

**AGENDA ITEM
REQUEST/JUSTIFICATION FORM**
(To be completed by requesting Department)
Forward all requests to Sharon Bourke, LC2 Civic Center
**DEADLINE SUBMITTAL IS 3:00 P.M. WEDNESDAY
BEFORE THE TUESDAY MEETING**

Agenda item: Kaplan Agreement
(i.e. Consent/Recognition-Proclamation/Presentation/Public Hearing/Committee, etc.)
Date to be on agenda: December 15, 2015

Exact wording to be used for the agenda: Affiliation agreement between
Kaplan School of Nursing and Douglas County Health Center.

Action requested: Approval of agreement

Amount requested: N/A Object Code: _____

Is item in current year's budget? Yes _____ No N/A

Does this item commit funds in future years? Yes _____ No N/A

If yes, explain: N/A

If an agreement or contract, has the County Attorney reviewed and approved? Yes X No _____

Previous action taken on this item, if any: N/A

Recommendations and rationale or action: N/A

Will anyone speak on behalf of this item, if so who? James Tourville, DCHC
Administrator; Shakil Malik, Deputy County Attorney.

If this is a rush agenda item, please explain why: N/A

Submitted by (Name & Dept.): James Tourville Ext. 7314

Date submitted: 12/09/2015

List Attachments: Resolution, agreement
(Attach resolution and all pertinent documentation; i.e. contract, agreement, memorandums, etc.)

Certified resolutions can be obtained at the County Clerk's website:
<http://www.douglascountyclerk.org/county-board-records/search-for-resolutions>

Completed by receiving office
Received in Administrative Office: Date <u>12/9/15</u> Time _____

**BOARD OF TRUSTEES
OF THE
DOUGLAS COUNTY HEALTH CENTER
DOUGLAS COUNTY, NEBRASKA**

Resolved

WHEREAS, Douglas County, Nebraska is the owner and operator of the Douglas County Health Center (DCHC) and provides quality long term care and short term rehabilitation to the residents of Douglas County through DCHC; and

WHEREAS, Iowa College Acquisition Corporation, dba Kaplan University shall provide students of nursing in clinical rotations to the Douglas County Health Center.

NOW THEREFORE, BE IT RESOLVED BY THIS BOARD OF TRUSTEES THAT this Professional Services Agreement requested by UNMC Physicians and Douglas County, Nebraska is hereby ratified and approved; and

BE IT FURTHER RESOLVED THAT the Chair of the Board is authorized to sign said Contract on behalf of Douglas County.

DATED this 15th day of December, 2015

CLINICAL AFFILIATION AGREEMENT

between
Kaplan University
and
Douglas County Health Center

This Clinical Affiliation Agreement (hereafter referred to as "Agreement") is effective as of December 1, 2015 and entered into by Board of Trustees of the Douglas County Health Center, located at 4102 Woolworth Avenue, Omaha, Nebraska 68105 (hereinafter referred to as "Institution") and Iowa College Acquisition, LLC, a Delaware limited liability company, d/b/a Kaplan University located at 5425 North 103rd Street, Omaha, Nebraska 68134 (hereinafter referred to as "School").

RECITALS

- a. School has established and sponsors certain accredited medical education programs, including a program providing training in the field of Pre-licensure Bachelor of Science in Nursing (the "Program") and is recognized as the "Sponsoring Institution" for those medical education programs, including the Program, subject to applicable accreditation standards and regulations;
- b. Institution operates a mental health hospital licensed in the State of Nebraska ("State");
- c. The Program requires certain Clinical Experiences ("Clinical Experiences") for completion of the training obtained therein;
- d. It has been determined that it is in the best interest of School's students ("Students") that the facilities of Institution be used to provide the requisite Clinical Experience for the Students' education;
- e. Institution has agreed to provide the Students with such Clinical Experience at its facilities, subject to the terms and conditions of this Agreement;
- f. This Agreement is intended, in part, to satisfy the standards set forth in applicable accreditation and other regulatory requirements.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

