

September 28, 2018

Hon. Wynne Carvill, Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, Ca 94612

Re: Response to 2017-2018 Alameda County Grand Jury Report: “Alameda Health System: Contracts, Compensation, and Care”

Dear Judge Carvill,

Pursuant to California Penal Code Section 933.05(a), (b) and (c), Alameda Health System (“AHS”) provides this letter in response to the section entitled “Alameda Health System: Contracts, Compensation, and Care” in the recently completed 2017-2018 Alameda County Grand Jury Final Report. AHS appreciates the feedback provided by the Grand Jury and this opportunity to respond to the findings and recommendations.

Introduction/Background

As an initial matter, AHS notes that the Grand Jury’s focus on the proper stewardship of resources designated for health services to residents of Alameda County is both timely and consistent with AHS’s priorities. As we continue the uncertain journey of health care reform it has been a goal of this organization to foster a culture of accountability that emphasizes the best quality of care and appropriate systems and internal controls to insure the appropriate and effective deployment of resources. AHS is satisfied with its partnership with contracted physicians, in particular OakCare Medical Group (“OakCare”) to achieve these ends.

The evolution of the contract with OakCare, highlighted in the report, reflects this effort. Before the prior contract expired we engaged with OakCare on a rigorous process to review services, service delivery, compensation, and contract performance in anticipation of a follow-on

agreement. While AHS values its partnership with OakCare and appreciates its contributions to the organization over time, the contract renewal process arose in part from opportunities identified from the performance under the expiring contract and from internal initiatives focused on increasing AHS accountability in the physician contracting process and performance management/monitoring under these agreements.

Physician Contracting - General

At the center of our efforts is a dedicated Physician Contracting Department, staffed by AHS employees, that oversees the development and execution of contracts with service providers. The Physician Contracting Department is closely aligned with medical and executive leadership (the Chief Medical Officer, President of Alameda Health Partners (“AHP”), and relevant Chief Administrative Officers), meeting weekly with these leaders to discuss matters related to contracting needs and issues.

Physician contracts are subject to a rigorous process, managed by AHS leaders to determine need, scope, terms, performance measures, and quality standards. This process, portrayed in the attached flowchart [**Attachment 1**], is designed mindful of the myriad of federal and California fraud and abuse, conflict of interest, ban on gift of public funds laws and the general notion that AHS as a public entity is entrusted with the responsibility of ensuring that public resources are utilized for a necessary public purpose. The Physician Contracts Department works with executive leadership, in-house legal counsel (and as appropriate outside legal counsel) dedicated to contracts, and third party appraisers to ensure that contracts entered into with physicians and medical groups are necessary, payment is set at a reasonable rate, and the overall arrangement furthers the best interests of AHS and its patients.

Oversight of this contracting process is provided by the AHS Internal Audit/Compliance Department. This Department has independent authority to review physician contracting practices and conducts periodic reviews of physician contracts to ensure that they were initiated appropriately by executive leadership, that a fair market value analysis had been conducted, and the services requested were in fact necessary. In addition Internal Audit/Compliance investigates issues related to improper deployment of resources (i.e., unauthorized use by contractors) or violations of conflict of interest policies and retains independent authority to address these issues and directed corrective actions to our Board of Trustees.

The Contract with OakCare

The most recent contract between OakCare and AHP illustrates the operation of each element of the process described above. First, the decision to move forward with AHP as the contracting party was made by AHS and AHP executive and board leadership as part of the strategy to facilitate a long term objective of achieving a staffing model where the majority of physicians are AHP employees. AHS and AHP approached the agreement with the intention that it would be the last comprehensive agreement with OakCare. Consequently, AHP and OakCare also signed a memorandum of understanding where the parties agreed to work together in good faith towards assimilating OakCare’s providers into the framework of AHP by the end of the contract term.

