

Fill in this information to identify the case:

Debtor 1 Fayette Memorial Hospital Association, Inc.
Debtor 2 _____
(Spouse, if filing)
United States Bankruptcy Court for the: Southern District of Indiana
Case number 18-07762-JJG-11

RECEIVED
MAY 13 2019
BMC GROUP

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Medical Hospitalists, LLC</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? <small>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</small>	Where should notices to the creditor be sent? <u>Andre Creese</u> Name <u>155 E Market Street, Suite 700</u> Number Street <u>Indianapolis IN 46204</u> City State ZIP Code Contact phone <u>800-526-6797</u> Contact email <u>acreese@opys.com</u>	Where should payments to the creditor be sent? (if different) Name _____ Number Street _____ City State ZIP Code _____ Contact phone _____ Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____	Filed on _____ MM / DD / YYYY
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 139,758.07. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

Services performed

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/10/2019
MM / DD / YYYY

/s/ Dustin R. DeNeal
Signature

Print the name of the person who is completing and signing this claim:

Name Dustin R. DeNeal
First name Middle name Last name

Title Partner

Company Faegre Baker Daniels LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 600 E. 96th Street, Suite 600
Number Street

Indianapolis IN 46240
City State ZIP Code

Contact phone 317-569-9600 Email dustin.deneal@faegrebd.com

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:)	Chapter 11
)	
FAYETTE MEMORIAL HOSPITAL)	Case No. 18-07762-JJG-11
ASSOCIATION, INC. d/b/a FAYETTE)	
REGIONAL HEALTH SYSTEMS,)	
)	
Debtor.)	

STATEMENT OF CLAIM OF MEDICAL HOSPITALISTS, LLC

Medical Hospitalists, LLC (“MedHosp”) respectfully submits this Statement of Claim in support of its claim (this “Claim”) and states as follows:

1. MedHosp and Fayette Memorial Hospital Association, Inc. d/b/a Fayette Regional Health Systems (“Debtor”) are parties to a certain Agreement for Physician Services, dated June 29, 2017, effective October 1, 2017 (the “Agreement”), whereby MedHosp agreed to provide to Debtor certain hospital medicine physician services. A true and accurate copy of the Agreement is attached as **Exhibit A**.

2. The Agreement’s initial term is from October 1, 2017 until September 30, 2019. Agreement § 4.1.

3. As consideration for its services, MedHosp received the right to “bill and collect all professional fees and charges for services rendered” by the physicians provided. Agreement § 3.2. To facilitate this billing, Debtor agreed to provide MedHosp with reasonable access to and copies of all information reasonably required for MedHosp to present bills to patients and third-party payers for the professional services provided by MedHosp under the Agreement (the “Billing Information”). Agreement § 3.4.

4. Debtor acknowledged, however, that these billings would not fully compensate MedHosp for the costs and expenses of staffing Debtor’s facilities, and Debtor accordingly

agreed to pay MedHosp a monthly subsidy of \$45,606.07 (“Subsidy”). Agreement § 3.1 & Ex. 3.1.

5. Debtor also agreed to pay MedHosp \$28,000.00 (the “Placement Fee”) for any physician Debtor hires who had been referred or assigned by MedHosp to Debtor during the term of the Agreement or within two years of the termination of the Agreement. Agreement § 9.2.

6. Prior to the filing of the above-captioned chapter 11 case, beginning in at least May 2018, Debtor failed to pay for MedHosp’s services and timely provide to MedHosp the Billing Information in accordance with the Agreement. Debtor’s failures constitute a breach of the Agreement and have caused MedHosp substantial damages.

7. On January 9, 2019, the Court entered its *Order Authorizing Rejection of Agreement with Medical Hospitalists, LLC* [Docket No. 193], authorizing Debtor to reject the Agreement, effective as of February 27, 2019, at 11:59 p.m.

8. Debtor owes MedHosp no less than \$139,758.07 (the “Indebtedness”). The Indebtedness is calculated as follows:

- a) \$45,606.07 in unpaid Subsidy owed as of February 28, 2019; and
- b) \$94,152.00 in MedHosp’s lost profit that would have been earned by MedHosp during the remaining term of the Agreement (i.e., February 28, 2019 until September 30, 2019).

9. MedHosp may have additional damages due to Debtor’s failure, despite demand, to timely provide MedHosp with the Billing Information to the extent that patients and/or third-party payers refuse to make payment due to the delayed billing. MedHosp reserves all rights to amend this claim to assert those damages as they become known.

10. MedHosp also may have additional damages due to Debtor's failure to remit to MedHosp the Placement Fee for each physician that Debtor hired, or caused to be hired by third parties, to provide services to Debtor during the term of the Agreement or within two years of the termination of the Agreement. Agreement § 9.2. MedHosp reserves all rights to amend this claim to assert those damages as they become known.