I. RESPONSIBILITIES OF SCHOOL. As the Sponsoring Institution of the Program, School shall be responsible for the overall direction of the Program and for enforcement of all applicable requirements of any governmental authority or applicable accreditation body (collectively, the "Requirements"). School shall retain ultimate authority with respect to all educational aspects of the Program and shall be responsible for the development and implementation of the educational curriculum for the Program. School's specific responsibilities shall include:

- a. Overall orientation of Students to the Program and its requirements and expectations; including provision of classroom theory and practical instruction to Students prior to their clinical assignment to Institution;
- b. Provision of faculty members ("Faculty") for the purpose of supervising the educational aspects of Students' experiences at Institution;
- c. Continuing oral and written communication with Institution regarding Student performance and evaluation, absences and assignment of Students;
- d. Subject to Paragraph I below, assigning Students to the Program and to Clinical Experiences at Institution;
- e. If required by the Requirements, ensuring that all Students assigned to Institution are properly licensed and provide documentation of licensure to Institution;
- f. At the reasonable request of Institution, removing a Student whose performance is unacceptable to Institution;

- g. Advising all Students and Faculty that while participating in the Clinical Experience and while they are present in Institution's facilities, they must comply with the policies, rules, regulations and procedures which the Institution requires that the School distribute in writing from time to time to Students and Faculty who participate in the Institution's Clinical Experience programs;
- h. Advising all Students and Faculty that they must be prepared to provide Institution with written verification of the immunization and diagnostic tests conducted in compliance with Institution's health policy and an overall health status report listing physical limitations, if any, and any other pertinent information in order to participate in the clinical assignment;
- i. Clearly informing all of their Students participating in this Agreement that they shall not be deemed employees of Institution and thus shall not be entitled to wages, worker's compensation, or other benefits available to employees of the Institution;
 - i. In order to participate as an unpaid intern under this Agreement, students must execute a copy of the Student Internship Agreement ("Student Agreement") incorporated with and attached to this Agreement as Exhibit "A." Interns shall be bound to all terms of this Agreement applicable to them and all terms of the Student Agreement;
- j. Students will be instructed in Universal Precautions as defined by the Centers for Disease Control and Prevention (CDC) and have OSHA in-service documentation. These records will be provided to the Institution upon request; and
- k. The number and level of training of Students initially to be assigned to Institution are set forth in Exhibit "B". Additional Students may be assigned only with the agreement of each of the parties hereto.

II. RESPONSIBILITIES OF INSTITUTION. Institution shall have the following responsibilities:

- a. Provide an orientation to Institution for each Student and Faculty member assigned which instructs each Student and Faculty member with regard to his/her institutional responsibilities while assigned to Institution;
 - b. Provide a reasonable level of qualified medical professionals to assist with the supervision of the clinical service aspects of Students' education in the Program while assigned to Institution;
 - c. If agreed upon by School and Institution, provide each Student with a mentor who shall have the responsibility to serve as an additional resource to the Student with respect to the Student's clinical education;
 - d. Provide all reasonable accommodations necessary for the clinical training of Students to satisfy the Requirements;
 - e. Retain ultimate decision making authority and responsibility for patient care;
 - f. If the performance of a Student or Faculty member is at any time considered unsatisfactory or unprofessional, immediately notify and provide documentation of such performance to School. A plan for corrective action will be determined by the School, in consultation with Institution. In addition, Institution may remove any Student or Faculty member from an assignment if Institution determines in its reasonable discretion that such removal is reasonably necessary for patient and/or Institution staff safety, or to comply with any applicable Requirements; and
 - g. Notify School of the results of any accreditation or licensing certification that is probationary or in which certification is denied or removed.
- h. **HIPAA REGULATION.** The parties agree to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. 1320d ("HIPAA") and any current and future regulations promulgated thereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 ("Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 142 ("Federal Security Regulations") and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as "HIPAA Requirements". The

