | <b>2018</b> |             |
|                                     | Frequency             | Amount       | Frequency   | Amount       | Frequency           | Amount      | Frequency   | Amount      |
| Mileage                             | 29 trips              | \$ 4,890.10  | 4 trips     | \$ 1,758.17  | 188 trips           | \$ 3,681.43 | 184 trips   | \$ 3,062.95 |
| Meals                               | 212                   | \$ 34,200.74 | 43          | \$ 8,051.02  | 37                  | \$ 2,334.84 | 38          | \$ 1,743.31 |
| Other items                         | 3                     | \$ 3,261.90  | 1           | \$ 65.91     | 1                   | \$ 37.00    |             | \$ -        |
| Support for reimbursement not found |                       | \$ -         |             | \$ 5,518.54  |                     | \$ -        |             | \$ -        |
| Total reimbursements                |                       | \$ 42,352.74 |             | \$ 15,393.64 |                     | \$ 6,053.27 |             | \$ 4,806.26 |
| Double paid/miscalculations         |                       | \$ 2,292.77  |             | \$ -         |                     | \$ -        |             | \$ 477.41   |

**David Conejo 2017-2018 Corporate Credit Card Meals**

|                              | #  | %    | Amount       |
|------------------------------|----|------|--------------|
| Total number of transactions | 72 | 100% | \$ 10,057.06 |
| Missing receipts             | 17 | 24%  | \$ 1,274.67  |
| Non-itemized receipts        | 29 | 40%  | \$ 3,145.08  |
| Itemized Receipts            | 26 | 36%  | \$ 5,637.31  |

**William Kiefer 2017-2018 Corporate Credit Card Meals/Entertainment**

|                              | #   | %    | Amount       |
|------------------------------|-----|------|--------------|
| Total number of transactions | 149 | 100% | \$ 16,644.51 |
| Missing receipts             | 11  | 7%   | \$ 971.49    |
| Non-itemized receipts        | 76  | 51%  | \$ 5,740.41  |
| Itemized Receipts            | 62  | 42%  | \$ 9,932.61  |

Of note:

1. William Kiefer received double reimbursements for 11 receipts during 6 trips in 2017 for an overpaid amount of \$2,292.77.

August 18, 2020

**Forensic Audit and Consulting Engagement of  
Rehoboth McKinley Christian Health Care Services,  
Exit Conference and Disclaimer**

---

2. Meals were reimbursed which included David Conejo's and William Kiefer's wives on several occasions. Total amount reimbursed was \$2,326.09
3. Movies charges of \$159.09 per hotel bills were reimbursed to William Kiefer.
4. Tips paid on meals by William Kiefer and reimbursed by RMCHCS frequently amounted to 30% to 50% of the meal total.
5. The majority of credit card purchases tested did not include the supporting receipts or lacked the itemized detail, so it could not be determined what was purchased, such as alcohol or if the expense was an acceptable business expense.
6. \$384.17 of alcohol purchased was reimbursed when possible to identify on itemized receipts.
7. A duplicate reimbursement in the amount of \$477.41 was paid to David Conejo and no evidence was found that it was refunded to RMCHCS.

2. Payments to Dallago Corporation

We reviewed the invoices paid to Dallago Corporation and found the following:

Double payments of \$505.99 and \$506.00 were paid for same work completed on 01/28/2017. We noted two different invoices (73586-B and 73905) submitted to RMCHCS for sprinklers close to the elevator which appears to be the same work.

Also, backup documentation for a payment to Dallago Corp. for \$1,693.56 could not be located.

**Criteria**

1. Controls over reimbursed and credit cards expenses should be established and implemented to ensure these meet proper business purpose guidelines.

Also, controls that improve the documentation for supporting expense reimbursement and credit cards should be implemented as well as controls that effectively eliminate the risk of double payments. Also, in general, reimbursements should be minimized as there are other ways to pay for travel and meal expenses, such as corporate credit cards.

**Effect**

RMCHCS:

1. Appears to have overpaid for reimbursements and services, and RMCHCS and the individuals involved run the risk of IRS non-compliance related to private/inurement and excess benefit transactions rules.

August 18, 2020

**Forensic Audit and Consulting Engagement of  
Rehoboth McKinley Christian Health Care Services,  
Exit Conference and Disclaimer**

---

2. Does not appear to have controls in place to ensure reimbursement and credit cards expenses are reasonable, and that there are appropriate business purposes for the expenses.
3. Should establish and implement controls over the risk of duplicate charges being submitted and paid.

**Cause**

RMCHCS appears to have a weak tone at the top, and a weak control environment.

**Recommendation**

We recommend the controls discussed under “Criteria” above be implemented.

