



Deschutes County Board of Commissioners  
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## **AGENDA REQUEST & STAFF REPORT**

### **For Board Business Meeting of August 17, 2015**

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**DATE:** August 14, 2015

**FROM:** Nancy Mooney, Contract Specialist                      Phone: 322-7516  
Health Services, Behavioral Health Division

**TITLE OF AGENDA ITEM:**

Consideration of Board Signature of Document #2015-559, to the Agreement between Youth Village, Inc., and community partners: Deschutes County Health Services, St. Charles Health System Inc., Lutheran Community Services Northwest, BestCare Treatment Services and the Wellness and Education Board of Central Oregon ("Partners").

**PUBLIC HEARING ON THIS DATE?** No

**BACKGROUND AND POLICY IMPLICATIONS:**

This Professional Services Agreement ("Agreement") is between Youth Villages, Inc., a not-for-profit Tennessee corporation licensed to conduct business in the State of Oregon ("Facility"). Facility is licensed by the State of Oregon for the care of patients and meets the requirements of the State of Oregon law for staffing and services. Facility will furnish professional services to pediatric mental health patients ("Patients") and those enrolled in the Oregon Health Plan ("OHP"), including Intercept Outpatient Program Services ("Intercept Services") and Emergency Department ("ED") Diversion Services ("Diversion Services").

The Partners are providers of health care and behavioral health services in the Tri-County Area. St. Charles, a nonprofit Oregon corporation, operates four hospitals in Central Oregon. Lutheran is a non-profit human services agency that provides behavioral health services in Crook County. BestCare is a non-profit human services agency that provides outpatient behavioral health services for Jefferson County. Deschutes is a division of Deschutes County Health Services and provides behavioral health services for Deschutes County. WEBCO is an intergovernmental entity that serves on behalf of the public health, behavioral health and early learning programs for the Tri-County Area.

Partners have determined that Intercept Services and Diversion Services are essential to meeting the needs of Patients within the Tri-County area and, aside from Facility, there is a lack of providers capable of providing such services. Partners are aware that the compensation provided by Health Plan to Facility for Services to OHP Patients is not sufficient to sustain the Services in the Tri-county Area. To ensure that these essential Services are available to Patients and sustainable, Partners have committed to compensate Facility for providing Services to Patients in the Tri-County Area.

Compensation shall be paid on an annual basis prior to July 1st of each year. For the calendar year beginning on August 1, 2015 and ending on July 31, 2016, the Partners agree to compensate Facility as follows:

Partner Yearly Compensation  
WEBCO \$166,170  
St. Charles \$166,170  
**Deschutes \$553,865**  
Lutheran \$37,983  
BestCare \$37,983

**FISCAL IMPLICATIONS:**

Maximum compensation Deschutes County shall pay for the term of the contract which is two (2) years is \$1,107,730.

**RECOMMENDATION & ACTION REQUESTED:**

Behavioral Health requests approval and signature.

**ATTENDANCE:** Request Consent Agenda

**DISTRIBUTION OF DOCUMENTS:**

Nancy Mooney at Deschutes County Health Services.

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is between Youth Villages, Inc., a not-for-profit Tennessee corporation licensed to conduct business in the State of Oregon (“Facility”), PacificSource Community Solutions, Inc., an Oregon corporation (“Health Plan”), and five community partners (“Partners”): St. Charles Health System (“St. Charles”), Deschutes County Behavioral Health (“Deschutes”), Lutheran Community Services Northwest (“Lutheran”), BestCare Treatment Services (“BestCare”), and the Wellness & Education Board of Central Oregon (“WEBCO”); together “Parties”).

### Recitals

Facility is licensed by the State of Oregon for the care of patients and meets the requirements of the State of Oregon law for staffing and services. Facility providers furnish professional services to pediatric mental health patients (“Patients”) and those enrolled in the Oregon Health Plan (“OHP”), including Intercept Outpatient Program Services (“Intercept Services”) and Emergency Department (“ED”) Diversion Services (“Diversion Services”).

Health Plan is a company contracted with the State of Oregon, acting by and through the Oregon Health Authority (“OHA”), Division of Medical Assistance Programs (“DMAP”), to implement and administer services under the OHP in certain counties in Oregon, including Crook, Deschutes, and Jefferson counties (the “Tri-County Area”);

The Partners are providers of health care and behavioral health services in the Tri-County Area. St. Charles, a nonprofit Oregon corporation, operates four hospitals in Central Oregon. Lutheran is a non-profit human services agency that provides behavioral health services in Crook County. BestCare is a non-profit human services agency that provides outpatient behavioral health services for Jefferson County. Deschutes is a division of Deschutes County Health Services and provides behavioral health services for Deschutes County. WEBCO is an intergovernmental entity that serves on behalf of the public health, behavioral health and early learning programs for the Tri-County Area.

Health Plan and Partners desires to enter into this Agreement with Facility in order to obligate Facility to provide Intercept Services and Diversion Services (together “Services”) to Patients residing in the Tri-County Area, and Facility desires to provide the Services to Patients.

Partners have determined that Intercept Services and Diversion Services are essential to meeting the needs of Patients within the Tri-County area and, aside from Facility, there is a lack of providers capable of providing such services. Partners are aware that the compensation provided by Health Plan to Facility for Services to OHP Patients is not sufficient to sustain the Services in the Tri-county Area. To ensure that these essential Services are available to Patients and sustainable, Partners have committed to compensate Facility for providing Services to Patients in the Tri-County Area.

NOW, THEREFORE, in consideration of the above recitals, which are made a part of this Agreement, and of the mutual promises in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following terms and conditions:

## I. FACILITY OBLIGATIONS.

- 1.1 Services. Facility shall provide Services to Patients, including those enrolled in the OHP, in the Tri-County Area under its Intercept and Diversion Programs in accordance with **Exhibit A**.
- 1.2 Personnel. Facility shall devote sufficient time, attention, and energy necessary for the competent and effective performance of Facility's duties under this Agreement to Patients. Facility will provide sufficient licensed and experienced personnel, will supervise their professional services and will provide Services on a 24-hour, seven-day-a-week basis, as needed, to meet the needs of Patients. All non-physician personnel reasonably required for the proper operation of Facility, including but not limited to licensed and non-licensed health care personnel and administrative personnel, shall be employed by or under contract with Facility. Facility shall be responsible for all compensation, benefits, insurance coverage, including any commercial, automobile and professional liability coverage, and any other costs incurred in connection with such personnel. Facility is solely responsible for all employment-related obligations. Decisions with respect to hiring, control, staffing levels, direction, and termination of such personnel shall be the sole responsibility of Facility.