11. The filing of this Claim shall not constitute (a) a waiver or release of any rights or remedies of MedHosp against Debtor or any other person or property; or (b) an election of remedies, choice of law, or submission to jurisdiction. MedHosp reserves all rights of setoff, and all rights, in law or equity, to amend, modify, or supplement this Claim, and nothing contained herein shall be construed to limit MedHosp's claims against Debtor, including without limitation, claims arising after the Petition Date, administrative claims, and adequate protection claims.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

/s/ Dustin R. DeNeal

Counsel for Medical Hospitalists, LLC

Dustin R. DeNeal (#27535-49)
Elizabeth M. Little (#34096-49)
600 E. 96th Street, Suite 600
Indianapolis, IN 46240
Telephone: 317-569-9600
Facsimile: 317-569-4800
dustin.deneal@faegrebd.com
elizabeth.little@faegrebd.com

Exhibit A

**AGREEMENT FOR PHYSICIAN SERVICES
HOSPITALIST**

This Agreement for Physician Services ("Agreement"), is entered into on June 29, 2017 by and between Medical Hospitalists, LLC, an Indiana limited liability company ("MEDHOSP") wholly owned by OPYS Holdings, Inc., and Fayette Regional Health System Inc., a Corporation located at 941 Virginia Ave, Connersville, IN 47331 ("Hospital"), with an effective date of October 1, 2017 ("Effective Date"), to provide Hospitalist Physician Staffing on the following terms:

WITNESSETH:

WHEREAS, Hospital operates a hospital located at 941 Virginia Ave, Connersville, IN 47331;

WHEREAS, Hospital desires to have MEDHOSP provide hospital medicine physician services to Hospital, and MEDHOSP desires to provide hospital medicine physician services to Hospital, all upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants as contained herein, the parties agree as follows:

1. DUTIES AND RESPONSIBILITIES

1.1. MEDHOSP Services. The services provided for in subparagraphs 1.1.1, 1.1.2, and 1.1.3 together shall be known as the "Services."

1.1.1 24/7 Coverage of the Hospitalist Service. Hospital hereby engages MEDHOSP to provide, and MEDHOSP hereby agrees to provide to Hospital, a sufficient number of physicians ("Physicians") to provide twenty-four hours daily, seven days per week ("24/7") availability of hospital medicine services at Hospital. The Physicians shall perform those Services and physician professional services for Hospital as more particularly described in this Agreement and at **Exhibit 1.1.1**, which is attached hereto and made a part hereof. MEDHOSP will cause the Physicians to provide Services at Hospital in accordance with the terms of this Agreement. MEDHOSP shall provide to Hospital a monthly schedule of scheduled Physicians at least five (5) days prior to the beginning of the applicable month. MEDHOSP may, in its discretion, adjust the monthly staffing schedule from time to time as reasonably necessary to ensure the availability of hospitalist medicine services at the Hospital consistent with the requirements of this Section 1.1.1. MEDHOSP shall use

commercially reasonable efforts to maintain consistency of staffing and minimize turnover in the Hospitalist Service.

- 1.1.2 Medical Director Services. Hospital hereby engages MEDHOSP to provide, and MEDHOSP hereby agrees to provide to Hospital, a medical director ("Director"), to perform Services as a medical director of Hospital's Hospitalist ("Department") and to perform those Services for Hospital as more particularly described in this Agreement and at Exhibit 1.1.2, which is attached hereto and made a part hereof. The Director shall consult with Hospital administration on material adjustments to the staffing schedules as reasonably necessary to ensure that patient care needs in the Department are met on a timely basis; provided, however, MEDHOSP may independently make routine adjustments to the staffing schedule consistent with the terms of Section 1.1.1. During each twelve (12) month period beginning on October 1 during the Initial Term and any Renewal Term (both as defined below), on average, the Director shall devote a maximum of Fifteen (15) hours per month to the performance of Director Services MEDHOSP may select a Backup Medical Director reasonably acceptable to Hospital's CEO to exercise the duties of the Director during times when the Director is not available to provide the Director Services. The Director shall maintain written time records with entries detailing the dates and time spent performing the enumerated duties as Director under this Agreement.
- 1.1.3 Administrative Services. MEDHOSP shall cause Physicians to participate in the risk management programs conducted by Hospital and Hospital Medical Staff as necessary to ensure continuing compliance with regulatory, accreditation, and insurance requirements and shall participate in such other risk management programs as Hospital may reasonably request.
- 1.1.4 Location of Services. Services will be performed only at the address of the Hospital set forth in the introductory paragraph of this Agreement unless otherwise agreed by MEDHOSP in writing.
- 1.2. Reporting. For non-clinical matters, Physicians shall report to President and CEO of the Hospital. For clinical matters, Physicians shall report to the Regional Medical Officer, or group CEO in the absence of the Regional Medical Officer.
- 1.3. Physician Acceptance. MEDHOSP shall cause each Physician to render Services in conformance with the terms and conditions of this Agreement.

- 1.4. Hospital Policies. The Services are to be performed in accordance with the policies of Hospital, which include the Medical Staff Bylaws and Medical Staff rules and regulations of Hospital, Hospital personnel policies and other established policies, practices and procedures of Hospital ("Policies"). All of the foregoing have been or will be provided to MEDHOSP, Physicians and Director and any amended, restated, replacement or updated versions of the same shall be promptly provided to MEDHOSP, Physicians and Director. Further, the Services are to be performed in accordance with the applicable rules and standards of the Medical Licensing Board of Indiana, and all applicable laws.