**View of Responsible Officials**

All financial expenditure policies are being reviewed and amended. The Credit Card Policy is implemented and includes requirements for timely Credit Card reconciliation, limits as to use and explanation of business purpose. The Travel and Expenditure Policy language has been updated to include reference to the IRS accountable plan reimbursement requirements for Travel & Expenditures, limits on allowable expenses and recommended means of travel. This is the responsibility of the RMCHCS CFO and has already been implemented.

**2020-005—CONTRACT MANAGEMENT**

**Statement of Condition**

During our audit procedure, we reviewed approximately 23 contract agreements. As part of RMCHCS’ contract formation and review procedures, contracts need to be routed to the appropriate administrative officials so they can be reviewed for key language, performance requirements and meeting the required regulations such as licensure, insurance and indemnification, etc. Out of 23 contracts reviewed, 15 had no indication they were routed or reviewed, or there was explicit documentation provided that they were not routed; 7 appeared to be properly routed and signed off on; and 1 appeared only partially routed and signed off on. In 14 of the instances, where there was a of lack of documentation of being routed, these contracts were approved by the CEO, David Conejo, and there was 1 instance in which the contract was approved by the CFO, Jay Hodges.

**Criteria**

Contract management processes and procedures should be used to improve services and reduce costs as well as to ensure the goods and services agreed upon meet performance expectations. This requires effective review and monitoring by responsible officials with expertise to conduct such procedures.

Also, per RMCHCS policy related to contracts and agreements:

August 18, 2020

**Forensic Audit and Consulting Engagement of  
Rehoboth McKinley Christian Health Care Services,  
Exit Conference and Disclaimer**

---

“All personnel, volunteers or entities that work in, at or through Rehoboth McKinley Christian Health Care Services (RMCHCS) must be employed, credentialed or contracted with RMCHCS. If an individual or organization provides care or services on behalf of RMCHCS, the services must be defined in a contract. The contract may be in the form of bylaws or policy of an organization or individually written per person.”

**Effect**

Weak internal controls and poor contract management result in:

- Risk of legal liabilities to RMCHCS.
- Overpaying for services.
- Higher risk of unknown related party transactions.

**Cause**

There appears to be a significant override of internal controls related to contract management by the CEO.

**Recommendation**

We recommend well-defined policies, procedures and processes related to contract formation management and performance review by responsible officials of RMCHCS.

**View of Responsible Officials**

As previously noted, policies have been updated to include review and approval of contracts in accordance with a Board of Trustees approved authority matrix. The authority matrix will be approved by the Board during the August 27, 2020 meeting. This is the responsibility of the RMCHCS CEO and has already been implemented unless otherwise noted.

**2020-006—FINANCIAL POLICIES, PROCEDURES AND PROCESSES**

**Statement of Condition**

RMCHCS’ financial policies, procedures and processes are not generally well defined as they do not provide guidance in several key areas where controls and risks should be addressed. Also noted is the Board of Trustees had authorized the CEO to purchase non-budgeted capital equipment at his or her discretion up to \$100,000.

Key areas in which the financial policies, procedures and processes are lacking are as follows:

- processes and policies for competitive quotes and bids.
- requirement of itemized receipts or documentation of business purpose.
- accepting gratuities from suppliers, including finder fees.
- credit card use policy.



- travel approval, lodging and meals policies.
- reimbursement policies.
- entertainment expenses.
- gifts to potential future employees.
- restrictions or limitations on the purchase of alcoholic beverages.
- ensuring management companies are also accountable to the policies.

### **Criteria**

Well-defined policies, procedures and processes are essential operating tools for a successful, financially stable organization. This includes providing confidence to the organization's staff as well as to the community it serves that its resources are being used efficiently, effectively and legally. Procurement of goods and services for an organization should be conducted in an open and competitive environment to ensure prices paid are fair and reasonable. Purchasing policies should include guidance for proper transaction documentation, fiscal responsibility, ethical behavior, adherence to federal and state government regulations, and compliance with RMCHCS' by-laws and policies.

### **Effect**

The current policies and procedures communicate a weak tone at the top at the organization and a lack of structure and direction for the organization.

### **Cause**

During discussions with previous administrative officials, it has been brought up that administratively burdensome rules could hinder RMCHCS' ability to perform its mission effectively and efficiently. While this may be true in some limited situations, well-defined policies, procedures and processes are essential operating tools for a successful, financially stable organization.

### **Recommendation**

We recommend RMCHCS develop comprehensive and well-defined financial policies and procedures as they are essential operating tools for a successful, financially stable organization. These policies and procedures should then be implemented and maintained. In addition, management companies acting on behalf of RMCHCS should also abide by these policies.

### **View of Responsible Officials**

As previously noted, policies have been updated to address recommendations. This is the responsibility of the RMCHCS CFO and has already been implemented.