## II. Oregon Health Plan (“OHP”) Provisions.

The Parties shall comply with all federal, state and local laws, rules, regulations and restrictions, executive orders and ordinances, and the Oregon Health Authority’s (“OHA”) instructions applicable to this Agreement, in the conduct of their obligations under this Agreement, including without limitation:

- 2.1 Laws. Vendor shall comply with all applicable laws, including but not limited to the following: (i) ORS Chapter 659A.142; (ii) OHA rules pertaining to the provision of integrated and coordinated care and services, OAR Chapter 410, Division 141; (iii) all other OHA Rules in OAR Chapter 410; (iv) rules in OAR Chapter 309 pertaining to the provisions of mental health services; (v) rules in OAR Chapter 415 pertaining to the provision of Substance Use Disorders services; (vi) state law establishing requirements for Declaration for Mental Health Treatment in ORS 127.700 through 127.737; and (vii) all other applicable requirements of State civil rights and rehabilitation statutes, rules and regulations. These laws, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to PacificSource Community Solutions, Inc.’s (“Health Plan”) contract with OHA (the “CCO Contract”) and required by law to be so incorporated. OHA’s performance under the CCO Contract is conditioned upon Facility’s compliance with the provisions of ORS 279B.220, 279B.230, 279B.235 and 279B.270, which are incorporated by reference herein. Facility shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

In compliance with the Americans with Disabilities Act, any written material that is generated and provided by Facility under this Agreement to Patients, including Medicaid-Eligible Individuals, shall, at the request of such Patients, be reproduced in alternate formats of communication, to include Braille, large print, audiotape, oral

presentation, and electronic format. Health Plan shall not reimburse Facility for costs incurred in complying with this provision. Facility shall cause all Subcontractors under this Agreement to comply with the requirements of this provision.

Facility shall comply with the federal laws as set forth or incorporated, or both, in the Agreement and all other federal laws applicable to Facility's performance under the Agreement as they may be adopted, amended or repealed from time to time.

- 2.2 Records. Facility agrees to comply with all applicable state and federal requirements regarding the accuracy, confidentiality, and retention of records of Patients, including the requirements established by OHA, which include, but are not limited to, the retention of all records for a period of ten years from the date this Agreement expires or terminates or the completion of any litigation or OHA-related audit, whichever is later. Facility shall maintain all financial records related to this Agreement in accordance with generally accepted accounting principles or National Association of Insurance Commissioners accounting standards.
- 2.3 Monitoring of Services. Health Plan has the right to monitor the performance of Facility under this Agreement on an ongoing basis under the terms and conditions of this Agreement. Such monitoring may include routine and random audits and Health Plan shall have the right to interview Facility staff, employees, and consultants who provide services thereunder.
- 2.4 Right to Audit. Facility agrees that OHA, the Center for Medicare & Medicaid Services ("CMS"), Department of Health and Human Services ("DHHS"), the Secretary of State's Office, the Comptroller General of the United States, and the Oregon Department of Justice Medicaid Fraud Control Unit or their designees shall have the right to inspect, evaluate, and audit any books, documents, papers, and records of Facility that pertain to or are related to any aspect of the services provided under this Agreement for a period of up to ten (10) years from the date this Agreement expires or terminates, or the completion of any program-related audit, whichever is later, and such other periods in excess of ten (10) years or more as defined in OHA or Medicaid laws, rules, and regulations and CMS instructions. This provision shall survive the termination of this Agreement for any reason.
- 2.5 Ultimate Responsibility. Notwithstanding any term or provision of this Agreement, Health Plan maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its Oregon Health Plan ("OHP") contract with OHA. Facility acknowledges and agrees that the services it provides under this Agreement shall be consistent with and shall comply with Health Plan's contractual obligations with OHA regarding benefit plans, which are subject to state and federal laws, rules, and regulations and OHA instructions. Facility agrees to cooperate with Health Plan in meeting its responsibilities under Health Plan's contract with OHA and further agrees that all applicable provisions from that contract apply to Facility in the same manner in which they apply to Health Plan.
- 2.6 Oversight. Health Plan shall oversee and is accountable to OHA for any functions or responsibilities delegated to Facility.

- 2.7 Compliance with Policies. To the extent applicable, Facility agrees to comply fully and abide by the rules, policies and procedures Health Plan has established as part of its OHP programs.
- 2.8 Revocation. In the event Health Plan or OHA determines that Facility has not performed satisfactorily under the terms of this Agreement or if requisite reporting and disclosure requirements are not otherwise fully met in a timely manner, Health Plan retains the right to terminate this Agreement in accordance with the termination provisions therein.
- 2.9 Subcontracting Entities. In the event Facility enters into contracts with other entities to perform its obligations hereunder, such subcontractors shall agree to comply with the terms of this Agreement.
- 2.10 Facility Certification. Facility hereby certifies that all claims submissions and/or information received from Facility are true, accurate, and complete, and that payment of the claims by Health Plan, or its subcontractor, for OHP members will be from federal and state funds, and therefore any falsification, or concealment of material fact by Facility when submitting claims may be prosecuted under federal and state laws.
- 2.11 Indemnification. Notwithstanding any indemnification provision in this Agreement, as it pertains to OHP members, Facility shall defend, save, hold harmless and indemnify Health Plan, the State of Oregon, its agencies and subdivisions, and their respective officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Facility or its officers, employees, subcontractors, or agents under this Agreement; provided, that Health Plan and/or OHA shall provide Facility with prompt written notice of any such claim, suit, action or proceeding and reasonable assistance, at Facility's expenses, in the defense thereof.

Facility shall have control of the defense and settlement thereof, but neither Facility nor any attorney engaged by Facility, shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Facility is prohibited from defending the State of Oregon, is not adequately defending its interests, an important governmental principle is at issue, or it is in the best interest of the State of Oregon to do so.

Notwithstanding the foregoing, no party shall be liable to any other party for any incidental or consequential damages arising out of or related to services provided for the OHA contract. Facility shall ensure that the State of Oregon, Department of Human Services is not held liable for any of Facility's debts or liabilities in the event of insolvency.

2.12 Insurance. During the term of this Agreement, in addition to any requirements provided in this Agreement, Facility shall maintain and require that all persons and entities performing services under this Agreement obtain and keep in force at its own expense, each insurance noted below, as issued by a company authorized to transact business and issue insurance coverage in the State of Oregon:

(a) *Workers' Compensation*. All employers, including Facility, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for all workers, unless they meet the requirements for an exemption under ORS 656.126(2). If Facility is a subject employer, as defined in ORS 656.023, Facility shall obtain employers' liability insurance coverage.

(b) *Professional Liability*. Covers any damages caused by an error, omission or any negligent acts related to the services to be provided under this Agreement. This insurance shall include claims of negligent Provider selection, direct corporate professional liability, wrongful denial of treatment, and breach of privacy. Facility shall provide proof of insurance with not less than the following limits:

Per occurrence limit for any single Claimant of not less than \$2,000,000,  
and  
Per occurrence limit for multiple Claimants of not less than \$4,000,000.

(c) *Commercial General Liability*. Covers bodily injury, death and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Facility shall provide proof of insurance with not less than the following limits:

Bodily Injury/Death -

A combined single limit per occurrence of not less than \$2,000,000, and  
An aggregate limit for all claims of not less than \$4,000,000.

Property Damage -

A combined single limit per occurrence of not less than \$150,000, and  
An aggregate limit for all claims of not less than \$550,000.

(d) *Automobile Liability*. Covers all owned, non-owned, or hired vehicles, this coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Facility shall provide proof of insurance with no less than the following limits:

Bodily Injury/Death -

A combined single limit per occurrence of not less than \$2,000,000, and  
An aggregate limit for all claims of not less than \$4,000,000.

Property Damage -

A combined single limit per occurrence of not less than \$150,000, and  
An aggregate limit for all claims of not less than \$550,000.

