



MURIEL BOWSER
MAYOR

July 15, 2020

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration by the Council of the District of Columbia is the "New Hospital at St. Elizabeths Emergency Amendment Act of 2020" and the accompanying "New Hospital at St. Elizabeths Emergency Declaration Resolution of 2020." This legislation will approve agreements with Universal Health Services and its subsidiaries to establish a new hospital and ambulatory pavilion on the east campus of St. Elizabeths in Ward 8 and make certain legislative amendments to support the project.

I previously transmitted to the Council a permanent version of the legislation, the "New Hospital at St. Elizabeths Amendment Act of 2020," and the Council approved that legislation on first reading on July 7, 2020.

Approval of the enclosed emergency legislation will allow the project to move forward without unnecessary delay, which will help expedite important improvements to health care services for District residents, particularly residents of Wards 7 and 8.

I look forward to the Council's prompt and favorable consideration of this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser".

Muriel Bowser
Mayor


Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To, on an emergency basis, approve the development agreement transmitted by the Mayor on June 8, 2020 as a contract in excess of \$1 million for the construction of a new hospital at St. Elizabeths; approve the operations agreement transmitted by the Mayor on June 8, 2020 as a multiyear contract and contract in excess of \$1 million for the operation of the hospital; to authorize the Mayor to dispose of the hospital and the real property on which the hospital will be located to UHS East End Sub, LLC; establish a special fund as a startup reserve for the hospital; and amend the Health Services Planning Program Re-Establishment Act of 1996 to establish an uncompensated care requirement for the hospital.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “New Hospital at St. Elizabeths Emergency Amendment Act of 2020”.

TITLE I. CONTRACT APPROVAL; DISPOSITION AUTHORIZATION.

Sec. 101.(a) Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), the Public-Private Partnership Act of 2014, effective March 11, 2015 (D.C. Law 20-228; D.C. Official Code § 2-271.01 *et seq.*), or any other law, the Council approves:

(1) The Development Agreement between the District of Columbia and UHS Building Solutions, Inc., for the design and construction of a hospital and other facilities

37 (“Hospital Facilities”) at St. Elizabeths and for other purposes (“Development Agreement”),
38 transmitted by the Mayor to the Council on June 8, 2020, as a contract involving expenditures in
39 excess of \$1 million during a 12-month period; and

40 (2) The Hospital Operations Agreement between the Government of the District
41 of Columbia and UHS East End Sub, LLC, for the operation of a hospital at St. Elizabeths and
42 for other purposes (“Operations Agreement”), transmitted by the Mayor to the Council on June
43 8, 2020, as a multiyear contract and as a contract involving expenditures in excess of \$1 million
44 during a 12-month period.

45 (b) Notwithstanding An Act Authorizing the sale of certain real estate in the District of
46 Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C.
47 Official Code § 10-801), or any other law, the Council authorizes the Mayor to dispose of the
48 Hospital Facilities to UHS East End Sub, LLC, or its successor or assign, in fee simple or by
49 lease for up to 99 years and to dispose of the real property known for assessment and taxation
50 purposes as Lot 859 in Square 5868S (“New Hospital Property”) by lease for up to 99 years to
51 UHS East End Sub, LLC, or its successor or assign,, as provided for in the Lease Agreement
52 between the District of Columbia as landlord and UHS East End Sub, LLC, as tenant (“Lease
53 Agreement”), transmitted by the Mayor to the Council on June 8, 2020, as such agreement may
54 be amended by the Mayor from time to time, and to provide easements to owners of real property
55 adjacent to the New Hospital Property and utility providers as may be necessary or appropriate
56 for the construction and operation of the Hospital Facilities.

57 (c) Notwithstanding any other provision of law, the Mayor is authorized to take such
58 actions as are appropriate to implement the Development Agreement, Operations Agreement,
59 and Lease Agreement.

60 **TITLE II. NEW HOSPITAL AT ST. ELIZABETHS STARTUP RESERVE FUND.**

61 Sec. 201. This title may be cited as the New Hospital at St. Elizabeths Startup Reserve
62 Establishment Fund Act of 2020”.

63 Sec. 202. New hospital at St. Elizabeths startup reserve fund.

64 (a) There is established as a special fund the New Hospital at St. Elizabeths Startup
65 Reserve Fund (“Fund”), which shall be administered by the Department of Health Care Finance
66 in accordance with subsections (c) and (d) of this section.

67 (b) There shall be deposited into the Fund such amounts as shall be appropriated,
68 consistent with the Hospital Operations Agreement between the Government of the District of
69 Columbia and UHS East End Sub, LLC, for the operation of a hospital at St. Elizabeths and for
70 other purposes (“Operations Agreement”), approved pursuant to Title I.

