Governor's Commission on Review of Taxpayer Funded Hospitals

Comments by Carl Crabtree – November 21, 2011

At the June 20 meeting I gave some impromptu public comments after being taken aback by some of the information learned during the presentations. At that time I asked to return after completing some research that I was doing at the time. Thank you for this opportunity.

Phil Williams (AHCA) made a presentation at the June 20 meeting to explain how the rates for Medicaid reimbursement are set. I was surprised to learn that different rates are set for each hospital based primarily on the annual cost report submitted by each hospital. This modified cost plus pricing method negates the efficiencies that would be gained as a result of true free market competition and it subsidizes inefficiencies. This pricing theory is appropriate where there is a sole source of supply but not where there is a free market with multiple suppliers.

In commenting on this I referred to two Ocala hospitals as examples—Munroe Regional Medical Center, a county owned facility which operates under the Marion County Hospital District and Ocala Regional Medical Center (ORMC) which is a non-government hospital operated by HCA. (ORMC's primary facility is located across the street from Munroe.) At the time, AHCA reports showed the in-patient Medicaid reimbursement rate for Munroe to be three times the rate for ORMC (roughly $2,200/day vs $700). The chairman asked that Mr. Williams investigate and return to discuss the specifics of these two hospitals which he did in the August meeting.

The rates were revised effective July 1 and Mr. Williams' August report shows the rates to be $1,362.46/day for Munroe and $662.09 for ORMC. The disparity of rates is now less but is still troubling. Equally troubling is the revelation that Munroe's variable cost rate is exempt from a cap while ORMC's rate is capped at $754.88/day. As I understand it, that exemption is because Munroe is considered a government hospital.

Mr. Williams also explained that the Medicaid rebasing that had added over $15 million to Munroe's FY 2010 earnings was due to a change in the proviso language of the General Appropriations Act of 2009 and that only a handful of hospitals benefited from that change. Upon further investigation I learned that the phrase "including any leased public hospitals found to have sovereign immunity" had been inserted into the appropriations bill which allowed <u>two</u> additional hospitals to share in Specific Appropriation 188 and Specific Appropriation 193. Those hospitals were Munroe Regional Medical Center and Citrus Memorial Hospital.

When this rebasing windfall was announced in Munroe's board of directors meeting no mention was made of the fact that a political benefactor had changed the appropriations bill to deliver more tax money to Munroe. It was implied that this was simply the result of the hospital being reclassified as a unit of government. Moody's Investors Service apparently received a similar explanation as they noted the following strength for Munroe in their March 9, 2011 rating report analysis: "MRHS' (Munroe) FY 2010 designation as a public entity for Medicaid reimbursement purposes resulted in rebased Medicaid rates which added $15.0 million in additional revenue for FY 2010 (approximately $6.9 million was retroactive revenue to July 2008); the higher levels will continue until there are general reductions state-wide in Medicaid rates." Had Moody's been aware of the true circumstances behind the higher levels of reimbursement, it seems unlikely that they would have predicted that the higher rates would continue until there are general state-wide reductions in rates.

It is very obvious from the circumstances outlined above that government hospitals are given favorable treatment over non-government hospitals and the result is higher cost. <u>As I stated before, government does not reduce or even contain the cost of healthcare, it inflates the cost of it.</u>

On another note, I would like to address a couple of misleading issues raised in a report that was sent to the administration of Munroe Regional Medical Center during or shortly after my June 20 comments and which was then promptly rebroadcast to employees, lawyers and others.

First, if you have questions about my credentials, please ask and I will gladly share the details of my education and experience with you. As stated previously, I am simply a concerned tax paying citizen who is trying to learn about and understand government.

Second, I would like to clarify and add to my comments regarding Munroe's Supplemental Executive Retirement Plan. The report stated that "Carl Crabtree went on to allege that he couldn't account for the dollars going into the supplemental retirement plan of Munroe Regional despite his inquires." That statement is misleading and by itself may have incorrectly given the impression that I was suggesting the possibility of the misappropriation of funds. That was not my intent.

When I read Munroe's 2010 audit report I noted that they had both a regular defined benefit pension plan and a supplemental executive retirement plan (SERP). These two plans had been combined on the audit report and showed that they were funded at slightly less than 80%. Through a public records request I had learned that the SERP had $1,606,000 of liabilities and zero assets which was odd because the SERP has been in place since 1999. I had submitted a follow up public records request prior to the June 20 meeting in an effort to understand this situation but as of that date had not received a response. This was part of the unfinished research that I referenced when I asked for an opportunity to return at a later date.

The records received after the June 20 meeting show that the SERP has no assets because there is no intent to ever pay benefits directly out of the plan. Periodically, the benefits accrued under the SERP are transferred to the regular pension plan for each SERP participant through the issuance of an amendment to the regular pension plan. The stated purpose for this process is (1) to eliminate the FICA tax obligation for the employee and Munroe, (2) to eliminate the creditor risk for the employee, (3) to improve the tax treatment for the employee and (4) to improve funding opportunities for Munroe.