- (e) *Additional Insured.* The Commercial General Liability insurance and Automobile Liability insurance required under this Agreement shall include Health Plan, the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Facility's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
- (f) *Notice of Cancellation or Change.* Facility shall assure that no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) occurs without 60 days prior written notice from Facility or its insurer(s) to Health Plan. Any failure to comply with this clause constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by Health Plan.
- (g) *Proof of Coverage.* Facility shall provide to Health Plan information indicating that Facility, and any subcontractors it has retained to perform work on its behalf under the terms of this Agreement, have obtained all required insurance coverage before delivering goods and performing any services required under the Agreement. Facility and/or its subcontractors shall pay for all deductibles, self-insured retentions, and self-insurance, if any.
- (h) *Tail Coverage.* If any of the required policies is on a “claims made” basis, then Facility shall maintain either “tail” coverage or “claims made” liability coverage from the effective date of this Agreement until the later of (1) twenty-four (24) months after completion of all services under this Agreement, or (2) the expiration of all warranty periods associated with this Agreement. These periods may only be shortened on approval of the DHS.
- (i) *Self-insurance.* Facility may fulfill one or more of its insurance obligations herein through a program of self-insurance, provided that Facility’s self-insurance program complies with all applicable laws, provides coverage equivalent in both type and level to that required in this Exhibit, and is reasonably acceptable to Health Plan. Facility shall furnish an acceptable insurance certificate to Health Plan for any insurance coverage required by this Agreement that is fulfilled through self-insurance. Stop-loss insurance and reinsurance coverage against catastrophic and unexpected expenses may not be self-insured

- 2.13 Fraud and Abuse. Facility shall have in place internal controls, policies or procedures capable of preventing and detecting Fraud and Abuse activities as they relate to the OHP program; such policies and procedures to be submitted to Health Plan upon Health Plan’s request. Facility shall report suspected Fraud and Abuse activities to Health Plan immediately upon detection and cooperate with Health Plan in regards to any required reporting or investigation of such activity to the Medicaid Fraud Control Unit. Facility shall comply with all patient abuse reporting requirements and fully cooperate with the State of Oregon for purposes of ORS 410.610 et. seq., ORS 419B.010 et. seq., ORS 430.735 et. seq., ORS 433.705 et. seq., ORS 441.630 et. seq., and all applicable Oregon Administrative Rules.



2.14 Governing Law, Consent to Jurisdiction. The Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, the “claim”) between OHA (or any other agency or department of the State of Oregon) and Facility that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver of the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any claim whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. **FACILITY, BY EXECUTION OF THE AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

2.15 Independent Contractor.

- (a) Facility is not an officer, employee or agent of the State of Oregon or Health Plan, as those terms are used in ORS 30.265 or otherwise.
- (b) If Facility is currently performing work for the State of Oregon or the federal government, Facility by signature to this Agreement, represents and warrants that Facility's work to be performed under this Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Facility currently performs work would prohibit Facility's work under this Agreement. If compensation under this Agreement is to be charged against federal funds, Facility certifies that it is not currently employed by the federal government.
- (c) Facility is responsible for all federal and State taxes applicable to compensation paid to Facility under this Agreement and, unless Facility is subject to backup withholding, neither Health Plan nor OHA will withhold from such compensation any amounts to cover Facility's federal or State tax obligations. Facility is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Facility under this Agreement, except as a self-employed individual.
- (d) Facility shall perform all work as an independent contractor. Health Plan reserves the right (i) to determine and modify the delivery schedule for the work and (ii) to evaluate the quality of the work product, however, OHA may not and will not control the means or manner of Facility's performance. Facility is responsible for determining the appropriate means and manner of performing the work.

2.16 Representations and Warranties. Facility represents and warrants that:

- (a) Facility has the power and authority to enter into and perform this Agreement,

- (b) This Agreement, when executed and delivered, shall be a valid and binding obligation of Facility enforceable in accordance with its terms,
- (c) Facility has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Facility will apply that skill and knowledge with care and diligence to perform the work in a professional manner and in accordance with standards prevalent in Facility's industry, trade or profession,
- (d) Facility shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the work, and
- (e) Facility prepared its application related to this Agreement, if any, independently from all other applicants, and without collusion, fraud, or other dishonesty.

The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

- 2.17 Assignment of Contract, Successor in Interest. Facility shall not assign or transfer its interest in this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or in any other manner, without prior written consent of Health Plan and OHA, where applicable. Any such assignment or transfer, if approved, is subject to such conditions and provisions as Health Plan may deem necessary, including but not limited to Exhibit B, Part 8, Section 13 of the CCO Contract. No approval by Health Plan of any assignment or transfer of interest shall be deemed to create any obligation of Health Plan in addition to those set forth in this Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.
- 2.18 Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- 2.19 Other Facility Requirements.
- (a) Facility shall comply with the requirements of 42 CFR 438.6 where it is applicable to this Agreement.
  - (b) Facility shall comply with the billing and payment requirements applicable to this Agreement, as outlined in OAR 410-141-0420.
  - (c) Facility's information systems must meet requirements of 42 CFR 438.242 that allow Health Plan to utilize pertinent data for analysis of delivery system capacity, consumer satisfaction, financial solvency, encounter, utilization and quality improvement, and other reporting requirements required under the OHA contract.
  - (d) Facility is required to participate in internal or external quality improvement activities as instructed by Health Plan.

- (e) Facility shall cooperate with all processes and procedures of child, elder, nursing home, developmentally disabled or mentally ill abuse reporting, investigations, and protective services.
- (f) If granted access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, Facility shall comply with OAR 943-014-0300 through 943-014-0320, as such rules may be revised from time to time. For purposes of this paragraph, "Information Asset" shall have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.

### III. Required Federal Terms and Conditions.

Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, and only to the extent: (i) required by law or explicitly required under the CCO Contract, and (ii) applicable to the functions delegated to Facility by this Agreement, Facility shall comply and, as indicated, cause all Subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to Facility, or to the work, or to any combination of the foregoing. For purposes of this Agreement, all references to federal and State laws are references to federal and State laws as they may be amended from time to time. For purposes of this Attachment 1, all capitalized terms not defined in this Agreement are as defined in the CCO Contract.

- 3.1 Miscellaneous Federal Provisions. Facility shall comply and cause all Subcontractors to comply with all federal laws, regulations and executive orders applicable to this Agreement or to the delivery of work. Without limiting the generality of the foregoing, Facility expressly agrees to comply and cause all Subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements , Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of CMHPs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated. No federal funds may be used to provide work in violation of 42 USC 14402.
- 3.2 Equal Employment Opportunity. If this Agreement, including amendments, is for more than \$10,000, then Facility shall comply and cause all Subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

- 3.3 Clean Air, Clean Water, EPA Regulations. If this Agreement, including amendments, exceeds \$100,000 then Facility shall comply and cause all Subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to HEALTH PLAN, OHA, DHHS and the appropriate Regional Office of the Environmental Protection Agency. Facility shall include and cause all Subcontractors to include in all contracts with Subcontractors receiving more than \$100,000, language requiring the Subcontractor to comply with the federal laws identified in this section.
- 3.4 Energy Efficiency. Facility shall comply and cause all Subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94-163).
- 3.5 Truth in Lobbying. Facility certifies, to the best of Facility's knowledge and belief that:
- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of Facility, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
  - (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, Facility shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
  - (c) Facility shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and Subcontractors shall certify and disclose accordingly.
  - (d) This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- (e) No part of any federal funds paid under this Contract shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.
- (f) No part of any federal funds paid under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- (g) The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- (h) No part of any federal funds paid under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