71 (c) Money in the Fund shall be used for the purposes set forth in the Operations
72 Agreement.

73 (d)(1) The money deposited into the Fund but not expended in a fiscal year shall not
74 revert to the unassigned fund balance of the General Fund of the District of Columbia at the end
75 of a fiscal year, or at any other time.

76 (2) Subject to authorization in an approved budget and financial plan, any funds
77 appropriated in the Fund shall be continually available without regard to fiscal year limitation.

78 **TITLE III. UNCOMPENSATED CARE REQUIREMENT.**

79 Sec. 301. Section 6 of the Health Services Planning Program Re-Establishment Act of
80 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-405), is amended by
81 adding a new subsection (a-1) to read as follows:

82 “(a-1) The requirement set forth in subsection (a) of this section that a health care facility
83 submit an assurance of its provision of a reasonable volume of uncompensated care through the
84 “annual compliance level” of 3% of its operating costs shall not apply to the hospital referenced
85 in Title I of the New Hospital at St. Elizabeths Amendment Act of 2020, as approved by the
86 Committee on Health on July 1, 2020 (Committee print of Bill 23-777) (“New Hospital Act”).
87 Such hospital shall instead submit an assurance of its compliance with the uncompensated care,
88 charity care, and community benefits requirement set forth in section 3.7 of the Operations
89 Agreement approved in section 101(a)(2) of the New Hospital Act.”.

90 **TITLE IV. GENERAL PROVISIONS.**

91 Sec. 401. Fiscal impact statement.

92 The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal
93 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
94 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

95 Sec. 402. Effective date.

96 This act shall take effect following approval by the Mayor (or in the event of veto by the
97 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
98 90 days, as provided for emergency acts of the Council of the District of Columbia in section
99 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
100 D.C. Official Code § 1-204.12(a)).


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: July 14, 2020

SUBJECT: Fiscal Impact Statement – New Hospital at St. Elizabeths Emergency
Amendment Act of 2020

REFERENCE: Draft Introduction as provided to the Office of Revenue Analysis on July
12, 2020

Conclusion

Funds are sufficient in the fiscal year 2020 budget and proposed fiscal year 2021 through fiscal year 2024 budget and financial plan¹ to implement the bill. The agreements approved by the bill are funded with \$375 million in capital costs, \$600,000 of operating budget in fiscal year 2021, and a total of \$5.6 million of operating budget during the fiscal year 2021 through fiscal year 2024 financial plan. Additional costs fall outside of the financial plan period.

Background

The emergency bill approves² the Development Agreement, Operations Agreement, and Lease Agreement between the District of Columbia and Universal Health Services (UHS) for the design, construction, and operation of a general hospital, ambulatory pavilion, and parking garage (collectively referred to as the "Hospital") at St. Elizabeths. The bill also exempts both the District and UHS from normal procurement³ and disposition⁴ procedures as well as public-private partnership

¹ As approved by Council on First Reading, July 7, 2020 in the Fiscal Year 2021 Budget Support Act of 2020, Bill 23-760.

² Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51).

³ Pursuant to the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 et seq.).

⁴ Pursuant to An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801).

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FIS: "New Hospital at St. Elizabeths Emergency Amendment Act of 2020," Draft Introduction as provided to the Office of Revenue Analysis on July 12, 2020

requirements.⁵ The bill also establishes the New Hospital at St. Elizabeths Startup Reserve Fund and requires the new Hospital to meet certain uncompensated care thresholds requirements⁶ to correspond to the Operations Agreement.

The Hospital will be a 136-bed facility that will offer medical, surgical, intensive care, women's health, emergency health, and imaging services. The District will own the Hospital and will pay for the costs of the project. An affiliate of UHS will provide program management services, managing the design, construction, furnishing, equipping, activation, and commissioning of the Hospital and supporting facilities.