parties agree not to use or further disclose any Protected Health Information (as defined in 45 C.F.R. Section 164.501) or Individually Identifiable Health Information (as defined in 42 U.S.C. Section 1320d, other than as permitted by the HIPAA Requirements and the terms of this Agreement. The parties agree to make their internal practices, books and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations. In addition the parties agree to comply with any state laws and regulations that govern or pertain to the confidentiality, privacy, security of, and electronic and transaction code sets pertaining to, information related to patients. The parties hereby acknowledge that the services being provided to the Institution by the School pursuant to this Agreement are not intended to create a "Business Associate" relationship as that term is defined in 45 CFR §160.103.

School shall direct Students and Faculty to comply with the policies and procedures of Institution, including those governing the use and disclosure of individually identifiable health information under federal law. Solely for the purpose of defining Students' and, if applicable, faculty members', role in relation to the use and disclosure of Institution's protected health information, Students and Faculty shall be deemed members of Institution's workforce, as that term is defined by 45 C.F.R. 160.103, when engaged in activities pursuant to this Agreement. Students are not, however, and shall not, for any purpose, be considered employees of Institution or School. Any Faculty provided by School shall not for any purpose, be considered employees of Institution.

III. MUTUAL RESPONSIBILITIES.

- a. **Independent Contractors.** Both parties agree that Students will not be deemed employees of Institution for any purpose but shall remain School's students who are present at Institution solely as a part of their course of study at School. Any and all acts that the parties or their personnel, employees, agents, contractors or servants perform pursuant to the terms of this Agreement shall be undertaken as independent contractors and not as employees of the other. None of the parties, its personnel, employees, agents, contractors or servants shall be entitled to any benefit of the other. Institution assumes no obligation for wages, worker's compensation, health insurance, transportation, meals, room or uniforms for School's Students. This Agreement does not contemplate the payment of any fee or remuneration by either party to the other but is intended to jointly benefit both parties by supporting education and patient care.
- b. **Indemnification.** Both parties will indemnify, defend and hold harmless the other party from any and all liability, expense, cost, attorney's fees, claim, judgment, suit and / or cause of action (whether or not meritorious), settlement, or demand for personal injury, death or damage to tangible property which may accrue against the other party to the extent it is caused by the negligent acts or omissions of the indemnifying party, its officers, employees, agents, or subcontractors while performing their duties under this Agreement, unless, in the event of such act or omission by School, the act or omission was directed by Institution or its agent. The other party shall give the indemnifying party prompt, written notice of any such claim, suit, demand or cause of action and shall cooperate in the defense or settlement negotiation of such claim, suit, demand or cause of action.
The provisions of this section shall survive expiration or termination of this Agreement. These Indemnification provisions are not intended to waive a party's sovereign immunity. A party's liability is governed by and limited to the extent provided by the Nebraska Political Subdivision Tort Claims Act or other applicable provisions of law.
- c. **Performance of Services.** All Students providing services at Institution shall be, at all times, unpaid externs. All Faculty provided by School shall be duly licensed, certified or otherwise qualified to participate in the Clinical Experience at Institution as part of the Program. School

shall, and shall instruct its Faculty to, perform its and their duties and services hereunder in accordance with all relevant local, state, and federal laws and shall comply with the standards and guidelines of all applicable accrediting bodies and the bylaws, rules and regulations of Institution and any rules and regulations of School as may be in effect from time to time. Any courtesy appointments to faculty or staff by either School or Institution shall be without entitlement to the individual of compensation or benefits and may be revoked, with or without cause, by the granting entity and in no event shall any such faculty or staff be entitled to any due process hearing or appeal rights in connection with any revocation thereof.