August 18, 2020

**Forensic Audit and Consulting Engagement of  
Rehoboth McKinley Christian Health Care Services,  
Exit Conference and Disclaimer**

---

**OTHER MATTERS**

**Determination of Whether RMCHCS is Subject to New Mexico State Compliance Rules**

During the consulting engagement, questions arose whether RMCHCS should be subject to New Mexico State Compliance Rules. Generally, a not-for-profit organization such as RMCHCS would not be under the jurisdiction of the Office of the State Auditor's Office. Because of the of the mill levy funds received from McKinley County, which are considered public funds, RMCHCS has been required to contract its audit under the Office of the State Auditor and comply with certain state compliance rules. Historically, because the mill levy funds have not been commingled with other funds of RMCHCS, the hospital was not under the Public Money Act (6-10-1 to 6-10-63 NMSA 1978) except in the individual funds where the mill levy funds were received and maintained. Per review of New Mexico Statutes 13-1-98.2, RMCHCS has also been determined to be exempt from the state procurement code, per diem and mileage act, and other similar statutes. It is noted that other hospitals in New Mexico that receive mill levy funds from their respective counties, do not appear to be subject to any state compliance rules.

**EXIT CONFERENCE**

We were not engaged to, and did not conduct an audit examination, the objective of which would be the expression of an opinion on the accounting records of RMCHCS under attestation standards. Accordingly, we provide no opinion, attestation or other form of assurance with respect to our work or the information upon which our work is based. The procedures performed do not constitute an examination in accordance with generally accepted auditing or attestation standards. Had we performed additional procedures; other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information of the parties specified above, McKinley County Commissioners and County Management, and parties identified by the County and their designated legal counsel. This report should not be relied upon by any other parties. Hinkle + Landers, PC accepts no responsibility to any other parties to whom this report may be shown or who may otherwise gain access to this report. We appreciate the opportunity to assist you in your assessment of RMCHCS and help the hospital achieve a stronger control environment and improved internal controls. Please do not hesitate to call if you have any questions or need further assistance regarding these matters. Hinkle + Landers, PC would like to sincerely thank the RMCHCS' management and staff for their support in assisting us with our procedures.

August 18, 2020

**Forensic Audit and Consulting Engagement of  
Rehoboth McKinley Christian Health Care Services,  
Exit Conference and Disclaimer**

An exit conference was held in a closed session on August 18, 2020, at McKinley County's Office. In attendance were the following:

Representing McKinley County and Rehoboth McKinley Christian Health Care Services:

|                       |  |
|-----------------------|--|
| Billy Moore           | McKinley County Commissioner                                   |
| Bill Lee              | McKinley County Commissioner                                   |
| Anthony Dimas         | McKinley County Manager  |
| Doug Decker           | McKinley County Attorney                                       |
| Sara Saucedo          | McKinley County Finance Director and Board Secretary of RMCHCS |
| Laura Hammons, MD     | Board Chairperson, RMCHCS                                      |
| Pastor John Luginbuhl | Board Member, RMCHCS   |
| George Munoz          | Board Member, RMCHCS   |
| Mary Bevier           | Chief Financial Officer, RMCHCS                                |

**Hinkle + Landers, PC**

Farley Vener, CPA, CFE, CGMA      President & Managing Shareholder

**DISCLAIMER**

We are not attorneys, a law enforcement agency or prosecuting officers. We do not have power to subpoena records or power to subpoena witnesses to testify under oath. We are a private accounting firm conducting a specified forensic consulting services based on information voluntarily provided by the subject of the engagement. During these consulting procedures we had incomplete information due to turnover in staff, availability of staff or former staff for interviews, inadequate controls and possible scope limitations of records requested. Because of we had incomplete information, this report is intended only to raise concerns of potential non-compliance with laws, regulations, and contracts, and abuse of the financial affairs of RMCHCS. We cannot conclude on the guilt or innocence of any party. We cannot and do not purport to be in a position to establish beyond reasonable doubt whether such violations occurred. Importantly, these indications of potential abuse and violations of state and federal laws in connection with financial affairs cover many years and will require further investigation by the relevant offices and authorities, which may include referral to the "proper prosecuting officer." We do not draw legal conclusions here and, instead, raise the matters below for consideration and investigation by appropriate authorities. Exercising our auditor judgment and erring on the side of transparency and disclosure, we are identifying these risks

**August 18, 2020**

**Forensic Audit and Consulting Engagement of  
Rehoboth McKinley Christian Health Care Services,  
Exit Conference and Disclaimer**

---

to the McKinley County and the New Mexico Office of the State Auditor so that they can determine appropriate next steps.

**(Exhibit I)****Independent Accountant's Consulting Report**

To the Board of County Commissioners and  
Management of McKinley County  
207 West Hill  
Gallup, NM 87301

We have performed a consulting engagement in accordance with our engagement letter dated October 30, 2018 to selected accounting records and transactions of the mill levy funds provided by McKinley County (the "County") to Rehoboth McKinley Christian Healthcare Services, Inc ("RMCHCS"). The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described in the attached supplement either for the purpose for which this report has been requested or for any other purpose.