2. QUALIFICATIONS OF PHYSICIANS

- 2.1. Licensure/Registration. Each Physician shall hold an unlimited license to practice medicine in Indiana and be registered with the Drug Enforcement Administration ("DEA") without any limitation on Physician's authority to prescribe drugs under said registration at the time any such Physician provides Services and also shall comply with regulations and standards of professional conduct adopted by the Medical Licensing Board of Indiana. Physicians shall be board certified or board eligible in internal medicine, family medicine, or a non-internal medicine specialty with internal medicine or family medicine experience, at the time any such Physician provides Services. Physicians shall also be certified in Advanced Cardiac Life Support, (functional equivalent as approved by Hospital). Each Physician shall provide current proof of licensure, DEA registration, Board Certification and Life Support Certification upon Hospital's request.
- 2.2. Medical Staff Privileges. Each Physician must apply for, obtain and maintain active medical staff membership with the staff of Hospital with appropriate clinical privileges in internal medicine or family medicine. MEDHOSP will cause Physicians to agree to remain active staff members in good standing of Hospital's medical staff with full unrestricted privileges in internal medicine.
- 2.3. Medicare and Medicaid Participation. Each Physician shall be and remain eligible for reimbursement from the Medicare and Medicaid programs as a Participating Provider, shall accept and treat Medicare and Medicaid patients, and shall immediately notify Hospital in the event Physician is, for any period of time, excluded from or is in any way sanctioned by either program. Each Physician shall also notify Hospital within five (5) days of the receipt of an initial sanction notice, notice of proposed sanction or of the commencement of a formal investigation, or the filing of charges, by a Medicare quality improvement organization, the Department of Health and Human

Services or any law enforcement agency or health regulatory agency of the United States or the State of Indiana.

- 2.4. Failure to Meet Paragraph 2 Qualifications. To the extent MEDHOSP learns that any Physician fails to meet the foregoing requirements, MEDHOSP will replace such Physician within 30 days.

3. COMPENSATION, BILLING AND ASSIGNMENT

- 3.1. Compensation. Hospital shall pay MEDHOSP, during the Term hereof, for all Services to be performed by Physicians, Director and MEDHOSP such compensation as is described in **Exhibit 3.1** which is attached hereto and made a part hereof.
- 3.2. MEDHOSP Billing/Collection. MEDHOSP will bill and collect all professional fees and charges for professional services rendered by Physicians on behalf of MEDHOSP under the terms of this Agreement. MEDHOSP will retain all fees it collects for its Physicians' professional services. All fees collected for MEDHOSP's Physicians' professional services will be the sole property of MEDHOSP.
- 3.3. Hospital Billing. Hospital will be responsible for billing patients or responsible third-party payors for any billable Hospital and supply charges associated with the provision of Hospital services that are not Physician professional services. All fees collected for such Hospital and supply services will be the sole property of Hospital. MEDHOSP agrees to cooperate with, and to ensure that the Physicians cooperate with Hospital in providing information necessary for prompt and accurate billing for such services.
- 3.4. Billing Assistance. Hospital shall provide MEDHOSP with reasonable access to and copies of, as appropriate and available, insurance information/insurance cards, medical records, patient demographic information (i.e., patient name/contact information/date of birth, patient employer contact information, guarantor contact information, details regarding any related work or automobile accident, etc., internal forms, tapes and/or other media), either in hard copy or electronic form as are reasonably required for MEDHOSP to present bills as permitted under subparagraph 3.2.
- 3.5. Fair Market Value. The parties intend that the total amount of compensation paid to MEDHOSP under this Paragraph 3 reflects fair market value consideration for all Services and Director Services provided under this Agreement. The parties have entered into this Agreement without regard to the volume or value of referrals.

4. TERM AND TERMINATION

- 4.1. Term. The Agreement shall be effective as of October 1, 2017 (the "Effective Date") until September 30, 2019 (the "Initial Term").

After the Initial Term, the term shall automatically renew for successive two (2) year periods (each a "Renewal Term") unless written notice of non-renewal has been given by one party to the other no later than one hundred twenty (120) days prior to the expiration of the Initial Term or any Renewal Term, as applicable.

- 4.2. Termination. The Agreement may be terminated as follows:

4.2.1. Termination for Cause. Through written notice by either party to the other party, either party may terminate this Agreement upon the material breach or violation of any of the terms of this Agreement by the other party; provided the breaching party has been given written notice specifying the nature of the breach or violation and a period of thirty (30) days in which to cure such breach or violation.

4.2.2. Mutual Termination. The parties may agree to terminate the Agreement on the date and under the terms agreed to by the parties in writing.

4.2.3. Termination by Hospital for Specific Circumstances. Hospital may terminate this agreement immediately upon written notice to MEDHOSP if (1) MEDHOSP becomes uninsurable; (2) MEDHOSP is excluded from participation in any state or federal health care program or any MEDHOSP Physician is excluded from participation in any state or federal health care program and MEDHOSP does not immediately remove such Physician and provide a replacement reasonable acceptable to Hospital; or (3) MEDHOSP becomes insolvent, makes an assignment for the benefit of creditors, is adjudged bankrupt, has a receiver of its property or business appointed, files a petition seeking relief under any bankruptcy act or has a petition filed against it under any such act.