These transfers are made on an irregular basis to avoid running afoul of the IRS. Five of these transfers have been made since the SERP was established, adding a total of $2,007,000 to executives' regular pensions. The latest transfer for seven executives was approved by the board of directors on June 27 for a total of $272,000. Of that amount, $188,000 was added to the CFO's pension.

One final comment on this report, it was a bit disconcerting for me to learn that a local unit of government is actually paying people to monitor and report on my comments and activities. This type of duplicitous nonsense would have been disappointing but not surprising coming from Washington DC but it is most disappointing to learn that a local unit of government is involved in this Big Brother type activity.

Finally, we have all heard that there are inconsistencies between the enabling legislation that was passed to create the hospital districts. For the past two years I have been studying the Marion County Hospital District (MCHD) and the following comments are limited to that district. Attached for your consideration is an explanation of what I believe to be a fatal flaw in Marion County's legislation. In short, the legislation gives the MCHD trustees the authority to borrow money and issue bonds to provide for the general healthcare of the residents of the district (not just for indigent care) while it requires that the Board of County Commissioners (BCC) levy property taxes to pay the debt incurred by the trustees. In other words, one body of government makes the commitments and another body is required to pay the bills. This conflict has resulted in an adversarial relationship between the MCHD trustees and the BCC since at least 1983. This flaw has been highlighted by the financial difficulties that the hospital has experienced over the past few years.

For the record and for the benefit of anyone who might choose to review it, I ask that this presentation be posted to your website.

Governor's Commission on Review of Taxpayer Funded Hospitals
Re: Flaws in Marion County Hospital District legislation (Chap. 2008-273, Laws of Florida)
Carl Crabtree – November 21, 2011

The following analysis is based solely on my research and my observations while attending the monthly meetings of the board of directors of Munroe Regional Health Systems (MRHS) and the board of trustees of Marion County Hospital District and the joint meetings of the trustees and the Marion County Board of County Commissioners (BCC) over the past two years.

Marion General Hospital began operations about 1898. It was later renamed Munroe Memorial Hospital and was operating under that name at the time the original enabling legislation was passed in 1965 (Chap. 65-1905, Laws of Florida). When the hospital district was created, title to the hospital was transferred from the city of Ocala to the board of trustees of the Marion County Hospital District. The hospital currently operates under the name of Munroe Regional Medical Center (MRMC).

A decision was made in 1983 to enter into a lease arrangement with Big Sun Healthcare Systems, Inc. which resulted in a lawsuit and countersuit between the hospital district trustees and the Board of County Commissioners. A stipulated settlement was reached in 1984 and later amended in 1998 and again in 2006. In 2003 the hospital district entered a new 10 year lease with Munroe Regional Health Systems, Inc.

The 2008 recodification of the enabling legislation reflected the stipulated settlement and the amendments to it. Currently there are seven members of the board of trustees (two of whom have to be practicing physicians at MRMC) which are appointed by the Board of County Commissioners. Munroe Regional Health Systems has a 13-member board of directors. The trustees serves as seven of those members. As the other six directors are chosen their names are submitted to the Board of County Commissioners which has the right to reject the first nominee for any reason and the right to reject the second and third nominee for "cause". They can't reject the fourth nominee for any reason.

Although they are not in immediate danger of failing, MRMC's financial condition is deteriorating. The trustees own consultants have warned the trustees that they are bucking the trend by trying to continue as a stand-alone hospital but the dominant members of the board of trustees (who are also the dominant members of the board of directors) refuse to give serious consideration to any other business model and are determined to have the Board of County Commissioners levy a property tax to support the hospital in its present form. Finally, at the August trustee meeting—just over 30 days before they were required to give notice if they did not intend to renew the current lease—they agreed to retain Ponder & Co. to investigate other alternatives. At the September meeting they voted against giving notice that they would not renew the lease.

The September meeting was packed with supporters of the status quo and speaker after speaker went to the microphone to laud the hospital under its current management arrangement, to predict the destruction of the hospital if any changes were made and to hurl insults at the county commission. Over the previous 20 months or so I had heard some of the dominant trustees make disparaging comments about the county commission and I had learned about the lawsuits so I dismissed it. I had also heard comments made in their discussions about topics such as raises for hospital staff that indicated that the trustees' responsibility was limited to providing healthcare. The basis of the problem came into focus after hearing a woman who identified herself as a MRMC nurse speak at the September meeting. After hurling insults at the county commissioner who was in attendance at the meeting as their liaison she turned on the trustees/directors and admonished them for even having a discussion about not renewing the current lease. She pointed out that they were successfully delivering health care under the present arrangement and if there was a shortfall of revenue they "should just dump it in

the lap of the county commission. They have to pay it." The dominant trustees/directors apparently have concluded that their only responsibility is to provide healthcare services to the residents of the district and that the county commission is totally responsible for paying any expenses the trustees/directors incur. In short, the trustees/directors have a blank check that the county commission has to fund. Based on the nurse's comments that attitude has been shared with the hospital staff and probably others.