3.6 HIPAA Compliance. The parties acknowledge and agree that each of OHA, Health Plan and Facility is a “covered entity” and Facility is a "business associate" of Health Plan for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA). OHA, Health Plan and Facility shall comply with HIPAA to the extent that any work or obligations of OHA or Health Plan arising under this Agreement are covered by HIPAA. With the assistance of Health Plan, Facility shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this Agreement and with HIPAA. Facility shall comply and cause all Subcontractors to comply with HIPAA and the following:

- (a) *Privacy and Security of Individually Identifiable Health Information.*  
Individually Identifiable Health Information about specific individuals is

protected from unauthorized use or disclosure consistent with the requirements of HIPAA. Individually Identifiable Health Information relating to specific individuals may be exchanged between Facility and OHA or Health Plan for purposes directly related to the provision of services to Clients which are funded in whole or in part under this Agreement. However, Facility shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate HIPAA Privacy Rules in 45 CFR Parts 160 and 164, OHA Privacy Rules, OAR 407-014-0000 et. seq., or OHA Notice of Privacy Practices, if done by OHA or Health Plan. A copy of the most recent OHA Notice of Privacy Practices is posted on the OHA web site at: <https://apps.state.or.us/Forms/Served/DE2090.pdf> , or may be obtained from OHA.

- (b) *HIPAA Information Security.* Facility shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that Patient Information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of this Agreement. Security incidents involving Patient Information must be immediately reported to DHS' Privacy Officer.
- (c) *Data Transactions Systems.* Facility shall comply with the HIPAA standards for electronic transactions published in 45 CFR Part 162 and the DHS EDT Rules, OAR 410-001-0000 through 410-001-0200. In order for Facility to exchange electronic data transactions with OHA in connection with Claims or encounter data, eligibility or Enrollment information, authorizations or other electronic transaction, Facility shall execute an EDT Trading Partner Agreement with OHA and shall comply with the OHA EDT Rules.
- (d) *Consultation and Testing.* If Facility reasonably believes that Facility's or OHA's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Facility shall promptly consult the OHA HIPAA officer and the Health Plan HIPAA officer. Facility, Health Plan or OHA may initiate a request for testing of HIPAA transaction requirements, subject to available resources and OHA testing schedule.

- 3.7 Resource Conservation and Recovery. Facility shall comply and cause all Subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
- 3.8 Audits. Facility shall comply and, if applicable, cause a Subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

- 3.9 Debarment and Suspension. Facility shall, in accordance with 42 CFR 438.808(b), not permit any person or entity to be a Subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Facility shall ensure that no amounts are paid to a Provider who could be excluded from participation in Medicare or Medicaid for the following reasons:
- (a) The Provider is controlled by a sanctioned individual;
  - (b) The Provider has a contractual relationship that provides for the administration, management or provision of medical services, or the establishment of policies, or the provision of operational support for the administration, management or provision of medical services, either directly or indirectly, with an individual convicted of certain crimes as described in section 1128(b)(8)(B) of the Social Security Act;
  - (c) The Provider employs or contracts, directly or indirectly, for the furnishing of health care, utilization review, medical social work, or administrative services, with one of the following:
    - (c)(1) Any individual or entity excluded from participation in Federal health care programs.
    - (c)(2) Any entity that would provide those services through an excluded individual or entity.
    - (c)(3) The Facility is prohibited from knowingly having a person with ownership of more than 5% of the Facility's equity who is (or is affiliated with a person/entity that is) debarred, suspended, or excluded from participation in federal healthcare programs.
- 3.10 Drug-Free Workplace. Facility shall comply and cause all Subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) Facility certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Facility's workplace or while providing services to Clients. Facility's notice shall specify the actions that will be taken by Facility against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Facility's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in

Paragraph (i) above; (iv) Notify each employee in the statement required by Paragraph (i) above, that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction; (v) Notify OHA and Health Plan within 10 days after receiving notice under Paragraph (iv) above, from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of Paragraphs (i) through (vi) above; (viii) Require any Subcontractor to comply with Paragraphs (i) through (vii) above; (ix) Neither Facility, or any of Facility's employees, officers, agents or Subcontractors may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe Facility or Facility's employee, officer, agent or Subcontractor has used a controlled substance, prescription or non-prescription medication that impairs Facility or Facility's employee, officer, agent or Subcontractor's performance of essential job function or creates a direct threat to Clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of this Agreement.

- 3.11 Pro-Children Act. Facility shall comply and cause all Subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 USC Section 6081 et. seq.).
- 3.12 Additional Medicaid and CHIP. Facility shall comply with all applicable federal and State laws and regulations pertaining to the provision of OHP Services under the Medicaid Act, Title XIX, 42 USC Section 1396 et. seq., and CHIP benefits established by Title XXI of the Social Security Act, including without limitation:
- (a) Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving OHP assistance and shall furnish such information to any State or federal agency responsible for administering the OHP program regarding any payments claimed by such person or institution for providing OHP Services as the State or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).
  - (b) Comply with all disclosure requirements of 42 CFR 1002.3(a); 42 CFR 455 Subpart (B); and 42 CFR 457.900(a)(2).
  - (c) Certify when submitting any Claim for the provision of OHP Services that the information submitted is true, accurate and complete. Facility shall acknowledge Facility's understanding that payment of the Claim will be from federal and State funds and that any falsification or concealment of a material fact may be prosecuted under federal and State laws.



- 3.13 Agency-Based Voter Registration. If applicable, Facility shall comply with the Agency based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
- 3.14 Clinical Laboratory Improvements. Facility shall and shall ensure that any Laboratories used by Facility shall comply with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories, which require that all laboratory testing sites providing services under this Agreement shall have either a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver or a certificate of registration along with a CLIA identification number. Those Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.
- 3.15 Advance Directives. Facility shall comply with 42 CFR Part 422.128 for maintaining written policies and procedures for Advance Directives. This includes compliance with 42 CFR 489, Subpart I “Advance Directives” and OAR 410-120-1380, which establishes, among other requirements the requirements for compliance with Section 4751 of the Omnibus Budget Reconciliation Act of 1991 (OBRA) and ORS 127.649, Patient Self-Determination Act. Facility shall maintain written policies and procedures concerning Advance Directives with respect to all adult Patients receiving medical care by Facility. Facility shall provide adult Patients with written information on Advance Directive policies and include a description of Oregon law. The written information provided by Facility must reflect changes in Oregon law as soon as possible, but no later than 90 days after the effective date of any change to Oregon law. Facility must also provide written information to adult Patients with respect to the following:
- (a) Their rights under Oregon law; and
  - (b) Facility’s policies respecting the implementation of those rights, including a statement of any limitation regarding the implementation of Advance Directives as a matter of conscience.
  - (c) Facility must inform Patients that complaints concerning noncompliance with the Advance Directive requirements may be filed with OHA.
- 3.16 Practitioner Incentive Plans (PIP). Facility may operate a Practitioner Incentive Plan only if no specific payment is made directly or indirectly under the plan to a Provider as inducement to reduce or limit Medically Appropriate Covered Services provided to a Patient. Facility shall comply with all requirements of Exhibit H, Practitioner Incentive Plan Regulation Guidance, to ensure compliance with Sections 4204 (a) and 4731 of the Omnibus Budget Reconciliation Act of 1990 that concern Practitioner Incentive Plans.
- 3.17 Risk HMO. If Facility is a Risk HMO and is sanctioned by CMS under 42 CFR 438.730, payments provided for under this Agreement will be denied for Patients who enroll after the imposition of the sanction, as set forth under 42 CFR 438.726.