- d. **Clinical Supervision.** Notwithstanding the presence of School Faculty, all clinical aspects of a Student's Clinical Experience at Institution will be under the direction and supervision of a member of Institution's staff. Although School and its Faculty are responsible for the overall direction and administration of the Program, School does not provide patient care and, as such, shall have no responsibility or liability for patient care.
- e. **Insurance.** School and Institution shall secure and maintain at all times during the Term (as defined in Section IX below), at their respective sole expense, commercial general liability insurance covering themselves and their respective agents and employees. Such coverage provided by School and Institution may be afforded via commercial insurance, self-insurance, a captive, or some combination thereof at limits of at least \$1,000,000 per occurrence. Such insurance shall not be cancelable except upon 30 days' prior written notice to the other party. Such coverage shall be primary and non-contributory. Upon either party's reasonable request, the other party shall provide a certificate of insurance evidencing such coverage.

To the extent required by law, School and Institution shall each secure and maintain at all times during the Term, at their respective sole expense, workers' compensation and employers' liability insurance covering their respective agents and employees. Such coverage provided by School and Institution may be afforded via commercial insurance or self-insurance.

School and Institution shall secure and maintain at all times during the Term, at their respective sole expense, professional liability insurance (medical malpractice) covering their respective employees and agents. Each of School and Institution's professional liability insurance shall provide for coverage of Students providing services to Institution pursuant to this Agreement. If the actions taken or omissions by Students leading to a claim of professional liability are taken at the direction of Institution, Institution's coverage shall be primary. If such actions or omissions are not at the direction of Institution, School's coverage shall be primary. Such coverage may be afforded via commercial insurance, self-insurance, a captive, or some combination thereof at limits of at least \$1,000,000 per occurrence and \$5,000,000 aggregate. Upon either party's reasonable request, the other party shall provide a certificate of insurance evidencing such coverage.

- f. **Records.** All records pertaining to professional services rendered by Students to Institution patients or clients shall remain the sole property, and in the custody, of Institution.
- g. **Term and Termination.** This Agreement shall commence on the Effective Date and shall continue for a period of three (3) years (the "Term") unless earlier terminated as follows:
 - i. Either party may terminate this Agreement without cause at any time upon not less than sixty (60) days prior written notice.
 - ii. Either party shall have the right to terminate this Agreement for cause, upon not less than sixty (60) days' notice upon the violation by another party of any material provision of this Agreement provided that, following receipt of written notice by the other party specifying such violation with reasonable particularity, such violation is not cured prior to the effective date of termination stated in such notice.

- iii. Either party shall have the right to terminate this Agreement for cause, upon not less than thirty (30) days' notice upon the Institution's loss or suspension of any material certification, license, accreditation, or other approval necessary to meet the requirements set forth in this Agreement. Any Students enrolled in the Program at the time of such termination notice shall be given the opportunity by Institution to complete the requirements of the program as offered at the time of their entry and in compliance with the conditions contained in this Agreement.
- h. **Confidentiality.** Each party hereto recognizes and acknowledges that, by virtue of entering into this Agreement and fulfilling the terms of this Agreement, such party may have access to certain information of the other party that is confidential and constitutes valuable, special and unique property of such other party ("Confidential Information"). Each party agrees that it will not, and it shall instruct its respective employees and agents to not, at any time (either during or subsequent to the term of this Agreement), disclose to others, use, copy or permit to be copied, without the express prior written consent of the other party, except in connection with the performance of duties hereunder, any Confidential Information, including, without limitation, information which concerns patients, Students, costs, or treatment methods and which is not otherwise available to the public.
- As used throughout this Agreement, the term "Confidential Information" shall not include any information that is or becomes part of the public domain other than due to a breach of this Agreement by the party obligated hereunder to maintain its confidentiality.
- School acknowledges that Institution is obligated to strictly comply with the requirements of the Nebraska Public Records Statutes, Nev. Rev. Stat. §§ 84-712 to 84-712.09 in responding to any request for public information pertaining to this Agreement. If either party receives a subpoena or other validly issued administrative or judicial process including, without limitation, a proper public records request pursuant to the Nebraska Public Records Statutes, Nev. Rev. Stat. §§ 84-712 to 84-712.09 ("Public Records Request"), requesting Confidential Information of the other party, it will provide prompt notice to the other party of such receipt. With respect to any Public Records Request, Institution shall promptly assert any privilege, exception and/or limitation and protect the Confidential Information under applicable laws on behalf of School unless otherwise directed by School. The party receiving the subpoena will thereafter be entitled to comply with such subpoena or other process to that extent permitted by law.
- i. **Notices.** All notices and other communications required hereunder by either party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or received when using overnight courier or three business days after being deposited in the United States mail, postage prepaid, addressed as follows:

If to School:

Kaplan University
5425 North 103rd Street
Omaha Nebraska 68134
Attn: Director of Nursing

If to Institution:

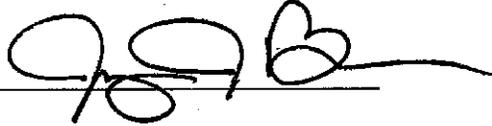
Douglas County Health Center
4102 Woolworth Avenue
Omaha, Nebraska 68105
Attn: Director of Nursing

- j. **Legal Compliance.** Both parties will comply with federal, state and local labor and employment laws applicable to Students, including, but not limited to, the Immigration Reform and Control Act of 1986; the Internal Revenue Code ("Code"); the Employee Retirement Income Security Act ("ERISA"); the Health Insurance Portability and Accountability Act ("HIPAA"); the Family Medical Leave Act; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act; the Fair Labor Standards Act; Section VI(b) of the Occupational Safety and Health Act of 1970, as may be amended or superseded from time to time; the Consolidated Omnibus Budget Reconciliation Act ("COBRA"); the Uniformed Services Employment and Reemployment Rights Act of 1994.
- k. **Nondiscrimination.** Neither party shall discriminate against any employee, applicant or Student for employment or registration in its course of study and/or training because of race, age, color, disability, religion, sex, national or ethnic origin, marital status, genetic information, sexual orientation, political affiliation, Vietnam-era veteran status, or special disabled Veteran status. Sexual harassment in any form, including hostile environment and quid pro quo, is prohibited. Both parties agree to comply with Family Educational Rights and Privacy Act of 1974 governing the privacy of student records, Title VI of the Civil Rights Act of 1964; the Rehabilitation Act of 1973, Public Law 93-112; the Americans with Disabilities Act of 1990, Public Law 101-336; and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§ 48-1101 to 48-1125.
- l. **Assignment.** This Agreement is exclusive to the parties and rights may not be assigned nor duties delegated by the parties except on prior written mutual consent. Any attempted assignment without such approval shall be void and shall constitute a breach of contract.
- m. **Amendments and Integration.** This Agreement contains the entire agreement of the parties. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or prior course of dealings. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof except as provided herein. This Agreement supersedes and replaces any and all previous agreements between the parties.
 - i. This Agreement may be modified only by written amendment, duly executed by authorized officials of the parties. No alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Every amendment shall specify the date on which its provisions shall be effective.
- n. **Descriptive Headings.** The descriptive headings in this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- o. **Severability.** If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and, provided that the fundamental terms and conditions of this remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the parties.
- p. **Drug Free Policy.** School assures Institution that School has established and maintains a drug free workplace policy.
- q. **Governing Law.** The laws of the State of Nebraska shall govern this Agreement. All legal proceedings arising out of this agreement shall be brought forth in the appropriate state or federal court located within Douglas County, Nebraska.

- r. **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party to be charged. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach.
- s. **Exclusivity.** This Agreement is nonexclusive and does not affect either party's ability to contract with other entities.

IN WITNESS WHEREOF, the parties hereto, duly authorized, will indicate their acceptance of this Agreement by affixing their signatures to this Agreement.