The language of Chap. 2008-273, Laws of Florida, seems to bear out this irresponsible relationship.

The board of trustees' broad (unlimited) authority to spend is defined as follows. Note that this authority is not limited to indigent care but is for the general population.

Section 6. Health care facilities and purpose.—The board of trustees is authorized to establish, construct, lease, operate, and maintain any hospital or clinic as in its opinion shall be necessary for the use of the people of the district. Any hospital or clinic shall be established, constructed, leased, operated, and maintained by said board of trustees for the preservation of the public health, for the public good, and for the use of the public of the district. Maintenance of any hospital or clinic within said district is hereby found and declared to be a public purpose and necessary for the preservation of the public health and the public use and welfare of the district and inhabitants thereof.

The board of trustees' broad authority to borrow money for 1 year or less and to pledge assets is defined as follows:

Section 10. Borrowing money.—The board of trustees is authorized, in order to provide for and carry out the work of this act, to borrow money from time to time for periods of time not exceeding 1 year at any one time, and to issue the note or notes of the district therefor upon such terms and upon such rates of legal interest per annum as said board may deem advisable. The board shall have the additional right to pledge as security for money borrowed by it, any moneys accruing to it or to accrue to it from any source, including revenues derived from the operation of the hospital; provided, however, that the aggregate amount of principal of money so borrowed shall not, at any one time, exceed 10 percent of the gross revenues realized by said board through the operation of the hospital during the preceding calendar year, and provided further that the interest to be paid thereon shall not exceed the prime interest rate charged by commercial banks doing business in Marion County.

The board of trustees' broad authority to issue general obligation bonds is defined as follows. Note that these bonds are not limited to use to establish, expand and construct facilities but can also be used to operate and maintain any facility.

Section 11. General obligation bonds.—Except as otherwise provided in this act, the Board of Trustees of the Marion County Hospital District is authorized to issue bonds of such form, denomination, and bearing such rate of interest not to exceed the maximum rate permitted by general law, and becoming due not less than 5 nor more than 30 years from the date of issuance, for the purpose of raising funds to establish, expand, construct, operate, and maintain any hospital or clinic as in the board's opinion is necessary in the district. The board of trustees shall have the power to refund any and all previous issues of bonds for any and all lawful hospital purposes. All proceeds derived from the sale of bonds or refunding bonds, exclusive of expenses, shall be deposited in a depository selected by the board.

General obligation bonds require voter approval but revenue bonds and refunding bonds do not.

Section 13. Approval.—All bonds issued by the Board of Trustees of the Marion County Hospital District, except refunding bonds, revenue bonds, or certificates and anticipation time warrants, shall be issued only after the same shall have been approved by a majority of the votes cast in an election of the qualified registered electors in the district; which election shall be called and held by the board of trustees, subject to reasonable rules and regulations prepared by the board.

The county commission is required to levy and collect property taxes to pay the interest and principal of the bonds issued by the board of trustees as follows:

Section 12. Taxation—Prior to the issuance of bonds, the board of trustees shall, by resolution, determine the amount that in its opinion will be necessary to be raised annually by taxation for an interest and sinking fund with which to pay the interest and principal of the bonds. The county commissioners are also authorized and required to provide for the levy and collection annually of a sufficient tax upon all the taxable property in the district, not exempt by law, to pay the interest, and with which to provide and maintain a sinking fund for the payment of the principal of the bonds.

Summary

A. The enabling legislation for this district gives the trustees unlimited authority to establish healthcare facilities. They could build one on every corner if they chose to do so.

B. The legislation doesn't set a minimum margin that must be earned by any of the facilities established by the trustees. In effect, the trustees have the authority to operate every facility without charging anything for the services.

C. The legislation grants the trustees unlimited authority to borrow money as long as they do it with revenue or refunding bonds. The voters only have a voice if the trustees choose to issue new general obligation bonds.

D. The legislation allows the trustees to spend the proceeds of borrowings for any purpose related to the healthcare facilities. No distinction is made between capital expenditures and regular day-to-day operating expenses.

E. The legislation requires the county commission to levy and collect property taxes to cover any liabilities incurred by the trustees through the issuance of bonds.

The passage of this legislation, with virtually no limit on the amount that this unelected board of trustees can commit the taxpayers of the hospital district to, was irresponsible and unconscionable. If this error cannot be fixed promptly through acceptable amendments, the entire act should be repealed.