3.18 Conflict of Interest Safeguards.

- (a) Facility shall not recruit, promise future employment, or hire any DHS or OHA employee (or their relative or member of their household) who has participated personally and substantially in the procurement or administration of this Agreement as a DHS or OHA employee.
- (b) Facility shall not offer to any DHS or OHA employee (or any relative or member of their household) any gift or gifts with an aggregate value in excess of \$50 during a calendar year or any gift of payment of expenses for entertainment. “Gift” for this purpose has the meaning defined in ORS 244.020(6) and OAR 199-005-0001 to 199-005-0035.
- (c) Facility shall not retain a former DHS or OHA employee to make any communication with or appearance before OHA on behalf of Facility in connection with this Agreement if that person participated personally and substantially in the procurement or administration of this Agreement as a DHS or OHA employee.
- (d) If a former DHS or OHA employee authorized or had a significant role in this Agreement, Facility shall not hire such a person in a position having a direct, beneficial, financial interest in this Agreement during the two year period following that person’s termination from DHS or OHA.
- (e) Facility shall develop appropriate policies and procedures to avoid actual or potential conflict of interest involving Patients, DHS or OHA employees, and sub-contractors. These policies and procedures shall include safeguards:
  - (e)(1) against Facility’s disclosure of applications, bids, proposal information, or source selection information; and
  - (e)(2) requiring Facility to: promptly report any contact with an applicant, bidder or offeror in writing to OHA; and reject the possibility of possible employment; or disqualify itself from further personal and substantial participation in the procurement if Facility contacts or is contacted by a person who is an applicant, bidder or offeror in a procurement involving federal funds regarding possible employment for Facility.
- (f) The provisions of this section on Conflict of Interest are intended to be construed to assure the integrity of the procurement and administration of this Agreement. For purposes of this Section:
  - (f)(1) “Contract” includes any similar contract between Facility and Health Plan or OHA for a previous term.
  - (f)(2) Facility shall apply the definitions in the State Public Ethics Law, ORS 244.020, for “actual conflict of interest”, “potential conflict of interest”, “relative” and “member of household”.

- (f)(3) “Facility” for purposes of this section includes all Facility’s affiliates, assignees, subsidiaries, parent companies, successors and transferees, and persons under common control with Facility; and all others acting or claiming to act on their behalf or in concert with them.
- (f)(4) “Participates” means actions of a DHS or OHA employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise in connection with the Contract.
- (f)(5) “Personally and substantially” has the meaning set forth in 5 CFR 2635.402(b)(4).

3.19 Non-Discrimination.

- (a) Facility shall comply with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. Facility shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.
- (b) Facility shall comply with and cause its subcontractors to comply with the integration mandate in 28 CFR 35.130(d), Title II of the Americans with Disabilities Act and its implementing regulations published in the Code of Federal Regulations.

3.20 OASIS. To the extent applicable, Facility shall comply with, and shall require Subcontractors to comply with, the Outcome and Assessment Information Set (OASIS) reporting requirements and patient notice requirements for skilled services provided by Home Health Agencies, pursuant to CMS requirements published in 64 FR 3764, 64 FR 3748, 64 FR 23846, and 64 FR 32984, and such subsequent regulations as CMS may issue in relation to the OASIS program.

3.21 Patient Rights Condition of Participation. To the extent applicable, Facility shall comply with, and shall require Subcontractors to comply with, the Patient Rights Condition of Participation (COP) that hospitals must meet to continue participation in the Medicaid program, pursuant to 42 CFR Part 482. For purposes of this Agreement, hospitals include short-term, psychiatric, rehabilitation, long-term, and children’s hospitals.

3.22 Federal Grant Requirements. The federal Medicaid rules establish that OHA is a recipient of federal financial assistance, and therefore is subject to federal grant requirements pursuant to 42 CFR 430.2(b). To the extent applicable to Facility or to the extent OHA requires Facility to supply information or comply with procedures to permit OHA to satisfy its obligations federal grant obligations or both, Facility must comply with the following parts of 45 CFR:

- (a) Part 74, including Appendix A (uniform federal grant administration requirements);

- (b) Part 80 (nondiscrimination under Title VI of the Civil Rights Act);
- (c) Part 84 (nondiscrimination on the basis of handicap);
- (d) Part 91 (nondiscrimination on the basis of age);
- (e) Part 95 (Medicaid and CHIP federal grant administration requirements); and
- (f) Facility shall not expend, and Facility shall include a provision in any Subcontract that its Subcontractor shall not expend, any of the funds paid under this Agreement for roads, bridges, stadiums, or any other item or service not covered under the OHP.

#### **IV. FACILITY REPRESENTATIONS.**

Throughout the term of this Agreement, Facility represents and warrants that Facility shall:

- 4.1 Maintain all appropriate license(s) and certification(s) mandated by government regulatory agencies;
- 4.2 Maintain accreditation by applicable accrediting agency;
- 4.3 Maintain compliance with all applicable federal and state laws and regulations related to this Agreement and the Services to be provided hereunder, including, without limitation, statutes and regulations related to fraud, abuse, discrimination, disabilities, confidentiality, false claims, and prohibition of kickbacks;
- 4.4 Establish and maintain an ongoing quality assurance/assessment program which includes, but is not limited to, appropriate credentialing of employees and subcontractors;
- 4.5 Ensure that all health care personnel employed by, associated or contracted with Facility who treat Patients are and will remain throughout the term of this Agreement appropriately licensed and/or certified as required by state law and supervised, and qualified by education, training and experience to perform their professional duties; and will act within the scope of their licensure or certification; and
- 4.6 Warrant that this Agreement has been executed by its duly authorized representative and that executing this Agreement and performing its obligations hereunder shall not cause Facility to violate any term or covenant of any other agreement or arrangement now existing or hereinafter executed; and notify Health Plan promptly of any (i) modification, restriction, suspension, or revocation of Facility's license(s) and/or certification(s); (ii) imposition of sanctions against Facility under the Medicaid program, Medicare program, or any other governmental program; or (iii) other disciplinary action of any kind against Facility, which is either initiated, in progress, or completed as of the Commencement Date of this Agreement and at all times during the term of this Agreement.

## V. COMPENSATION.

Partners shall compensate Facility for Intercept and Diversion Services provided to Patients in the Tri-County Area in accordance with **Exhibit B**.