SCHOOL -Iowa College Acquisition LLC, dba
Kaplan University,

By: 

Name: Jeremy Brunssen

Title: Campus President Omaha Campus

INSTITUTION
Douglas County Health Center

By: _____

Name: _____

Title: Chair, Board of Trustees

Approved as to form by:

Name:

Title: Deputy County Attorney

Exhibit "A"
STUDENT INTERNSHIP AGREEMENT

The purpose of this Agreement is to articulate the duties, responsibilities of _____ ("intern") a student at _____ ("School") in engaging in an unpaid nursing internship ("internship") with the Douglas County Health Center ("HC"). This Agreement is not intended to be or give rise to a legally binding employment contract between the intern and HC. The internship may be terminated at any time by the intern, the School, or HC.

The intern will not be considered an employee of HC and the laws, rules, and regulations governing employment with HC will not apply to intern.

The essence of this arrangement is that the intern is free to choose whether the intern will carry out activities during the suggested hours, and, equally, there will be no obligation on HC to provide the intern with work or activities.

Neither intern, School, nor HC intends any employment relationship between any of them to be created either now or at any time in the future.

As a condition of participating in an internship with HC, I, the above named intern, knowingly, voluntarily, and intelligently agree to the following terms and conditions:

1. I will comply with HC rules, policies, procedures, standards and instructions provided to me in connection with my internship.
2. I will comply with all Federal, State, and Local laws, rules, and regulations during my internship.
3. I will maintain the confidentiality of any confidential information I receive during the course of my internship even after my internship concludes.
4. I will acquire and maintain health insurance during any period of time that I will be visiting the HC. I understand that I will be responsible for all premiums, deductibles and co-pays associated with such insurance. If I become ill while at the HC and am provided initial medical or emergency treatment (first aid), I will be primarily liable for and will reimburse HC for all reasonable amounts expended on my behalf. If such treatment is covered under, and paid by, my insurance, I will be liable for and will reimburse HC for any amount incurred by HC and not paid by my insurance.

I understand that HC does not represent in any way that any insurance I acquire will be adequate, whether in scope of coverage or limits, to protect my interests. I am solely responsible to determine my need for and to procure additional coverage. Furthermore, the procuring of insurance policies required by this Agreement shall not be construed to limit my liability hereunder nor to fulfill the indemnification provisions and requirements of this waiver.

5. I agree to hold HC and its employees, agents and assignees harmless and to indemnify and defend HC for any and all claims, damages, liabilities, or suits whether or not meritorious, and all expenses incident thereto, including but not limited to attorneys' fees and court costs, for injuries or damages to persons or property arising out of or related to the terms and conditions of this Waiver and/or my work at HC, which result from any of my negligent acts or omissions or those of my agents and that this indemnification provision shall survive completion of my internship.

6. I understand that HC will not be responsible to me for wages, compensation or benefits of any kind whatsoever including but not limited to Social Security Taxes, reimbursable Workers' Compensation, insurance premium costs, and/or Unemployment Compensation.

Having read and fully understood this Student Internship Agreement, I execute this agreement as evidenced by my dated signature below.

Printed Student Name

Signature

Date

EXHIBIT "B"

This Exhibit provides information regarding the maximum number of Students to be placed at Institution at any one time and the level of training / type of training.

*If more than one Program, information must be completed for EACH program. Institution will document number of hours student performs for each program separately.

Name of Program(s) Available at Institution and Hours Required for Externship Completion:

The Pre-licensure Bachelor of Science in Nursing Program requires up to 60 hours for externships

The maximum number of students at any one time shall be as follows for the Programs listed above:

The Pre-licensure Bachelor of Science in Nursing Program can accept a maximum of 24 students per course term; however, one faculty member can instruct only 10 students at a time.

The School will provide documentation of the following training prior to the Students' start date:

Instructions regarding HIPAA and Federal Privacy regulations.

Immunization records, including flu vaccination, and evidence of criminal background checks will be provided upon written request of the Institution.