Memorandum

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To: John Copeland III, Chair
and Members, Public Health Trust Board of Trustees

Eneida O. Roldan, M.D., President and CEO
Jackson Health System

From: Christopher Mazzella, Inspector General

Date: November 23, 2010

Subject: **FOLLOW-UP** Memorandum of OIG Observations, Review, and Comments on the *Proposed Agreement between the Public Health Trust and MedAssets Supply Chain Systems, LLC, For Group Purchasing Organization Services Pursuant to RFP 10-5140,* Ref. IG10-50

The Office of the Inspector General (OIG) has reviewed the revised agreement between the Public Health Trust (PHT) and MedAssets Supply Chain, LLC (MedAssets) for Group Purchasing Organization (GPO) Services (hereinafter the 'Agreement') that was presented at the PHT Board of Trustees Workshop of November 19, 2010.

The latest Agreement has four revisions that are a step in the right direction. With respect to those revisions:

1. **Termination for Convenience** – We ask "why only after three years?" We believe that both sides should be able to terminate the arrangement for convenience at any time after contract execution with sufficient notice and in accordance with agreed upon compensation terms.

2. **Transparency in Pricing** - We believe utilization of reverse auctions and other e-procurement methods approved by Florida House Bill 5001 may indeed benefit JHS.

3. **MedAssets Commitments** – We believe that MedAssets' use of *"all available commercially reasonable efforts to ensure Jackson is receiving the best price available"* does not ensure that JHS will actually receive the lowest pricing. What if best pricing is available through other means, such as through another government entity's contract or through contracting with the vendor directly? Would JHS be precluded from sourcing the item through the alternative means? If MedAssets were able to match the lower price, would the difference in price be counted towards its achieved savings?

4. **Primary GPO** – While we are pleased to see the arrangement revised from "exclusive" to "primary," we believe that the proposed language is vague and necessarily raises more questions. In its entirety, Statement of Work (SOW) Section 5.2.1 has been revised to read:

> Jackson hereby designates MedAssets as the primary Group Purchasing Organization authorized to provide any of the services comprising the GPO Program to Jackson during the term hereof including any [sic] all programs and/or tools necessary to increase vendor competition and provide Jackson the greatest economic advantage reasonably obtainable. JHS agrees to utilize MedAssets on a preferred vendor basis, and JHS retains the right to utilize other vendors ***if MedAssets cannot meet the stated goals for a particular product or service***. JHS shall maintain the ability to self-contract without punitive or negative consequences. (Emphasis added by OIG.)

We find this language obscure. On its face, it appears that the italicized clause is a condition precedent to JHS being allowed to utilize another vendor. It is entirely unclear what the "stated goals for a particular product or service" may be. Moreover, the last sentence, while seemingly reassuring, contains extremely harsh language that begs the question: if JHS uses another vendor to procure a product or service without first assuring that MedAssets could not meet "stated goals," would JHS be subjecting itself to punitive or negative consequences? This new provision demands clarification.

We appreciate the thoughtful discussion presented during the workshop on the proposed Agreement. However, we must clarify one misconception that was repeated throughout the meeting. We believed that it was misleading to state that JHS, through the Executive Committee, has "veto power" over approving MedAssets financial initiatives and "veto power" over crediting MedAssets with those projected savings. This is just not true.

The OIG notes the following relevant sections of the Agreement stipulating the authority of the Executive Committee and the approval process for financial initiatives:

- **Section 5.7 Executive Steering Committee** (ESC) – The ESC consists of three representatives from JHS and two representatives from MedAssets. This represents a natural 3-2 vote on matter, with only one swing vote necessary to benefit MedAssets. Clearly this is not analogous to a "veto."

- **Section 5.3.1 Initiatives and Prior Approvals by Jackson** – This provision clearly states that in the approval process, *"approval shall not be unreasonably withheld."*

- **Section 5.3.2 Documentation/Calculation of Financial Improvement and Approval by Jackson** – States that *"In the event that Jackson fails to either accept or reject the report with the fifteen (15) day period, MedAssets may count the Financial Improvement toward its guaranteed savings."*

- **Section 5.3.3 Pro rata Reduction in Event of Unreasonable Disapproval** – States, in part, *"If a requested approval under either 5.3.1 or 5.3.2 is unreasonably withheld, then the parties shall reduce the Guaranteed Savings, the Recurring Savings Commitment and/or the Targeted Savings commitment for the applicable period on a pro rata basis for each month such that implementation is delayed, unless such delay is due to the fault of MedAssets."*

- **Section 3 Jackson Commitments** – States, in part, *"In the event that Jackson fails to implement or comply with (vi) or (vii) set forth above, MedAssets may include the amount of the Financial Improvement which would otherwise have been achieved but for Jackson's failure to implement or comply with such commitments for purposes of determining whether MedAssets met its Guaranteed Savings commitments ... "*

Given the foregoing contract clauses, the OIG believes that MedAssets maintains a significant advantage in the approval process. Indeed, MedAssets has the upper hand. This is far from JHS having veto power.

As to the Agreement in general, the OIG stands by its previous remarks of our original memorandum regarding the subject Agreement, issued on November 9, 2010. Overall, we believe that, as structured, this contract carries significant financial risk. Moreover, the "bundling" arrangement only ensures MedAssets' opportunities for achieving its "guaranteed savings." These saving may never actually materialize, while at the same time, JHS is committed to paying MedAssets' contracted fee. Three years, we believe, is too long for JHS to commit to this experiment.

cc: Alina Hudak, Assistant County Manager
Miriam Singer, Director of Procurement Management
Charles Anderson, Commission Auditor