## VI. TERM AND TERMINATION OF AGREEMENT.

- 6.1 Term. This Agreement will be in effect for a term of two (2) years (“Initial Term”) beginning as of the date of the last Party to sign below (the “Commencement Date”), unless terminated earlier as provided herein. At least ninety (90) days prior to the expiration of the Initial Term, the Parties will mutually consider whether this Agreement should be extended. If the Parties decide to extend this Agreement, such extension shall be documented in an amendment and attached to this Agreement. If the Parties are unable to reach agreement during the ninety (90) day period prior to expiration of the Initial Term, this Agreement shall expire and no further Services may be provided until the Parties enter into a new agreement.
- 6.2 Termination.
- (a) *Termination without Cause*. Any Party may terminate this Agreement at any time upon at least one hundred twenty (120) days prior written notice to the other Parties. Provided, however, that termination of this Agreement shall not affect any contract entered into directly by Health Plan and Facility for the provision of services, including those listed on Exhibit A, to members on any health plan or policy issued or administered by Health Plan.
- (b) *Immediate Termination*. Health Plan or Partners may terminate this Agreement immediately by written notice to Facility upon the occurrence of any of the following events:
- (b)(1) Withdrawal, expiration or non-renewal of any federal, state or local license, certificate, approval or authorization of Facility;
  - (b)(2) Bankruptcy or receivership of Facility, or an assignment by Facility for the benefit of creditors;
  - (b)(3) Loss or material limitation of Facility's insurance under Section 2.12 of this Agreement;
  - (b)(4) Health Plan makes a reasonable and good faith, determination that Facility's continued participation in provider networks could result in harm to Patients;
  - (b)(5) Debarment or suspension of Facility from participation in any governmental sponsored program, including, but not limited to Medicare;
  - (b)(6) Failure to comply with the notification requirements set forth in Section 5 of this Agreement;
  - (b)(7) Revocation or suspension of Facility's accreditation by applicable accrediting agency;

(b)(8) Change of control of Facility to an entity not acceptable to Health Plan, or there is a change in the majority ownership or control of Facility; or

(b)(9) Facility violates the drug-free workplace provisions of this Agreement.

To protect the interests of Patients, Facility shall provide immediate notice to Health Plan of any of the aforesaid events, including notification of impending bankruptcy.

- (c) *Termination for Breach.* Any Party may terminate this Agreement with thirty (30) days written notice upon material violation of this Agreement by a Party, provided that the breaching Party does not cure the breach during the thirty (30) day notice period. Provided, however, that termination of this Agreement shall not affect any contract entered into directly by Health Plan and Facility for the provision of services, including those listed on Exhibit A, to members on any health plan or policy issued or administered by Health Plan.

## VII. FRAUD AND ABUSE/STARK/ANTI-KICKBACK COMPLIANCE.

It is the intent of the Parties to comply with all laws and regulations applicable to the relationship contemplated under this Agreement, including but not limited to the federal prohibition against physician self-referrals, known as the Stark Law, codified at 42 U.S. § 1395nn and regulations promulgated thereunder; the Federal Anti-Kickback Statute, codified at 42 U.S.C. § 1320a-b and regulations promulgated thereunder; and the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, codified at 45 C.F.R. §§ 160, 162 and 164 (“HIPAA”). All payments under this Agreement are consistent with fair market value for items and Services rendered, are negotiated at arms-length between the Parties, and are not related to the volume or value of any referrals or other business generated between the Parties.

Further, it is the intent of the Parties that the terms of this Agreement be in compliance with all applicable federal and state laws, statutes, rules and regulations, including, without limitation, Medicare and Medicaid provisions. If any Party determines, in good faith, or receives general or specific notice from a governmental agency that this Agreement or any part hereof: (i) violates or fails to comply with any state or federal law, regulation, rule or administrative policy or would result in Stark law restrictions on referrals to a physician or any of his affiliates; (ii) jeopardizes such Party's (or any of its affiliates') participation in any federal or state health care program; (iii) violates or fails to comply with the Antikickback Statute; or (iv) exposes any person or Party or its affiliates to any other sanctions by any other regulatory agency, such Party shall notify the other Parties in writing of its determination. The Parties shall then (x) negotiate those modifications reasonably determined to be necessary to comply with a change of law other event described in this Section VII; or (y) if the Parties are unable to negotiate a modification within thirty (30) days of delivery of the notice, then this Agreement shall automatically terminate.

## VIII. MISCELLANEOUS.

- 8.1 Arbitration. Any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, shall be resolved by arbitration in accordance with the then effective arbitration rules of Arbitration Service of Portland, Inc., and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The parties acknowledge that mediation usually helps parties to

settle their dispute. Therefore, any party may propose mediation whenever appropriate through the above named organization or any other mediation process or mediator as the parties may agree upon. The cost of arbitration shall be shared equally by the Parties to it. Each Party shall be solely responsible for its attorneys' fees, if any. The obligations set forth under this section shall survive the termination or expiration of this Agreement.

- 8.2 Applicable Law. The interpretation of this Agreement and the resolution of any disputes arising under this Agreement shall be governed by the laws of the State of Oregon.
- 8.3 Relationship of Parties. Facility understands and agrees that, in providing Services under this Agreement, Facility acts as an independent contractor and not as a partner, employee; or agent of Health Plan or Partners, and that Facility shall be solely responsible for all tax withholding, Social Security, Worker's Compensation Insurance, and other obligations with respect to Facility's employees.
- 8.4 Assignment. No Party may assign the rights or the duties of this Agreement without the prior written approval of the other Parties, provided however, that this Agreement may be assigned by Health Plan in its sole discretion to any successor entity of Health Plan. Health Plan shall notify other Parties prior to any such assignment.
- 8.5 Waiver of Breach. The waiver of any breach of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or any other provision of this Agreement.
- 8.6 Severability. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term(s) or provision(s).
- 8.7 Confidentiality. During and after the term of this Agreement, Parties shall, keep confidential any financial, operating, proprietary, or business information relating to the Parties that is not otherwise public information or reasonably identified as confidential.
- 8.8 Headings. The headings of the various sections of this Agreement are merely for convenience and do not, expressly or by implication, limit, define, or extend the terms of the sections to which they apply.
- 8.9 Amendments. This Agreement may be amended at any time by mutual written agreement signed by all Parties.
- 8.10 Notices. When required by the terms of this Agreement, the Parties shall give notice by personal delivery or by Certified Mail, return receipt requested, postage prepaid, or by generally recognized electronic service to the following addresses:

**To Facility:** Youth Villages, Inc.  
P.O. Box 368  
Marylhurst, Oregon 97036  
Fax number:  
Attention:

**To Health Plan:** PacificSource Community Solutions, Inc.  
P.O. Box 7469  
Bend, OR 97708-7469  
Fax number: 541-322-6434  
Attn: Vice President of Medicaid Programs

**To Partners:** Wellness & Education Board of Central Oregon (WEBCO)  
2659 SW Fourth Street, Suite 200  
Redmond, OR 97756  
Fax number: 267-295-2059  
Attention: Jeff Davis, Executive Director

St. Charles Health System  
2500 NE Neff Road  
Bend, OR 97701  
Fax number:  
Attention:

Deschutes County Behavioral Health  
2577 NE Courtney Drive  
Bend, OR 97701  
Fax number:  
Attention: DeAnn Carr or Jane Smilie

Lutheran Community Services Northwest  
1251 NE Elm Street  
Prineville, OR 97754  
Fax number: 541-447-6694  
Attention: Scott Willard

BestCare Treatment Services  
PO Box 1710  
Redmond, OR 97756  
Fax number: 541-504-1195  
Attention: Rick Treleaven

Notices shall be effective upon receipt if hand or electronically delivered or three (3) days after mailed. A Party may change its address for receipt of notices by written notice to the other Parties.

