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City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
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R-2009-0050 Resolution In Committee

Resolution relative to approving Service Agreement between City of West Allis and Concentra Medical Centers for Occupational Health Services relating to Hearing Conservation and Respiratory Protection guidelines.

Introduced: 2/17/2009

Controlling Body: Administration & Finance Committee

Sponsor(s): Administration & Finance Committee

COMMITTEE RECOMMENDATION *Adopt*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>FEB 17 2009</u>			Barczak				
			Czaplewski				
			Kopplin	✓			
		✓	Lajsic	✓			
			Narlock	✓			
			Reinke	✓			
			Roadt				
			Sengstock				
			Vitale	✓			
		Weigel					
			TOTAL	5			

SIGNATURE OF COMMITTEE MEMBER

Kurt Kopplin
 Chair Vice-Chair Member

COMMON COUNCIL ACTION *adopt*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>2/17/09</u>			Barczak	✓			
			Czaplewski	✓			
			Kopplin	✓			
			Lajsic	✓			
			Narlock	✓			
		✓	Reinke	✓			
			Roadt	✓			
			Sengstock	✓			
			Vitale	✓			
		Weigel	✓				
			TOTAL	10	1		



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2009-0050

Final Action:
FEB 17 2009

Sponsor(s): Administration & Finance Committee

Resolution relative to approving Service Agreement between City of West Allis and Concentra Medical Centers for Occupational Health Services relating to Hearing Conservation and Respiratory Protection guidelines.

WHEREAS, the City of West Allis has previously obtained its occupational health services at the Sensia Healthcare Clinic; and,

WHEREAS, the City has an opportunity to obtain increased services with the addition of Concentra Medical Centers as a second occupational health services facility; and,


WHEREAS, the Concentra Medical Centers will provide financial savings in occupational services provided to the City; and,

WHEREAS, the Concentra Medical Centers and its agents will provide mandatory services relating to audiometric and spirometry testing to all affected City Departments.

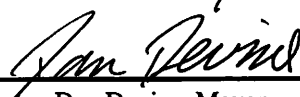
NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the attached Service Agreement between the City and Concentra Medical Centers for occupation health services be and is hereby approved.

BE IT FURTHER RESOLVED by the Common Council of the City of West Allis that the proper City officials are authorized and directed to sign such document on behalf of the City and provide such copies to the Concentra Medical Centers.

ADM\ORDRES\ADMR360

ADOPTED FEB 17 2009


Paul M. Ziebler, City Admin. Officer, Clerk/Treas.

APPROVED 2/23/09


Dan Devine, Mayor

AGREEMENT FOR OCCUPATIONAL HEALTH SERVICES

This Agreement for Occupational Healthcare Services (the "Agreement") is made and entered into as of the 6th day of February, 2009 by and between Concentra Health Services, Inc., a Nevada corporation, d/b/a Concentra Medical Centers ("Concentra") and The City of West Allis ("Client"). Concentra and Client may be referred to herein as each a "party" or collectively as the "Parties".

WHEREAS, Concentra is in the business of providing certain occupational healthcare services, as described herein (the "Services"); and

WHEREAS, Client desires to engage Concentra, and Concentra desires to accept such engagement, to provide the Services with respect to Client's employees, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, and in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Services.** During the term of this Agreement, Concentra shall provide the Services described on **Schedule I** hereto with respect to Client employees as designated by Client.
2. **Compensation.** In consideration of Concentra's provision of the Services pursuant to Section 1, Client shall pay Concentra in accordance with the fee schedule set forth on **Schedule I** hereto. Concentra shall invoice Client no more frequently than weekly, and Client shall remit payment to Concentra within sixty (60) days of receipt of invoice for all amounts due thereunder which are not subject to a bona fide, good faith dispute. Any payment that is not made by Client within sixty (60) days of receipt of Concentra's invoice shall bear interest at the rate of one and one-half percent (1.5%) per month, or, if lesser, the maximum rate permitted by applicable law .
3. **Term and Termination.**
 - (a) The initial term of this Agreement shall be a period of one (1) year commencing on the date first set forth above. Thereafter, this Agreement shall be automatically renewed for successive additional terms of one (1) year each, unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the initial or any renewal term, as the case may be.
 - (b) Anything herein to the contrary notwithstanding, either party may terminate this Agreement at any time, without cause, upon not less than thirty (30) days prior written notice to the other party.
 - (c) Anything herein to the contrary notwithstanding, either party may terminate this Agreement immediately upon written notice to the other party in the event of such other party's breach of a material provision of this Agreement which remains uncured for a period of thirty (30) days following receipt of written notice specifying the breach complained of.
 - (d) With respect to services performed prior to termination, each party shall pay the other party hereunder for work actually performed. Except for termination of the obligations to perform further services and to compensate for such services, the terms and conditions of this Agreement shall continue and survive any termination of this Agreement.