4.2.4. Termination by MEDHOSP for Specific Circumstances. MEDHOSP may terminate this agreement immediately upon written notice to Hospital if (1) Hospital becomes insolvent, makes an assignment for the benefit of creditors, is adjudged bankrupt, has a receiver of its property or business appointed, files a petition seeking relief under any bankruptcy act or has a petition filed against it under any such act; or (2) is excluded from participation in any state or federal health care program.

- 4.3. Effect of Termination. Upon termination of this Agreement, the parties shall have no further obligations under this Agreement except for those accruing prior to the date of termination or those that by their terms explicitly or impliedly survive termination.

5. EQUIPMENT, FACILITIES AND SUPPORT STAFF

- 5.1 Hospital shall provide and maintain facilities, utilities, equipment, supplies and support staff as Hospital reasonably deems necessary for Physicians' and Director's performance of the Services under the terms of the Agreement. Hospital shall consult with MEDHOSP on the status of the facilities, utilities, equipment, supplies and support staff necessary for Physicians' and Directors' performance of the Services.

6. INSURANCE, LIABILITY AND INDEMNITY

6.1. Professional Liability and other Insurance.

MEDHOSP agrees to maintain occurrence-based professional liability insurance with a carrier acceptable to Hospital, for itself and all of its employees and/or contractors providing Services hereunder, in the minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) per occurrence, Seven Hundred Fifty Thousand Dollars, (\$750,000.00) annual aggregate; general liability insurance in the minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) per occurrence, Seven Hundred Fifty Thousand Dollars, (\$750,000.00) annual aggregate and Workman's Compensation insurance in such amounts as required by Indiana law. MEDHOSP shall furnish Hospital with a Certificate of Insurance, evidencing such coverage, upon Hospital's request. MEDHOSP must notify Hospital prior to any cancellation, modification or non-renewal of the professional liability insurance policy required hereunder, at least thirty (30) days prior to the expiration of such policy.

- 6.2. Representations and Warranties. The parties represent and warrant to one another that they have full corporate power and authority to enter into this Agreement and to carry out their obligations hereunder and this Agreement has been duly authorized by all necessary action on their part.

- 6.3. Indemnification. Except as set forth in this Agreement, each party is responsible for all acts and omissions of itself and its employees and neither party agrees to indemnify the other party for those acts or omissions. However, this provision does not constitute a waiver by any party of any right to indemnification, contribution, subrogation, or other remedy available to that party at law or in equity.

7. ACCESS TO BOOKS AND RECORDS

- 7.1. Access to Books and Records. In order to assure that compensation paid to MEDHOSP for Services rendered by Physicians is included in determining the proper reimbursement to Hospital under Medicare and Medicaid, the parties agree that if this Agreement is determined to be a contract within the purview of Section 1861(V)(1)(I) of the Social Security Act (Section 952 of the Omnibus Reconciliation Act of 1980) and the regulations promulgated in implementation thereof at 42 CFR part 420, MEDHOSP will agree to make available to the Comptroller General of the United States, the Department of Health and Human Services ("HHS") and their duly authorized representatives (including the Medicare Administrative Contractor), the books, documents and records of MEDHOSP and Physicians, and such other information as may be required by the Comptroller General or Secretary of HHS to verify the nature and extent of the costs of Services provided by MEDHOSP and Physicians. If MEDHOSP or Physicians carry out the duties of this Agreement through a subcontract worth Ten Thousand Dollars (\$10,000.00) or more the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General and their representatives to the related organization's books and records. If MEDHOSP or Physicians refuse to make the books, documents and records available for said inspection and Hospital is denied reimbursement for said Services as a result of MEDHOSP's refusal, MEDHOSP will indemnify Hospital for Hospital's loss or reduction in reimbursement. The obligation of MEDHOSP and Physicians to make records available shall extend for four (4) years after the furnishing of the latest Services under this Agreement.
- 7.2. Quarterly Review of Books. MEDHOSP will provide Hospital with a quarterly written review of the books maintained related to the Services.
- 7.3. Medical Records. MEDHOSP and Physicians shall, consistent with such Policies as may be established from time to time for Hospital's records, timely prepare or cause to be timely prepared such reports, records, charts, and other documentation regarding the Services performed as may be necessary to comply with applicable laws, applicable standards of third-party payors including Medicare and Medicaid, applicable accreditation standards and standards of professional practice. MEDHOSP and Physicians agree that the reports, records, charts, and other documentation regarding the Services shall typically be prepared or caused to be prepared within seven (7) from a patient's date of discharge. MEDHOSP shall preserve the confidentiality of such records in accordance with applicable laws. Such records shall be and remain the property of Hospital. Upon expiration or earlier termination of this Agreement, MEDHOSP shall have access to records related to the Services hereunder as reasonably necessary for the defense of any claims related to such Services or for other reasonable purposes as determined by Hospital consistent with all applicable laws and regulations and policies. Hospital will provide the training

necessary to cause Physicians to optimize use of the EMR and to participate in any Hospital or payor incentive program or any accreditation agency sponsored program.