- 8.11 Non-Exclusivity. Nothing in this Agreement shall be construed to restrict Facility from providing, or entering into other contracts or agreements to provide, health care services outside of this Agreement, provided that (a) such activities do not hinder or conflict with Facility's ability to perform its duties and obligations under this Agreement; (b) in rendering such services, Facility shall neither represent nor imply in any way to the recipient that such services are being rendered by or on behalf of Health Plan or Partners; and (c) any professional services rendered by Facility outside the scope of this Agreement shall not be billed by, to, or through Health Plan or Partners. Facility, as a matter of policy and general professional ethics, shall avoid business and financial



arrangements that may influence Facility's judgment in the care of Patients and/or significantly compromise Facility's relationship with Health Plan or Partners. Additionally, if a Facility agent serves as a director, officer, or committee member of Health Plan or a Patient, such Facility shall disclose to Health Plan or the Patient, at the earliest practical time, any financial, business, personal, or competitive interest that is reasonably likely to affect his or her judgment or actions as a director, officer, or committee member of Health Plan or the Patient.

- 8.12 No Third Party Beneficiaries. Neither Health Plan Patients nor any other third Parties are intended by the Parties to this Agreement to be third party beneficiaries under this Agreement, and no action may be brought to enforce the terms of this Agreement against any Party by any person who is not a Party to this Agreement.
- 8.13 Advice of Counsel. Each Party hereby acknowledges, (i) having fully read this Agreement in its entirety; (ii) having had full opportunity to study and review this Agreement; (iii) having been advised that counsel for the Health Plan has acted solely on the Health Plan's behalf in connection with the negotiation, preparation, and execution hereof, (iv) having been advised that all Parties have the right to consult and should consult independent counsel respecting their rights and duties under this Agreement; and (v) having had access to all such information as has been requested.
- 8.14 Signature Authority. The individuals executing this Agreement represent and warrant that they are competent and capable of entering into a binding contract, and that they are authorized to execute this Agreement on behalf of the Parties hereto.
- 8.15 Facsimile or Scanned Signatures. Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, will be the same as delivery of an original. At the request of any Party, the Parties shall confirm transmitted signatures by signing an original document.
- 8.16 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

[Signature page follows.]

NOW, THEREFORE, this Agreement shall be executed and shall become effective as of the date of the later Party to sign below.

**YOUTH VILLAGES, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PACIFCSOURCE COMMUNITY SOLUTIONS, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ST. CHARLES HEALTH SYSTEM**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**DESCHUTES COUNTY BEHAVIORAL HEALTH**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LUTHERAN COMMUNITY SERVICES NORTHWEST**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BESTCARE TREATMENT SERVICES**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**WELLNESS & EDUCATION BOARD OF  
CENTRAL OREGON**

By: \_\_\_\_\_

Name: Ken Fahlgren

Title: Crook County Commissioner

Date: \_\_\_\_\_

**WELLNESS & EDUCATION BOARD OF  
CENTRAL OREGON**

By: \_\_\_\_\_

Name: Tammy Baney

Title: Deschutes County Commissioner

Date: \_\_\_\_\_

**WELLNESS & EDUCATION BOARD OF  
CENTRAL OREGON**

By: \_\_\_\_\_

Name: Mike Ahern

Title: Jefferson County Commissioner

Date: \_\_\_\_\_

Reviewed by WEBCO Legal Counsel Max Merrill \_\_\_\_\_

## EXHIBIT A SERVICES

### I. Intercept Services.

- A. Program Purpose. The Intercept Program is a holistic model of comprehensive, in-home service delivery designed for youth and families as an alternative to or diversion from out-of-home placement. Intercept Services are focused on providing a structured, supervised, and supportive environment, strengthens individual and family relationships, uses evidence-based practices and strength-based approaches in dealing with the mental health needs of the youth, and focuses on long term success as defined in the “Anticipated Outcomes” section below.
- B. Target Populations. The target patient population for in-home Intercept Services are youth up to seventeen (17) years of age, or who will complete Intercept Services by the age of eighteen (18) years of age, current residents of the Tri-County Area, and who are at-risk for out-of-home placement or removal from their families.
- C. Length of Services. The length of Intercept Services will vary depending on individual youth and family needs but is anticipated to be between four (4) and six (6) months.
- D. Description of Services.
- D.1. *Referrals.* Referrals could originate from any source in the region including, but not limited to, county care coordinators, coordinated care organizations, parents, or community providers. At the time of referral, Facility will request copies of the youth's most recent Mental Health Assessment, and any additional appropriate information available.
- D.2. *Pre-placement assessment.* Facility shall initiate a pre-placement assessment within three (3) business days of the referral to determine whether the youth can be safely treated in the home setting.
- D.3. *Orientation.* Facility shall provide an orientation which shall minimally include written and oral information about rights, responsibilities, programmatic expectations, rules and policies, and criteria for program completion.
- D.4. *Assessments.* Facility shall provide a comprehensive, written assessment of client's diagnostic profile, risk of out-of-home placement, need for Services, and responsibility to Services, including recommendations to be integrated into appropriate treatment and supervision strategies within twenty-one (21) working days of the client interview at orientation.
- D.5. *Service plan.* Facility shall develop a service plan for each client based on the assessment and additional information and input provided by all referral sources with identified goals and objectives and measurable outcomes and will include a detailed and thorough safety plan specific to the youth's and family's needs.

- D.6. *Therapeutic counseling sessions.* Therapeutic counseling sessions shall consist of:
- (1) Comprehensive family treatment to address referral issues, reduce the impact from behavioral and emotional disorders, and restore healthy family functioning. This includes but is not limited to parenting skills education (*e.g.*, consistency, discipline, communication, coping strategies, peer monitoring, *etc.*), Collaborative Problem Solving, healthy peer and family relationships, self-care, aggression reduction, anger management, personal habits, social skills, effective time management and communication techniques;
  - (2) Providing instruction and education on goal development for both parents and youth and teach the skills necessary to set goals and means, methods and techniques for achieving and measuring those goals;
  - (3) Individual therapy, as needed, using evidence based practices such as Trauma Focused Cognitive Behavioral Therapy (TF-CBT) for youth experiencing symptoms of trauma; and
  - (4) Providing psychiatric diagnostic interviews, management, and monitoring that may include video conferencing.
- E. Crisis intervention. Facility shall make an appropriate professional, such as a Family Intervention Specialist, available 24 hours per day, 7 days per week, by phone or in person, to provide crisis intervention to youth and families currently receiving Intercept Services.
- F. Educational support. Facility shall support the educational plan for each youth, including providing academic assistance by accessing tutoring programs, school liaison and advocacy activities, by focusing on family attitudes toward school attendance and completion, and teaching parents to advocate for their children's educational needs in the school system.
- G. Transportation. Facility shall assess the youth and family's transportation needs, educate the youth and family about accessing transportation, and shall provide transportation to Intercept Services, appointments and events as necessary as determined by Facility.

## II. Diversion Services.

- A. Background & Program Purpose. The ED Diversion Program is designed to safely and effectively respond to youth who currently reside in Tri-County Area and present to any Emergency Room or Emergency Department in the Tri-County Area with a primary complaint of mental health. By their nature these are urgent and emergent situations where time is of the essence. As such, these Services will be available twenty-four (24) hours per day, three hundred sixty-five (365) days a year. While Diversion Services will include home/community based follow up, they are not intensive treatment.