4. Compliance With Laws. In the performance of its duties and obligations pursuant to this Agreement, Concentra shall comply with all laws, rules, and regulations applicable to Concentra in connection therewith.
5. Performance Standards. In the performance of its duties and obligations pursuant to this Agreement, Concentra will act in accordance with the standards and practices of care, skill, and diligence customarily observed by similar firms under similar circumstances at the time Concentra's services are rendered hereunder.
6. Insurance. Concentra shall procure and maintain at its sole cost and expense all insurance coverage required by applicable law and by customary business practices for the performance of the Services. At a minimum, such coverage shall include:
 - (a) workers' compensation insurance at statutory limits;
 - (b) general liability insurance with limits of not less than \$1 million each medical incident and \$3 million in the aggregate, and
 - (c) professional liability insurance with limits of not less than \$1 million per medical incident and \$10 million excess liability.

Upon execution of the Agreement and annually thereafter, Concentra shall provide a certificate of insurance evidencing the foregoing coverage.

7. Confidentiality. Concentra shall maintain the confidentiality of all patient medical records, communications, data, and information relating to or obtained in the performance of this Agreement in accordance with applicable law.
8. Indemnification.
 - (a) Each party hereby covenants and agrees to indemnify, defend, and hold harmless the other party, and such other party's officers, directors, employees, and affiliates, from and against any and all liability, loss, cost, or expense (including, without limitation, reasonable attorneys' fees), arising out of or in connection with the negligence or misconduct of the indemnifying party in the performance of its duties and obligations pursuant to this Agreement.
 - (b) The party seeking indemnification shall promptly notify in writing the party from whom indemnification is sought of any claim asserted against it for which such indemnification is sought, and shall promptly deliver to the party from whom indemnification is sought a true copy of any such claim including, but not limited to, a true copy of any summons or other process, pleading, or notice issued in any lawsuit or other proceeding to assert or enforce such claim. Where acceptance of its obligation to indemnify is deemed proper by the indemnifying party, said party reserves the right to control the investigation, trial, and defense of such lawsuit or action (including all negotiations to effect settlement) and any appeal arising therefrom and to employ or engage attorneys of its own choice.
 - (c) The party seeking indemnification may, at its own cost, participate in such investigation, trial, and defense of such lawsuit or action and any appeal arising therefrom. The party seeking indemnification and its employees, agents, servants, and representatives shall provide full cooperation to the indemnifying part at all times during the pendency of the claim or lawsuit, including without limitation, providing them with all available information with respect thereto.

9. Miscellaneous.

(a) Entire Agreement; Amendment. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes any and all prior agreements, understandings, and arrangements, written or oral, between the parties hereto regarding the subject matter hereof. This Agreement may be amended only by a written instrument executed by both parties.

(b) Notices. All notices required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, addressed as follows:

If to Concentra: Concentra Health Services, Inc.
5080 Spectrum Drive, Suite 1200 - West Tower
Addison, Texas 75001
Attention: Office of General Counsel

If to Client: City of West Allis
7525 W. Greenfield Avenue
West Allis, WI 53214

Either party may change its address to which notice shall be sent by a written notice sent in accordance with this Section 9(b).

(c) Force Majeure. Neither party shall be liable for failure to perform any duty or obligation that either may have under this Agreement where such failure has been occasioned by any act of God, fire, strike, inevitable accident, war, or any cause outside the reasonable control of the party who had the duty to perform.

(d) Waiver. The failure of either party to exercise or enforce any right conferred upon it hereunder shall not be deemed to be a waiver of any such right, nor operate to bar the exercise or performance thereof at any time or times thereafter, nor shall its waiver of any right hereunder at any given time, including rights to any payment, be deemed a waiver thereof for any other time.

(e) Assignment; Binding Effect. Neither party may assign this Agreement, or any of its respective rights or obligations hereunder, to any other person or entity, without the prior written consent of the other party. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the parties hereto and their respective successors and assigns.

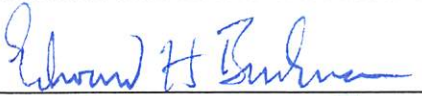
(f) Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not declared illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

(g) Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Wisconsin. Any action concerning this Agreement shall be filed and maintained in federal or state court located in the City and County of Milwaukee, Wisconsin.