7.4. Metric Data. To the extent allowed by applicable federal, state and local laws, rules and regulations ("Applicable Laws"), Hospital and MEDHOSP agree to provide one another with monthly Hospital, Department, and Physician specific patient satisfaction, quality, sustainability, and related metric data and historical trends.

8. STATUS OF THE PARTIES

8.1. Independent Relationship.

8.1.1. Independent Contractors. MEDHOSP is an independent contractor of Hospital, and there is no employment, partnership, joint venture or agency relationship between MEDHOSP and Hospital. Neither party shall have any right or obligation to bind the other party in any manner whatsoever. In performing the Services, Hospital and MEDHOSP agree that Physicians are acting as employees or contractors of MEDHOSP and not as agents or employees of Hospital. MEDHOSP shall use its discretion and independent judgment in providing Physicians to perform the Services and shall select the procedures, working hours and other incidents of performance for accomplishing the Services in accordance with the terms of this Agreement.

8.1.2. Payment of Taxes. MEDHOSP and Physicians are responsible for all federal and state income taxes, as well as other taxes, including self-employment taxes, and will hold Hospital harmless from any and all such taxes, penalties or interest which might arise by MEDHOSP's or Physicians' failure to comply with such responsibility. This provision shall survive the expiration or termination of this Agreement.

8.2. Medical Decisions. Hospital will not direct or control the independent medical acts, decisions, or judgments of Physicians in their rendering of Services.

8.3. Exclusive Provider. While this Agreement is in effect, Hospital will not engage the services of any other individual, contractor or provider to provide hospitalist services without the prior written consent of MEDHOSP. Notwithstanding the forgoing, if for any reason MEDHOSP is unable to meet the Services needs of the hospitalist during any period of time during the Initial Term or a renewal term, Hospital may engage the services of alternate hospitalist medicine physicians to fill the Services coverage gap during such period. The

parties agree that Hospital's securing alternate coverage during a period where MEDHOSP is unable to perform its duties under this Agreement is not a violation of this exclusivity provision.

9. RESTRICTIVE COVENANTS

9.1. Non-Competition. In recognition of this exclusive Agreement and the important position that MEDHOSP will hold as Hospital's exclusive contracted provider of the Services required under this Agreement, MEDHOSP, its employees, independent contractors, Physicians and any related entities shall not, during the term of this Agreement and for a period of one (1) year after termination or expiration of this Agreement, directly or indirectly provide any of the Services rendered under this Agreement within any facility located within a ten (10) mile radius of Hospital, other than Hospital. In addition, during the term of this Agreement and for a period of one (1) year after termination or expiration of this Agreement, MEDHOSP, its employees, independent contractors, Physicians and any related entities agree not to own, manage, lease, staff, or otherwise participate in the operation of any business or facility within a ten (10) mile radius of Hospital that provides any service that is also offered by Hospital or a Hospital affiliate, including but not limited to hospitalist medicine services. If this Paragraph 9.1, or any part thereof, is held to be unenforceable because of the scope of such provision, the duration of such provision or the area covered thereby, the parties agree that the court making such determinations will have the power to reduce the scope, duration and/or area of such provisions, and in its reduced form such provisions will then be enforceable and will be enforced. If MEDHOSP or any Physician is in violation of this Paragraph 9.1, the parties agree that an injunction preventing the future or ongoing violation is an appropriate remedy for Hospital to seek and be granted.

9.2. Permanent Placement. The parties agree that all Compensation to be paid for the Services provided for in this Agreement is set forth at Section 3.1 and Exhibit 3.1 (MEDHOSP Compensation). Except as otherwise provided in this Section 9.2, MEDHOSP will not charge Hospital a Placement Fee (as defined below) for Physicians MEDHOSP employs or engages to provide Services under this Agreement. If MEDHOSP refers or assigns a physician to Hospital to provide hospitalist service or to any other location operated by Hospital to provide professional medical services under the terms of this Agreement or any other agreement between the parties, and such physician is not already a Hospital medical staff member at the time of such referral or assignment ("Referred Physician"), Hospital agrees to pay MEDHOSP a placement fee in the amount of Twenty Eight Thousand Dollars (\$28,000.00) ("Placement Fee") for each Referred Physician that Hospital or any of its affiliates independently hires to

provide professional medical services at Hospital or any other location operated by Hospital during the term of this Agreement or within two years following the termination of this Agreement. Notwithstanding the above and for avoidance of doubt, the Placement Fee does not apply to any physician who is a member of Hospital's medical staff prior to being referred or assigned to Hospital by MEDHOSP to provide hospitalist services at the Hospital.

10. GENERAL PROVISIONS

- 10.1. Confidentiality of Materials. MEDHOSP will cause Physicians to agree not to disclose to others, either during the term of this Agreement or subsequent to termination, any data, forms, reports, systems or other materials containing confidential information specific to Hospital without the prior written consent of Hospital. Further, Hospital will not disclose to others, either during the term of this Agreement or subsequent to termination, any data, forms, reports, systems or other materials containing confidential information specific to MEDHOSP or the Physicians ("Confidential Information") without the prior written consent of MEDHOSP.