Development Agreement

The Development Agreement includes the details of construction, including design and operation requirements, timeline for construction, development and completion milestones, labor and contractor requirements for the design and construction, and financing obligations. The following table outlines key components in the Development Agreement.

| Development Agreement Summary | |
|-------------------------------|--|
| Construction: | <ul style="list-style-type: none">▪ UHS will manage the design and construction of the hospital and its associated costs.▪ UHS will ensure that contractors are adhering to applicable District Law including Project Labor Agreements,⁷ Certified Business Enterprise⁸ requirements, and First Source requirements.⁹▪ The District will assist UHS with obtaining all permits and approvals for the project. The District will also apply and pay for the Certificate of Need (CON) on behalf of UHS.▪ The District retains approval rights to proceed with the project at critical phases.▪ The District and UHS must update the hospital schedule and cost at various stages of the project. |
| Financing: | <ul style="list-style-type: none">▪ The District contributes \$375 million towards construction:<ul style="list-style-type: none">○ \$293 million for the General Hospital (in-patient facility);○ \$69 million for the Ambulatory Pavilion (out-patient facility); and○ \$13 million for a parking garage. |
| Timeline | <ul style="list-style-type: none">▪ Fall of 2023 (Fiscal Year 2024) – Ambulatory Pavilion is open to patients.▪ Fall of 2024 (Fiscal Year 2025) – General Hospital is open to patients and Parking Facility opens. |

Lease Agreement

The Lease Agreement describes the terms of occupancy of the Hospital and Parking Facility and UHS's obligations to operate the Hospital. The lease also provides terms for each side to terminate the Lease

⁵ Pursuant to the Public-Private Partnership Act of 2014, effective March 11, 2015 (D.C. Law 20-228; D.C. Official Code § 2-271.01 et seq.).

⁶ By amending Section 6 of the Health Services Planning Health Services Planning Program Re-Establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-405).

⁷ Meeting the requirements of D.C. Official Code § 2-356.06.

⁸ Pursuant to the Small, Local, and Disadvantaged Business Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 et seq.).

⁹ Pursuant to the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.01 et seq.).

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Agreement, as well as UHS purchase options. UHS may purchase the Hospital and Parking Facility from the District or enter into modified lease terms pertaining to the facilities, as long as it continues to operate a Hospital and Ambulatory Pavilion branded in a manner consistent with the branding of the George Washington University Hospital in Foggy Bottom. The following table outlines key components in the Lease Agreement.

| Lease Agreement Summary | |
|-------------------------|--|
| Lease Terms: | <ul style="list-style-type: none"> ▪ The District will retain ownership of the facilities and land that comprise the Hospital and Parking Facility and will lease the facilities and land to UHS. ▪ The District will lease the Hospital to UHS for a term of 75 years with a \$1 base rent. ▪ UHS will pay the District participation rent based on the percentage of the Hospital's gross revenues for each year where earnings before interest, taxes, depreciation, and amortization (EBITDA) exceeds a 12 percent margin. |
| Purchasing Rights: | <ul style="list-style-type: none"> ▪ UHS is given the option to purchase the Hospital and Parking Facility after 10 years. ▪ UHS may purchase the hospital building (but not the underlying land) in two ways: <ul style="list-style-type: none"> ○ Outright by paying the higher of the outstanding bond amount, or the fair market value of the Hospital. UHS then pays fair market rent for the land; or ○ Purchasing the business by paying to the District an annual lease payment equal to the greater of the annual debt service payment for the Hospital construction bonds and the fair market rent. |
| Termination of Lease: | <ul style="list-style-type: none"> ▪ UHS must provide the District with 18-months' notice if it decides to terminate the Lease Agreement after ten years and pay a penalty based on the number of years remaining on the lease. ▪ UHS is required to pay a penalty to the District if UHS is in material breach of the Lease Agreement in years 1 through 10. |

Operations Agreement

The Operations Agreement defines the relationship between UHS and the District with regard to hospital operations, the establishment of other health care facilities and the making of other health care investments. It establishes the type and level of services to be offered in Hospital and performance standards for the provision of these services. The following table outlines key components in the Operations Agreement.

| Operations Agreement Summary | |
|------------------------------|--|
| Hospital Operations | <ul style="list-style-type: none"> ▪ UHS will cover the cost of operations, physician staffing and management of the new hospital. ▪ UHS will staff the new Hospital with Medical Faculty Associates, the same physician group currently associated with the University. ▪ UHS will integrate the George Washington University Health brand and programming with new Hospital. ▪ UHS will achieve or demonstrate progress towards achieving national benchmarks. ▪ UHS will provide workforce development programs for District residents to pursue careers in health care. |
| Financial Commitments | <ul style="list-style-type: none"> ▪ UHS will spend \$75 million in healthcare infrastructure over ten years in Wards 7 and 8, including: <ul style="list-style-type: none"> ○ at least one urgent care or ambulatory center in Wards 7 and 8; and |

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- o An electronic health records system and capital expenditures at the new Hospital.
- UHS will dedicate three percent of operating expenses towards uncompensated care, charity care, or community benefits.
- The District will require Medicaid Managed Care Organizations to pay the new Hospital at an enhanced Medicaid rate (148 percent of the 2019 Medicaid fee-for-service rate) due to the high volume of Medicaid patients in Ward 8.
- The District provides a \$25 million operating reserve by depositing \$5 million per year into a special purpose revenue fund (the New Hospital at St. Elizabeths Startup Reserve Fund) for the first five years of Hospital's operation. The fund must be used to return the Hospital to a 0 percent operating margin and dissolves after ten years.