Next, AHS initiated a plan to achieve a successor agreement, adopting a “zero-base” approach. AHS engaged in a 9-month due diligence process to assess needs, consider delivery options and evaluate contracting goals. AHS, with collaboration from OakCare, engaged in numerous retreats to clarify the scope and necessity of services, to discuss fair market valuation, to consider alternate service models, and to evaluate performance/quality standards. These discussions/negotiations were subject to legal review and third-party evaluation (proposed compensation). As a result of this process, significant differences from the prior contract emerged and were incorporated into a successor agreement:

- The scope of services to be provided by OakCare was increased by 10 additional FTEs, over the requirements of the prior agreement, based on needs identified by AHS.¹
- Compensation (for clinical, administrative, or academic services) is provided on a “services rendered” basis. OakCare must demonstrate services provided, subject to validation by AHS, before payment is due.
- The contract details specific procedures for OakCare to document services and AHS has implemented a process to insure each invoice is reviewed by the Contracts Department, AHS clinical leaders, and AHS administrative leadership before payment is authorized.
- The contract specifies use of AHS facilities and space only for the delivery of care to AHS patients.
- The contract specifies that grants may only be procured through the AHS Grants Department and for the benefit of AHS.

AHS Accountability and Alignment with AHS Strategic Direction

AHS concurs with the general notions, reflected in the report, that proper accountability for public resources and alignment of contracting practices with strategic goals are of paramount importance. Accordingly, in areas where practices require more robust control and oversight by AHS, we have undertaken to accomplish that transformation. Our continued emphasis on the evolution of AHP will insure clinical leadership and direction that is fully aligned with AHS strategic goals. Likewise, administrative processes are being reviewed and enhanced to insure complete accountability for public resources entrusted to AHS.

With that said, AHS appreciates the additional review conducted by the Grand Jury that complements our efforts towards continuous improvement of our processes. As we discuss in more detail below, the recommendations proposed by the Grand Jury have either been implemented or will be implemented.

¹ The report appeared to take issue with the fact that the overall commitment to OakCare increased by 5% over the last agreement. Inasmuch as the increase is only 5% since the last negotiation with OakCare in 2013/2014 and incorporates a notable increase in the services to be provided, we are satisfied that the compensation represents appropriate value to AHS and its patients.

AHS Responses to Findings

Finding 18-27: “The relationship between Alameda Health System and OakCare Medical Group has been characterized, in the past, as contentious and lacking in transparency. In large measure, this is a function of the outsized role that OakCare plays in the medical leadership and medical staff at Alameda Health System. While the contract and management processes have improved under the current contract, the ability to build a sustainable health system to serve the county is hampered by the lack of alignment between the medical leadership and staff and the strategic direction of Alameda Health System.”

AHS Response to Finding 18-27:

AHS disagrees with this finding.

Initially, this finding is difficult to address as it begins with an opinion and a temporal focus that have been superceded – as noted by the Grand Jury - by more recent events. To the degree that the Grand Jury identifies AHS “medical leadership and medical staff” as bodies over which OakCare has an outsized role (at least as regards decisions related to the Highland campus), AHS acknowledges that OakCare providers are the largest single group within the medical staff and it does have a significant presence where its physicians serve as medical staff leaders including medical directors, chairs, and chiefs.² Likewise, AHS concurs with the principle that a “sustainable health system” requires alignment between medical (clinical) leadership and strategic direction. However, AHS leadership has articulated and is continuing to pursue a plan to transition the services currently provided by OakCare under contract, including physician leadership positions, to AHP providers at or around the time the current agreement expires in 2020. Both parties have agreed, under an executed memorandum of understanding, to regular working meetings to enable detailed planning that will result in a smooth transition from contracting for leadership and professional services to a structure organized under AHP.