- (h) Legislative Modification. Notwithstanding any other provision to the contrary: (a) in the event that any federal, state, or local law, rule, regulation, or interpretation thereof at any time during the term of this Agreement prohibits, restricts, or in any way materially changes the method or amount of reimbursement or payment for services under this Agreement, then this Agreement shall, in good faith, be amended by the parties to provide for payment of compensation in a manner consistent with any such prohibition, restriction, or limitation, and (b) with respect to any law, rule, regulation, or interpretation thereof which results in a material increase in the cost of services provided by Concentra hereunder, Concentra shall have the right to increase its fees to reach that level of prices at which it is willing to provide services hereunder. With respect to any other prohibition, restriction, or change that causes this Agreement to be impermissible or materially different in its effect than contemplated herein, the parties hereto will, in good faith, negotiate and amend this Agreement to cause their relationship to be as consistent as possible with that which is created herein; if this Agreement is not so amended in writing prior to the effective date of said prohibition, restriction, or change, either party may terminate this Agreement upon written notice to the other party.
- (i) Section Headings. Section headings contained in this Agreement are for convenience of reference only and shall not affect, in any way, the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

CONCENTRA HEALTH SERVICES, INC.

By: 
Name: Edward H. Baucknam
Title: SVP operations

THE CITY OF WEST ALLIS

By: 
Name: PAUL M. ZIEHLER
Title: CAD/CL. TR.

SCHEDULE I

SERVICES AND COMPENSATION

Respirator Questionnaire	\$19.00
Audiogram	\$19.00
Audio Surveillance Review	\$ 4.00
Pulmonary Function Test	\$39.00
X-Ray Chest – 1 View	\$57.50
Respirator Physical	\$49.00

SCHEDULE II

EMPLOYEE OCCUPATIONAL HEALTH SCREENING PROTOCOL FOR AUDIOMETRIC HEARING TEST

1. All employees will be asked to complete a short questionnaire regarding their ears/hearing.
2. All employees are to have an examination of their ears prior to testing, by properly certified personnel of the West Allis Health Department, to check for obvious pathology or wax impaction in the ear.
3. The audiogram will be performed by properly certified personnel of the City of West Allis Health Department using properly calibrated equipment.
4. Test results will be forwarded to Concentra to be reviewed by a Concentra physician.
5. If any previous results are available, the new test will be compared to the previous tests.
6. OSHA mandated reports, recommendations for follow-up, and an employee copy will be mailed to the designated Department contact, with an additional copy going to the West Allis Health Department, within 5 business days. The designated Department contact will be responsible for timely distribution of test results to employees.
7. At times, the medical history information provided by the employee, the otoscopic examination, or the test scores will result in a medical referral. The referral to see a personal physician or specialist about a particular possible medical problem is a recommendation to the employee. Follow up medical care, therefore, is solely at the discretion of the employee. Costs incurred as a result of a medical referral are the responsibility of the employee unless the investigated medical problem is deemed work-related.
8. Concentra will not reveal any personal medical information, without the explicit consent of the employee, except to the City of West Allis Health Department as it pertains to the OSHA Hearing Conservation Program(s). This includes forwarding of records to a specialist for and evaluation. See Notice of Privacy Practices.
9. This protocol can be modified, at any time, with mutual consent by Concentra and the City of West Allis.
10. The medical records will be retained by Concentra in accordance with Concentra's Medical Record Filing and Storage policy.

SCHEDULE III

EMPLOYEE OCCUPATIONAL HEALTH SCREENING PROTOCOL FOR PULMONARY FUNCTION TEST

1. All employees will be asked to fill out an OSHA compliant respirator questionnaire regarding a variety of medical and pulmonary conditions.
2. Pulmonary function testing (breathing test) will be performed under the supervision of the West Allis Health Department.
3. The tests will be briefly reviewed on site to make sure that they are of good quality.
4. Test results will be forwarded to Concentra to be reviewed by a Concentra physician.
5. If any previous tests are available, the new test will be compared to the previous tests.
6. If the respiratory questionnaire or pulmonary function tests show any indication of disease, at the discretion of the medical examiner, the employee will be contacted and scheduled for an examination and repeat of the pulmonary function tests at Concentra.
7. If the repeat breathing test and history uncover a possible problem, the employee will be referred to a Pulmonary (lung) specialist or personal physician for further treatment. All follow-up and further treatment for condition(s) identified must be paid for by the employee's health care provider, not the City, unless abnormality is a result of the employee's employment.
8. If no lung problems are demonstrated on the repeat test, the test result will be reported to the City of West Allis as normal.
9. No medical information except the Recommendation for Use of a Respirator form will be revealed without the explicit, written consent of the employee. This includes forwarding of records to a specialist for evaluation.
10. Employees will be made aware of the results of their tests, and may have copies for themselves or for their private physician.
11. The medical records will be retained by Concentra in accordance with Concentra's Medical Record Filing and Storage Policy.