- B. Target Population. The target population is any person under the age of eighteen (18), a current resident of the Tri-County Area, and presenting in the ED with a primary mental health complaint. The vast majority of Services provided under this Agreement will be in Bend and Redmond. In those locations, Facility will be called on all youth ED cases. In Prineville and Madras, County Crisis teams will be first responders, calling Facility as needed.
- C. Length of Services. Initial contact with the youth will be made within one (1) hour of the Facility being called. Assessment and recommendations will commence immediately and continue until complete. Follow-up services will be available for up to fourteen (14) days after initial contact.
- D. ED Diversion Services.
- D.1. *Assessment, recommendations, and initial case management. Diversion Services include assessment, recommendations, and initial case management.* When a person under the age of eighteen (18) presents in the Bend or Redmond ED with mental health as a primary complaint, the St. Charles' hospital staff will contact Facility's ED diversion team. The Team will respond as follows:
- D.1.1. Facility's "Diversion Specialist" will respond on site within one (1) hour and communicate with hospital staff to get an overview of the situation.
- D.1.2. The Diversion Specialist will then meet with parent and child to conduct assessment.
- D.1.3. During the assessment phase, the Diversion Specialist will connect with the Local Crisis Teams and other known providers to collect information needed to inform assessment and recommendations.
- D.1.4. Once the assessment is complete, the Diversion Specialist will make recommendations regarding treatment.
- D.1.5. Once recommendations are made, the Diversion Specialist will provide case management services necessary to ensure safety and care coordination.
- D.1.6. If psychiatric consultation is indicated, the youth will be seen by Facility's psychiatrist via videoconference as soon as possible. At startup, Facility's Psychiatrist will be available Mondays, Tuesdays, and Fridays within regular business hours.
- D.1.7. During initial case management, Facility will communicate with Hospital staff, County Crisis Teams, and other key partners to ensure coordination of care.
- D.1.8. A completed assessment, recommendations, and disposition will be available to all applicable parties within seventy-two (72) hours.

D.2. *Follow up.* Follow up from the Facility's ED Diversion team is expected to be a critical service component in some cases. Follow up will include:

D.2.1. Within twenty-four (24) hours the ED Diversion team will meet with the youth/family in their home OR by phone as is determined to be most clinically appropriate. The focus of this contact is to complete safety sweeps of the home and to develop short term safety plans.

D.2.2. For the two weeks that follow, the Diversion Specialists will provide case management to ensure follow-up service connections occur, facilitate implementation of in home plans developed with families, and be available 24 hours per day, 7 days per week to respond to urgent situations.

**EXHIBIT B**  
**FUNDING FOR INTERCEPT AND DIVERSION SERVICES**

**I. Compensation.** Compensation shall be agreed to by the Parties, in writing, on an annual basis prior to July 1<sup>st</sup> of each year. Provided, however, that any such amount that is dependent upon state or federal fund is subject to automatic and unilateral revision if those funds are not made available or in a reduced amount. For the calendar year beginning on August 1, 2015 and ending on July 31, 2016, the Partners agree to compensate Facility as follows:

<u>Partner</u>	<u>Yearly Compensation</u>
WEBCO	\$166,170
St. Charles	\$166,170
Deschutes	\$553,865
Lutheran	\$37,983
BestCare	\$37,983

Compensation shall be paid in full on or before August 31, 2015.

**II. Performance Withhold.** The Parties agree to withhold a portion of the compensation to incentivize performance on the below performance standards. The withhold will be equal to five percent (5%) of the total annual compensation outlined herein, and reconciled after the end of the Agreement Term for the contract year; such reconciliation to occur no later than thirty (30) calendar days after July 31<sup>st</sup> of each year.

**III. Billing.** Facility shall bill Health Plan for all services rendered in accordance with the terms of its provider contract with Health Plan. Any services billed under the Intercept Program should also contain the code H0037 for tracking purposes.

**IV. Performance Measures for Intercept Services.** Facility's outcome evaluation process will track all program participants for up to two years after discharge, regardless of whether this Agreement continues after its Initial Term. Performance under this Agreement will be monitored and evaluated using the following performance measures/outcomes:

<b>Program</b>	<b>Performance Measure/Outcome</b>	<b>Target</b>	<b>Reporting Frequency</b>	<b>Source</b>	<b>Incentive Weight</b>
Diversion	1 hour ED response time	90%	Quarterly	YV Evaluation	0
Diversion	72 hour assessment completed	90%	Quarterly	YV Evaluation	0
Diversion	% of Youth diverted from higher levels of care after ED Diversion intervention	60%	Quarterly	YV Evaluation	50%
Diversion	24 hour follow up after ED Diversion (8.2.1.a)	90%	Quarterly	YV Evaluation	0
Diversion	Patient experience/satisfaction survey	TBD	Annual	YV Evaluation	0
Diversion	Recidivism to ED (for BH issues) within 3 and 6 months after initial ED Diversion	TBD	Quarterly	SCHS or PS claims data	0



	intervention				
Intercept	% of Successful discharges (with family/other permanent resource	80%	Discharge	YV Evaluation	50%
Intercept	% With family or independent	80%	6 & 12 month post	YV Evaluation	0
Intercept	% In school or graduated	80%	6 & 12 month post	YV Evaluation	0
Intercept	% Reporting NO trouble with the law	80%	6 & 12 month post	YV Evaluation	0
Intercept	% of Youth that need a higher level of care after Intercept Intervention (within 2 years)	10%	Annual Review	PS Claims data	0
Intercept	Patient experience/satisfaction survey	TBD	Annual	YV Evaluation	0

**V. Performance Measures for Diversion Services.** Facility's outcome evaluation process will track all program participants for up to two years after discharge, regardless of whether this Agreement continues after the Initial Term. Performance under this Agreement will be monitored and evaluated using the following performance measures/outcomes:

Program	Performance Measure/Outcome	Target	Reporting Frequency	Source	Incentive Weight
Diversion	1 hour ED response time	90%	Quarterly	YV Evaluation	0
Diversion	72 hour assessment completed	90%	Quarterly	YV Evaluation	0
Diversion	% of Youth diverted from higher levels of care after ED Diversion intervention	60%	Quarterly	YV Evaluation	50%
Diversion	24 hour follow up after ED Diversion (8.2.1.a)	90%	Quarterly	YV Evaluation	0
Diversion	Patient experience/satisfaction survey	TBD	Annual	YV Evaluation	0
Diversion	Recidivism to ED (for BH issues) within 3 and 6 months after initial ED Diversion intervention	TBD	Quarterly	SCHS or PS claims data	0
Intercept	% of Successful discharges (with family/other permanent resource	80%	Discharge	YV Evaluation	50%
Intercept	% With family or independent	80%	6 & 12 month post	YV Evaluation	0
Intercept	% In school or graduated	80%	6 & 12 month post	YV Evaluation	0
Intercept	% Reporting NO trouble with the law	80%	6 & 12 month post	YV Evaluation	0
Intercept	% of Youth that need a higher level of care after Intercept Intervention (within 2 years)	10%	Annual Review	PS Claims data	0
Intercept	Patient experience/satisfaction survey	TBD	Annual	YV Evaluation	

3.1 Review of Performance Measures Data. Facility shall provide Health Plan and Partners with a quarterly analysis of each Performance Measure listed above. This analysis shall also contain the raw data supporting any conclusions or inferences drawn by Facility. The Parties shall meet on not less than a quarterly basis to discuss the Performance Measures and Facility's results for the most recent quarter. The Parties shall produce a written summary after each meeting which specifically notes the Parties' agreement or disagreement that the Facility has or has not met the Performance Measures for the most recent quarter.

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