In the interim, despite the contract structure, the delivery of care reflects significant collaboration between AHS and OakCare. OakCare physicians in leadership roles are approved by AHS and accountable to the AHS Chief Medical Officer. The CMO meets regularly with these leaders to insure clinic operations and practices reflect AHS priorities and quality standards. Direction for clinical care and standards comes from the CMO according to AHS strategic priorities. No OakCare physician has independent authority to deploy resources except as directed by AHS leadership and the parties work in partnership to execute on AHS’s strategic mission. An example, of this partnership was recently reflected in the consolidation of emergency room services within the

² We would disagree with the Report’s focus on the fact that a member of OakCare sits on the AHS Board of Trustees. First, although the individual is employed by OakCare, he does not serve in a leadership capacity in that organization. Second, the AHS bylaws call for the appointment of a member of the medical staff to the Board of Trustees. The three medical staffs decided collectively on the nominee for the position – this was not a decision made by OakCare.

OakCare group. AHS determined that an integrated alignment of these services would best serve the organization and the AHS CEO and CMO worked with OakCare's governing board to craft an agreement to meet the need.

Based on the foregoing, AHS believes that the relationship with OakCare has been evolved to assure the greatest degree of alignment with our strategic priorities, while that organization continues to provide services to AHS.

This ongoing effort plus AHS' leaderships unwavering commitment to AHP's continued expansion as the preferred provider of medical services at AHS will address the concerns in the Final Report regarding OakCare's influence over medical care at AHS. It is expected that this change will facilitate alignment and more complete physician involvement in driving performance at AHS and allow leadership the fullest degrees of flexibility needed to realize our mission of providing high-quality, financially viable and relevant services to the community in the long-term.

Finding 18-28: "Policies and procedures related to the use of public resources by management and leadership OakCare have been inadequately developed and followed. This includes use of public space, public equipment, and direct public budgetary expenditures for activity that supports the private medical group."

AHS Response to Finding 18-28:

AHS partially agrees with this finding.

Although policies and procedures governing expenditures have been in place for some time, our Internal Audit/Compliance Department has recently conducted review of these practices and is overseeing corrective actions where gaps have been identified. In addition, in 2017, a budget oversight committee was established to more closely monitor departmental expenses and work with department heads to take corrective action as needed.

AHS is committed to insuring that use of public resources by contracted physicians/physician groups is limited to support necessary to provide services under contract.

Contracted physicians practice in AHS facilities alongside AHS employees, and as such, may inadvertently receive some incidental benefits. Internal Audit/Compliance is continuously working with the respective departments to clarify and emphasize the importance of distinguishing between contracted providers and those employed by AHS with respect to use of public assets/resources. In specific instances where Internal Audit/Compliance has identified improper support, the practice has been terminated.³

³ The Report refers to information regarding OakCare using AHS facilities for business of the medical group (i.e., board meetings). AHS agrees that such support would not be appropriate in the absence of an agreement by OakCare to reimburse AHS the fair market value of the use of meeting space. We have taken corrective action to address this point and to insure that use of AHS facilities is consistent with contractual and regulatory requirements.

When issues such as the inappropriate use of equipment are identified, they are addressed and resolved expeditiously by management. Moreover AHS/AHP requires its contracted physician providers to abide by strict contractual terms prohibiting them from using any AHS resources (property, personnel, etc.) in furtherance of any business interests not solely related to their contractual obligations with AHS (essentially an anti-inurement clause). Below is the actual language used in the current OakCare agreement and that is incorporated generally into the physician contract templates:

Real and Personal Property. Consistent with the PSA, Providers and personnel may use such real and tangible property of the Hospitals and Clinics as may reasonably be required for Contractor to provide the Services effectively and efficiently to ensure high-quality patient care. Any facilities, equipment, supplies, or personnel provided by the Hospitals and Clinics shall be used by Contractor and Providers solely to provide Services under this Agreement and shall not be used for any other purpose whatsoever. No part of AHS's premises shall be used at any time by Contractor or any Provider for their own purposes, as an office for the general practice of medicine or for any purpose other than the provision of the Services under this Agreement.