Financial Plan Impact

Funds are sufficient in the fiscal year 2020 budget and proposed fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. The bill approves the Development Agreement which requires the District to issue taxable bonds in an amount sufficient to cover the cost of the new Hospital. The Capital Improvement Plan included in the approved fiscal year 2020 budget as well as the proposed Capital Improvement Plan in the Mayor's proposed fiscal year 2021 budget will fund the anticipated \$375 million construction costs for the new Hospital.

The project budget assumes that the hospital building will be 251,409 square feet and have construction costs of \$946 per square foot. The proposed Parking Facility will have 500 spaces at a construction cost of \$25,000 per parking space. The Ambulatory Pavilion will be 77,164 square feet and have a construction cost of \$892 per square foot. The project budget also includes \$67.4 million for furniture, fixtures, medical equipment, and information technology equipment. The costs also include \$3 million to build infrastructure that will allow the Hospital to expand capacity in the future if needed. The proposed budget for hospital construction includes a 10 percent contingency reserve for unforeseen costs such as environmental remediation and deep foundation systems removal. When an architect is hired for the project and completes design drawings and project specifications, the architect shall update the estimated project budget and these documents are subject to approval by both the Project Manager and the District. The Project Manager is required to enter into one or more construction contracts that include a guaranteed maximum price. Any changes to the project budget, at any stage in the design, bidding, or construction process, will require District approval and any increases would require further appropriations.

The agreements allow the District to have a construction consultant and the Department of General Services (DGS) will use an existing project management contract associated with the St Elizabeths site to perform such work.

The agreements require the District to enter into Medicaid managed care contracts that direct the managed care organizations (MCOs) to pay an enhanced rate for services at the Hospital. This could cause Medicaid costs for the District to rise. However, there are many factors which will contribute to fiscal year 2024 Medicaid managed care costs, including health care market dynamics and Medicaid patient mix. Medicaid per member costs are set every year to ensure actuarial soundness, and the Department of Health Care Finance will complete a Medicaid rate rebasing in fiscal year 2023 to prepare the fiscal year 2024 budget. Any effects on the per member Medicaid costs resulting from

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paying an enhanced rate to the new Hospital will be captured in the rebasing analysis for inclusion in the fiscal year 2024 budget.

The proposed fiscal year 2021 State Health Planning and Development Agency (SHPDA) budget includes \$600,000 in local funds to complete the Certificate of Need approval process on behalf of UHS.

The District must deposit \$5 million on an annual basis into the New Hospital at St Elizabeths Startup Reserve Fund (Fund) beginning in fiscal year 2024 and ending in fiscal year 2028. In total, \$25 million will be deposited into the Fund. The fund balance will be available to the Hospital for a period of 10 years and can be used to reduce the Hospital's annual operating deficits. If the reserve is needed, UHS is required to provide to the District financial statements and other supporting documentation to demonstrate how the Hospital's deficit was calculated.

| New Hospital at St. Elizabeths Act of 2020 | | | | | | |
|--|----------------|-----------------|------------------|------------------|-----------------|------------------|
| Total Cost (\$ thousands) | | | | | | |
| | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 | Total |
| Construction Costs | \$8,205 | \$36,775 | \$114,315 | \$126,425 | \$88,961 | \$374,681 |
| Certificate of Need Fees | \$0 | \$600 | \$0 | \$0 | \$0 | \$600 |
| Operating Reserve Deposit | \$0 | \$0 | \$0 | \$0 | \$5,000 | \$5,000 |
| Total | \$8,205 | \$37,375 | \$114,315 | \$126,425 | \$93,961 | \$380,281 |

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Legal Counsel Division



MEMORANDUM

TO: Ronan Gulstone
Director
Office of Policy and Legislative Affairs

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: July 14, 2020

RE: New Hospital at St. Elizabeths Emergency Amendment Act of 2020 and
Accompanying Emergency Declaration Resolution
(AE-20-363B rev.)

This is to Certify that this Office has reviewed the legislation entitled the “New Hospital at St. Elizabeths Emergency Amendment Act of 2020” and the “New Hospital at St. Elizabeths Emergency Declaration Resolution of 2020” and determined that they are legally sufficient.

If you have any questions, please do not hesitate to call me at 724-5524.

Brian K. Flowers

Brian K. Flowers