Confidential Information does not include and this Paragraph 10.1 shall not apply to (i) information that is publicly available or in the public domain or enters the public domain provided that the party receiving Confidential Information ("Receiving Party") was not responsible, directly or indirectly, for such information entering the public domain without the party disclosing information's ("Disclosing Party") consent, (ii) information that otherwise becomes lawfully available on a non-confidential basis from a third party who is not under an obligation of confidence to a Disclosing Party, (iii) information that was known to a Receiving Party or which a Receiving Party had in its/his possession prior to disclosure by the Disclosing Party and that was not acquired, directly or indirectly, under any secrecy obligation such as a non-disclosure or confidentiality agreement with the Disclosing party or any other party, or (iv) information which the Receiving Party independently develops without reference to information received from the Disclosing Party.

- 10.2. Notices. Notices or communications required by the Agreement or permitted by the Agreement shall be given to the respective parties by registered or certified mail (said notice being deemed given as of the date of mailing) or by hand delivery at the following addresses unless either party shall otherwise designate its new address by written notice:

MEDHOSP
Medical Hospitalists, LLC
155 East Market Street, Suite 700

Indianapolis, IN 46204
Hospital
Fayette Regional Health System Inc.
1941 Virginia Ave
Connersville, IN 47331

- 10.3. Assignment. No party may assign, transfer or delegate this Agreement or its rights and obligations hereunder without the prior written consent of the other party.
- 10.4. Waiver of Breach. The waiver by either party hereunder of a breach or violation of any provision of the Agreement shall not operate as, nor be construed to be, a waiver of any subsequent breach hereof whether of the same provision or not. The failure of either party to take action as a result of a breach of this Agreement by the other party shall constitute neither a waiver of the particular breach involved nor a waiver of either party's right to enforce any or all provisions of this Agreement through any remedy granted by law or this Agreement.
- 10.5. Compliance with Laws. The parties intend and in good faith believe that the Agreement will not violate any Applicable Law, including the Internal Revenue Code and the proscriptions against private inurement and private benefit. In the event that either party reasonably believes subsequently that any provision of the Agreement is contrary to the Internal Revenue Code, the Fraud and Abuse Statute, the Stark Act or any other Applicable Law, then the parties shall negotiate in good faith to reform the Agreement to eliminate the problematic provision. In the event the parties are unable to reform the Agreement, then either party may terminate the Agreement upon thirty (30) days written notice to the other party. This Agreement will be subject to an appraisal by a health care consultant skilled and experienced in valuing health care transactions. Further, if this Agreement is terminated before one (1) year from its initial Effective Date, then the parties shall not enter into a subsequent agreement regarding the subject matter of this Agreement prior to the expiration of one (1) year after the initial Effective Date of this Agreement. This Agreement covers all of the Services furnished by MEDHOSP to Hospital. MEDHOSP or Physicians may currently be providing, or may from time to time in the future provide, other services to Hospital pursuant to a separate agreement or agreements. This Agreement shall be included in a master Physician contracts list maintained and updated by Hospital and available for review upon request by the Secretary of DHHS.
- 10.6. Governing Law. The Agreement shall be construed and governed by the laws of Indiana without regard to its choice or conflict of law provisions. Marion County, Indiana shall be the sole and exclusive venue for any proceeding which arises out of this Agreement.

- 10.7. Severability. In the event that any provision of the Agreement is found to be illegal, invalid or unenforceable pursuant to judicial decree or decision, the remainder of the Agreement shall remain valid and enforceable according to its terms so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such decree or decision, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are consummated to the fullest extent possible.
- 10.8. HIPAA Compliance. Each party agrees that it will comply in all material respects with all federal and state-mandated regulations, rules or orders applicable to privacy, security and electronic transactions, including without limitation, regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). To the extent the Director and Physicians assist Hospital with its Department-related utilization review, quality assurance and performance activities, or other administrative services, MEDHOSP agrees that, for purposes of HIPAA only, the Director and Physicians shall be considered members of Hospital's Workforce, as that term is defined by HIPAA, and MEDHOSP agrees to cause Director and Physicians to participate in any HIPAA training required by Hospital for Workforce members so that Hospital may comply with HIPAA.
- 10.9. Confidentiality of Agreement Terms. Hospital and MEDHOSP agree that the terms and conditions of the Agreement shall remain confidential. No party hereto shall distribute the Agreement or any part thereof or reveal any of the terms of the Agreement to parties other than their employees or agents who have valid reason to know or their spouse except as required by law.
- 10.10. Entire Agreement; Amendments. This Agreement and the Exhibits hereto constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior contracts, agreements and understandings, whether oral or written, between them with respect to the subject matter of this Agreement. All exhibits are incorporated into the Agreement by reference. This Agreement may be amended, changed, waived, discharged or terminated only by an instrument in writing signed by the parties.
- 10.11. Execution. This Agreement and any amendments may be executed in the original, by facsimile or by any generally accepted electronic means (including transmission of a pdf file containing an executed signature page) in one or more copies on behalf of Hospital and MEDHOSP,

each of which shall constitute an original and all of which together shall constitute one and the same instrument.