Finding 18-29: "Policies and procedures related to the acquisition and management of contracts and grants received from federal and state agencies and private foundations by affiliated physicians who are members of OakCare Medical Group have been adequately developed and followed."

AHS Response to Finding 18-29:

AHS partially agrees with this finding.

AHS acknowledges that a portion of its grants portfolio is not actively managed by AHS executive leadership. A grants policy/process to address this issue has been drafted and is currently under review.

As required by the agreement between OakCare and AHP, grants involving OakCare are worked through the Grants Department and are subject to contract and legal review. The Internal Audit/Compliance Department conducts periodic audits and over the past five years has identified two grants that were initiated by OakCare outside of this process and the administration of both of grants has been moved to the Grants Department. Management has worked with OakCare to educate them on the proper process going forward and will advise them when the policy has been finalized.

AHS Responses to Recommendations

Recommendation 18-21: “Alameda Health System must continue to improve its contracting process with medical groups and independent physicians making sure that staffing requirements and performance standards are clearly established, complied with by the medical groups and individual physicians, and are transparent.”

AHS Response to Recommendation 18-21:

This recommendation has been implemented.

As noted at the outset of this response, AHS had an inconsistent physician contracting process prior to a major reorganization of the Contracting Department in early 2015. Since that time, however, processes have been developed and are continuously being refined resulting in:

- contract language and templates that require clear description and quantification of physician services and compensation,
- inclusion of explicit performance and quality metrics when appropriate; and
- verification that each contracted provider has met the professional qualifications required to render services at AHS.

These steps are subject to regular review and are updated when deemed appropriate by AHS Legal and Internal Audit/Compliance Departments.

This combination of template-based contracting and a thorough due diligence process geared to confirm the qualifications of every contracted provider form the backbone of a contracting process that has been designed to ensure superior quality of care and oversight. In addition to routine updates to the process as laws, regulations and AHS internal requirements dictate, the Contracting Department continues to replace existing agreements that were generated without benefit of these updated templates and due diligence process as we transition all contracted providers to this leading edge contracting and monitoring standard.

Recommendation 18-22: “Alameda Health System must continue to improve its internal monitoring capacity to assess compliance and performance by all groups and physicians providing care in the system.”

AHS Response to Recommendation 18-22:

This recommendation will be implemented.

In addition to the project to update contract language and the due diligence process (see Response to Recommendation 18-21, above), there are three additional steps that have been taken:

1. The Contracting Department's rigorous validation process for physician invoicing requires independent verification of claimed services by the AHS department administrators overseeing said services. Department administrators are assisted in this review by AHS-employed clinical leaders and staff that validate the provision of claimed services. In addition, the Quality Department assesses performances against contract metrics. To date this validation process has resulted in a robust and sound protocol that is both transparent and defensible. This process is highly effective and routinely flags invoices for follow-up when any element is unclear or inappropriate. Payment will, and has been, denied if investigation fails to corroborate invoiced services. Similar invoice validation protocols are in place at other organizations, including Sutter Health and Dignity Health. [See Attachment 2]
2. Quality of care and productivity metrics linking contract provider quality and production levels to pay are being implemented in the contracting process where appropriate (i.e. OakCare and other large/complex contract providers). Once these terms are agreed to contractually, AHS monitors and runs quality and productivity reports on contract providers to generate a "report card" against which the provider performance is assessed. This allows AHS to incorporate the most current and relevant quality and productivity metrics in the terms of our key contractual relationships and use the incentive power of performance-based pay to better align AHS and contractor goals.
3. Recurring internal audits of physician contracting processes and contracts by AHS Compliance to help ensure scrupulous adherence to all governing laws, regulations and AHS policies and procedures.

The above elements of AHS' monitoring efforts are ongoing and evolve as required to ensure a robust and defensible compliance posture and sound performance by our contracted providers.

Recommendation 18-23: "Alameda Health System must establish and enforce policies and procedures related to the use of public resources by private contractors."