We were not engaged to, and did not perform a financial statement audit, the objective of which would be the expression of an opinion on the specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, or had we conducted an audit of the financial statements in accordance with generally accepted auditing standards, matters might have come to our attention that would have been reported to you.

This report relates only to transactions and items specified in the attached supplement and does not extend to any financial statements of the County or RMCHCS. This report is intended solely for the use of management and the Board of County Commissioners and should not be used for any other purpose.

Very truly yours,



Hinkle + Landers, PC  
Albuquerque, NM  
February 3, 2020

## Supplement

### I. Procedures, Results and Recommendation

It was County's objective to have Hinkle + Landers, P.C. provide services as specified by management. The areas we addressed and the results obtained are documented below as items 1 and 2. RMCHCS' Board and Management are responsible for the internal controls surrounding items 1 and 2.

1. Evaluate mill levy fund provided to RMCHCS from January 2015 through December 2018 and determine if funds were comingled with other funds of RMCHCS.

**Results: During our evaluation of mill levy funds provided to RMCHCS we found \$5,895,182 and \$375,897 were comingled with other operating funds of RMCHCS during calendar years 2017 and 2015 respectively. Section II of this supplement outlines the detail of the monthly transfers and bank accounts involved.**

2. Determine what expenditures mill levy funds provided during calendar years 2015 through 2018 were used for.

**Results: Per review of bank statements for calendar years 2015 through 2018 and review of information provided by management of RMCHCS, the mill levy funds were used by RMCHCS as follows:**

|                                   | 2018             | 2017             | 2016           | 2015             |
|-----------------------------------|------------------|------------------|----------------|------------------|
| Debt Service                      | \$ 1,299,490     | 531,221          | 364,587        | 1,956,011        |
| Operating and<br>Payroll Expenses | -                | 5,895,182        | -              | 375,897          |
| Total \$                          | <u>1,299,490</u> | <u>6,426,403</u> | <u>364,587</u> | <u>2,331,908</u> |

**Recommendation: Due to the fact there has been commingling of mill levy funds, the County has the right, as well as the fiduciary responsibility, to audit the use of those public funds received by RMCHCS. Since there has been a great deal of concern over the significant related party transactions between RMCHCS and senior management, we recommend the County gain an in-depth understanding of those relationships to determine whether all of the related party activity is properly identified and executed without conflict of interest and in the best interest of Gallup, McKinley County and the surrounding area.**

## **II. Schedule of Mill Levy Transfers from RMCHCS Pledged Revenue Bank Account to RMCHCS Depository Account**

### **2017**

| <b>Month</b>    | <b>Amount of Transfer</b> | <b>From</b>                                 | <b>To</b>                           |
|-----------------|---------------------------|---|-------------------------------------|
| March           | \$ 1,100,000              | Pledged Revenues Account -<br>Pinnacle Bank | Depository Account -<br>Wells Fargo |
| June            | 450,000                   | Pledged Revenues Account -<br>Pinnacle Bank | Depository Account -<br>Wells Fargo |
| July            | 800,000                   | Pledged Revenues Account -<br>Pinnacle Bank | Depository Account -<br>Wells Fargo |
| August          | 1,100,000                 | Pledged Revenues Account -<br>Pinnacle Bank | Depository Account -<br>Wells Fargo |
| September       | 320,000                   | Pledged Revenues Account -<br>Pinnacle Bank | Depository Account -<br>Wells Fargo |
| October         | 291,000                   | Pledged Revenues Account -<br>Pinnacle Bank | Depository Account -<br>Wells Fargo |
| December        | <u>1,834,182</u>          | Pledged Revenues Account -<br>Pinnacle Bank | Depository Account -<br>Wells Fargo |
| Total transfers | \$ 5,895,182              |   |                                     |

### **2015**

| <b>Month</b>    | <b>Amount of Transfer</b> | <b>From</b>                                 | <b>To</b>                           |
|-----------------|---------------------------|---|-------------------------------------|
| January         | \$ 233,003                | Pledged Revenues Account -<br>Pinnacle Bank | Depository Account -<br>Wells Fargo |
| February        | 6,198                     | Pledged Revenues Account -<br>Pinnacle Bank | Depository Account -<br>Wells Fargo |
| June            | 117,589                   | Pledged Revenues Account -<br>Pinnacle Bank | Depository Account -<br>Wells Fargo |
| July            | 12,086                    | Pledged Revenues Account -<br>Pinnacle Bank | Depository Account -<br>Wells Fargo |
| August          | <u>7,020</u>              | Pledged Revenues Account -<br>Pinnacle Bank | Depository Account -<br>Wells Fargo |
| Total transfers | \$ 375,897                |   |                                     |