- 10.12. Force Majeure. MEDHOSP shall not be liable or deemed in default for any delay or failure in performance under this Agreement or interruption of the Services resulting, directly or indirectly, from circumstances beyond its control, including without limitation, acts of government, acts of God, fires, floods, explosions, riots, civil disturbances, strikes, insurrections, terrorism, earthquakes, wars, rebellion, and epidemics ("Events of Force Majeure"). MEDHOSP shall use reasonable efforts to notify Hospital of any factor, occurrence or event that may cause any such delay or failure. For any period that MEDHOSP is unable to perform its duties or obligations under this Agreement due to Events of Force Majeure ("Non-Performance Period"), Hospital will be permanently relieved of its obligation to pay for Services for the Non-Performance Period. Each party will resume its respective duties and obligations once the Events of Force Majeure have ended.
- 10.13. Survival. All paragraphs explicitly stated to survive termination (including by expiration) of this Agreement as well as any other paragraphs which by their nature survive, shall survive the termination (including by expiration) of this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the duly authorized officers and representatives of Hospital and MEDHOSP have executed this Agreement effective as the Effective Date.

FAYETTE REGIONAL HEALTH SYSTEM INC.

BY: Samantha Bell-Jent
Samantha Bell-Jent
Chief Financial Officer

MEDICAL HOSPITALISTS, LLC

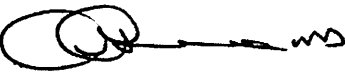
BY: 
Andre T. Creese
Managing Member

Exhibit 1.1.1

Physician Services

POSITION SUMMARY:

Performs patient care assignments according to established Policies and procedures with high level of independence. He/she must be able to demonstrate effective interpersonal skills and an understanding of the roles of various allied health care professionals with whom Physician works. Provides Services consistent with ACP standards of care keeping in mind the resources available to a rural hospital in Indiana.

POSITION DUTIES:

Promote positive patient relations in the inpatient Hospitalist Services department, providing competent patient care.

Maintain open communication with staff; problem solves as necessary.

Provide appropriate supervision of inpatient hospitalist service staff including nurses, technicians and other allied health care providers and ancillary staff.

Promote a cooperative and collaborative working environment among all clinical disciplines involved in patient care.

Maintain an effective working relationship with the medical staff, administration, and other departments.

Maintain clinical skills consistent with ACP standards by attending appropriate continuing medical education ("CME") seminars, and by continuously learning/perfecting inpatient internal medicine skills. Meet Medical Licensing Board of Indiana and Board Certification requirements for minimum number of CMEs to maintain licensure and certification.

Carry out and document assignments in a manner that meets or exceeds standards established by Indiana Department for Public Health, Center for Medicare and Medicaid Services, HFAP, OSHA, and other regulatory agencies.

Correct any identified deficiencies in assigned areas as identified by external review and peer review.

Initiate patient care in a timely manner. Assume full responsibility for patients treated during scheduled work shifts.

Maintain expertise and certifications for assigned tasks and procedures within the inpatient Hospitalist service.

Comply with the EMTALA Statute and implementing regulations with respect to treatment of all patients who come to or are brought to the Hospital for assessment and treatment by a Hospitalist Physician. Comply with Hospital Policies addressing provision of medical screening exam, stabilizing treatment when Physician determines that there is an emergency medical condition and appropriate EMTALA-compliant transfers to other facilities. Physician will also meet all requirements and Hospital Policies addressing call.

Follow-up care shall be rendered to patients by the patient's physician of choice or in the absence of such a physician, by the physician to whom the patient is referred by MEDHOSP's Physician pursuant to the Policies established by Hospital and Medical Staff for follow-up care.

Documentation of care rendered and response to treatment shall be in accordance with appropriate standards and pursuant to the Policies of Hospital and the Service. Responsibility for adequately recording history and physical, documentation of procedures, and recording of diagnosis in a fashion consistent with billing needs rests with the Physician who provided services to the patient.

Fulfill Active Medical Staff responsibilities including Medical Staff and assigned Medical Staff committee meetings. Make appropriate referrals for specialty medical services and communicate with those specialty physicians as appropriate.

Report quality of care issues promptly to appropriate individuals.

Follow patient care protocols established and complete them within the time constraints within the protocols.

Provide other Hospitalist Services as reasonably requested by Hospital.

ENVIRONMENTAL AND JOB HAZARDS:

Physician may be exposed to blood borne pathogens, infectious diseases and other hazardous wastes, (i.e. Hepatitis, HIV, Tuberculosis).

PHYSICAL AND MENTAL DEMANDS:

The position requires a considerable amount of walking, stooping, pulling, lifting, feeling, hearing, and repetitive motions. Physician must be able to lift in excess

of 50 lbs. on occasion. The position requires visual and hearing acuity sufficient for verbal communication.