AHS Response to Recommendation 18-23:

This recommendation has been implemented.

AHS has policies in place that require personnel to use AHS resources exclusively for the benefit of AHS. The following are examples of such policies: purchasing policy which requires all purchases and disbursements made by AHS to be made exclusively for the benefit of AHS; a computer system policy that makes clear that computer resources are the property of AHS and may only be used for a legitimate business purpose; a telephone system policy that prohibits the use of postage meters, printers, copiers, fax machines and the like for personal use; and a vehicle policy that forbids the use of AHS vehicles for personal use.

In addition, AHS is presently reviewing and updating policies related to:

- Gifts
- Expense Reimbursement
- Nonmonetary Compensation to Physicians
- Expenses Related to the Graduate Medical Education Program

These policies are incorporated by reference in contracts with medical groups. As mentioned above, AHP/AHS also has contract language that is required in all physician contracts that makes it clear that space, equipment and the like are to be used only in furtherance of the services to be provided under contract. The Internal Audit/Compliance Department is tasked with enforcing these policies and contract terms. There have been instances where equipment has been improperly used by an outside entity, in which case, the Internal Audit/Compliance and Legal Departments quickly moved to remedy the violation and take any remedial measure necessary to protect the interests of AHS. With respect to OakCare, the medical group is provided office space and staff to carry out the services required under contract. OakCare has its own administrative office that is offsite and is not located in any AHS facility.

Recommendation 18-24: “Alameda Health System must establish and enforce policies and procedures related to the acquisition and management of private and public contracts and grants by affiliated physicians.”

AHS Response to Recommendation 18-24:

The recommendation has not yet been fully implemented, but will be.

A policy/process regarding grant approval and administration has been drafted and is currently under review. As noted above, the current contract with OakCare requires that grants be processed through the AHS Grants Department and are subject to contract and legal review by AHS.

This contract provision/process has been audited by the AHS Internal Audit/Compliance Department. That audit determined that there have only been two grants that the Compliance Department identified that were initiated by OakCare outside of this process and the administration of both of these grants has been moved to the Grants Department. Management has worked with OakCare to educate them on the proper process going forward and will advise them when the policy has been finalized. The target date for completion is September 30, 2018.

Additionally, the Compliance and Grants Departments are working with OakCare staff to identify all research projects currently in process at AHS. This project is intended to identify any projects that are not administered through the Grants Department and bring them under administrative control of the Grants Department. The target date for completion is September 30, 2018.

Recommendation 18-25: “Alameda Health System should aggressively pursue the expansion of its medical staff and leadership along the employed medical staff model. This is the most effective way to fully align physician services, service lines and the public mission of Alameda Health System.”

AHS Response to Recommendation 18-25:

This recommendation will be implemented.

Considering this recommendation broadly (i.e. as applying to all AHS providers, not just OakCare), AHS is actively pursuing the goal of transitioning the majority of our contracted providers to AHP with a particular emphasis on physician leadership positions. This is an intermediary step on the path towards a staffing model with the preponderance of providers serving as AHP employees. This goal serves to align providers more closely with AHS through the physician-led medical group model while simultaneously better positioning AHS to remain viable in the transition from fee-for-service to population health based reimbursement. Importantly, this is a long-term strategy that is in its beginning stages. Due to the sheer number of providers and the time-intensive complexities of transitioning existing providers to AHP, it will not be possible to fully implement this recommendation in a single year. Realistically, this is a multi-year strategy that with respect to OakCare AHS leadership anticipates completing by June 2020 when the current contract expires.