MISCELLANEOUS:

Attend at least one in-service orientation each year to review Hospital policies and procedures is mandatory. Attend HIPAA training sessions required for Hospital employees as for HIPAA purposes only, Physician providing Services hereunder is deemed to be a Member of Hospital's Workforce as that term is defined under the HIPAA regulations.

PERFORMANCE:

Physicians will be managed, led, and incentivized, to work closely with Hospital satisfactorily attain agreed upon performance, quality, metrics and objectives.

This job description is in no way intended to imply or state that these are the only duties to be performed. Some duties may be assigned and other duties assigned as required at Hospital's sole discretion.

EXHIBIT 1.1.2

HOSPITALIST MEDICAL DIRECTOR RESPONSIBILITIES

1. The Medical Director ("Director"):
 - 1.1. Director is to provide leadership, planning, organization, staffing, coordination, and evaluation for Hospitalist activities.
 - 1.2. Director is responsible for all medical administration, personnel, and activities in the Hospitalist Service department.
 - 1.3. Director has the responsibility for ensuring the ethical practice of Hospital Medicine within the department.
 - 1.4. Director directly supervises and has responsibility for Hospitalist physicians in clinical and assigned administrative duties. Supervises nursing and other Hospitalist personnel when providing professional physician services in the inpatient service and ensures that Physician on duty in the inpatient service provides appropriate supervision for nurses and other Hospitalist personnel.
 - 1.5. Director acts as liaison with Hospital administration and medical staff.
 - 1.6. Director assists with physician scheduling.
2. The Director should present a written annual report to Hospital administration, and the medical executive committee of the medical staff, detailing departmental progress, problems, and solutions.
3. Department Management
 - 3.1. Director promotes and participates in a collaborative, interdisciplinary Hospitalist leadership team including personnel from MEDHOSP who will provide overarching support, guidance, and managerial resources for Hospitalist program.
 - 3.2. Director collaborates with nursing leadership and inpatient service Leadership team to ensure that performance meets or exceeds standards described in medical staff rules and regulations, the Hospital bylaws, departmental policies, and in other appropriate local and national standards.
 - 3.3. Director works with Department leadership team to ensure that the Department meets or exceeds its defined objectives for improvement, and expansion of services. As part of this Director and MEDHOSP will develop quality and safety metrics for the hospitalist service. The

following is a partial list of quality/safety/patient satisfaction issues to be used for designing metrics and benchmarks:

- Admissions refused when called by the ED
 - Inpatient transfers
 - Inpatient departures against medical advice ("AMA")
 - Inpatient Elopements
 - Re-admits within 48 hours, and 30 days of previous hospitalization
 - Hospital stays greater than 48 hours
 - Numbers of billed and unbilled visits
 - Patient Satisfaction
 - Core Measure Performance
 - Patient complaints and management of complaints
 - Other issues as mutually agreed upon and as directed by Hospital's Board, Medical Executive Committee, Medical Director or MEDHOSP
- 3.4. Director cooperates with Hospital administration and nursing leadership to develop a team of personnel managers for the inpatient service (clerical, nursing, and others), teaching them by precept and example to manage.
- 3.5. In conjunction with the hospital's leadership team, Director helps build enthusiasm, stability, teamwork, and competence among employees through supervision, individualized evaluation and counseling, training, and praise for a job well done.
- 3.6. Director ensures inpatient service policies are known, understood, and implemented by the Hospitalist physicians.
- 3.7. Director monitors correctness and appropriateness of the inpatient service records; implements corrective intervention as required in association with medical records and quality assurance mechanisms. Director is competent in use of Hospital's EMR and is willing and able to teach, train and mentor new Department Physicians in the use of Hospital's EMR.

- 3.8. Director participates in personnel, purchasing, and procedural changes on the hospitalist service, in cooperation with appropriate personnel and Hospital managers.
- 3.9. Director is available for counseling, advice, information, and general support to the physicians and other department members.
- 3.10. Director participates and encourages Physicians to participate in Peer Review as needed to ensure high quality, safe care that meets internal family medicine standards.

4. Liaison

- 4.1. Director shall ensure that the hospitalist service has effective communications with the following individuals and groups:
 - Patients and their families; Director addresses customer satisfaction / complaints raised by patients and families
 - Hospital administration
 - Nursing leadership and clerical supervisors.
 - Hospital department heads
 - Medical staff
 - Lab and radiology for follow-up and evaluation of tests initiated
 - Industry
 - Clergy

5. Recruitment-Orientation

- 5.1. Director establishes an active process for identifying and recruiting Hospitalist physicians.
- 5.2. Director reviews and verifies credentials, training, and education of Hospitalist physicians, and mid-level staff in cooperation with the appropriate organizational credentialing office.
- 5.3. Director designs a formal orientation process for new Department members.

6. Department Meetings

- 6.1. Director schedules regular departmental meetings and decides on the final agenda and special guests.
- 6.2. Director encourages open forums for departmental communications and problem solving by all personnel.

7. Committees - Hospital/Service

- 7.1. Director assures Service representation on all appropriate committees.
- 7.2. Director encourages participation of Hospitalist Physicians on Hospital medical staff committees.