Respectfully submitted,

ALAMEDA HEALTH SYSTEM

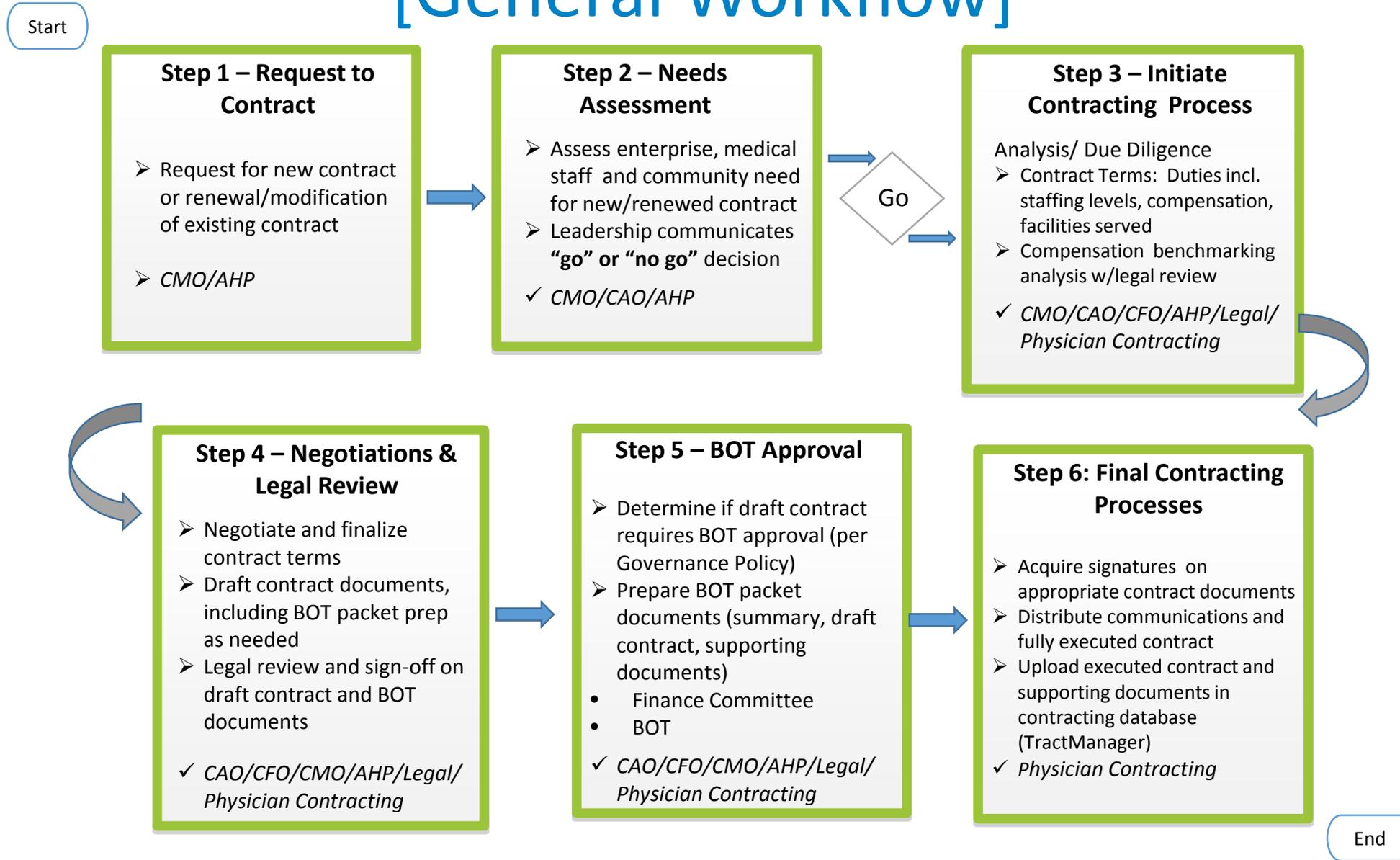
By 

Joe Devries
President, Alameda Health System Board of Trustees

cc: Chief Executive Officer, Alameda Health System



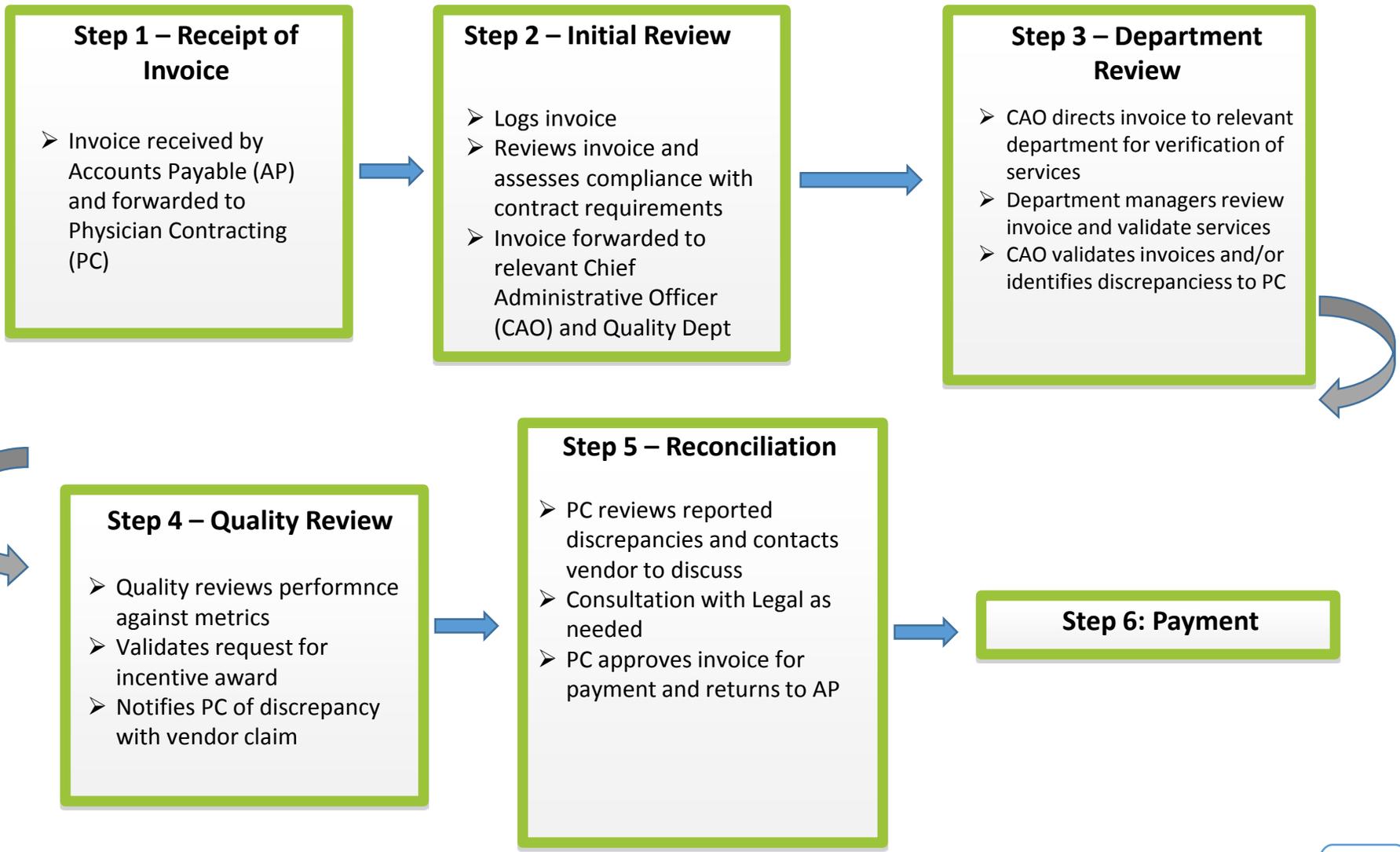
Physician Contracting [General Workflow]





Physician Contracting [Payment Process]

Start



End