

**COUNTY OF LEHIGH, PENNSYLVANIA
RESOLUTION NO. 2016-29
SPONSORED BY COMMISSIONER JONES
REQUESTED DATE: MAY 24, 2016**

**APPROVING AN AMENDED AND RESTATED AGREEMENT WITH
MAGELLAN BEHAVIORAL HEALTH OF PENNSYLVANIA, INC.**

WHEREAS, the County of Lehigh (County) and Magellan Behavioral Health of Pennsylvania, Inc. (MBH) entered into an agreement dated July 1, 2015 (MBH Agreement) for MBH to act as the County's Behavioral Health Managed Care Organization (BH-MCO) administering the County's HealthChoices Behavioral Health Program (HealthChoices Program); and

WHEREAS, the HealthChoices Program is the responsibility of the County under an agreement with the Commonwealth of Pennsylvania, Department of Human Services, which was effective July 1, 2011 and amended most recently on January 1, 2016 (the DHS Agreement); and

WHEREAS, the County's obligations as a primary contractor for HealthChoices are contained in the DHS Agreement and in the DHS Agreement's Program Standards and Requirements (PSR), which are incorporated into the MBH Agreement and made a part of MBH's obligations and duties as the County's BH-MCO; and

WHEREAS, in accordance with the Request for Proposals issued for the BH-MCO contract, the MBH Agreement has an initial term of thirty-six (36) months, which commenced on July 1, 2015 and will end on June 30, 2018, consisting of three (3) program years. Pursuant to Section 9 of the MBH Agreement, the second program year and the

third program year are each subject to the prior approval of the County Board of Commissioners, to be given on or before January 15th of the year prior to the beginning of the respective program year. Resolution 2015 – 78 granted approval for the Second Program Year; and

WHEREAS, the County and MBH have negotiated (under DHS guidance) the Amended and Restated Agreement, attached hereto as Exhibit A in order to comply with the DHS agreement and the PSR's.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF COMMISSIONERS OF LEHIGH COUNTY, PENNSYLVANIA, THAT:

1. The foregoing Whereas clauses are incorporated herein as if set forth in their entirety.
2. The Lehigh County Board of Commissioners hereby approves the attached Amended and Restated MBH Agreement.
3. Any resolution or part of resolution conflicting with the provisions of this resolution is hereby repealed insofar as the same affects this resolution.
4. The County Executive shall distribute copies of this resolution to the proper officers and other personnel, whose further action is required to achieve the purpose of this resolution.

ADOPTED BY THE LEHIGH COUNTY BOARD OF COMMISSIONERS

on the ____ day of _____, 2016, by the following vote:

Commissioners

AYE

NAY

Geoff Brace
Thomas C. Creighton, III
Percy H. Dougherty
Dan Hartzell
Amanda Holt
David S. Jones, Sr.
Marty Nothstein
Brad Osborne
Michael P. Schware

ATTEST: _____

Clerk to the Board of Commissioners



May 4, 2016

Mr. Matthew Bauder, M.S.
Lehigh County HealthChoices
Acting Administrator/Quality Assurance Manager
17 S. 7th Street
Allentown, PA 18101

RE: Lehigh County and Magellan Behavioral Health of Pennsylvania Amended and Restated Agreement Dated July 1, 2016 ("Agreement")

Dear Mr. Bauder:

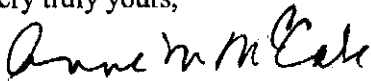
Enclosed are three (3) copies of the Agreement signed by Magellan Behavioral Health of Pennsylvania, Inc. and Magellan Health, Inc. We understand you will have the enclosed countersigned by Lehigh County and return at least one fully signed copy to Diane Marciano.

Please note, Magellan asserts that all of the percentage numbers and dollar amounts contained in the Agreement as well as Attachments, and the Proposal attached to the Agreement (as specified in the cover letter to the Proposal), are protected and exempt from the Pennsylvania Right-to-Know Law ("Law") enacted on February 14, 2008, 65 P.S. § 67.101-67.3104, as "confidential proprietary information" or a "trade secret" as defined in the Law. Accordingly, such information cannot be disclosed under the Law.

In addition, please see also enclosed three (3) copies of a letter to Lehigh County to be made a part of the package of the signed Agreement provided to Lehigh County, providing the five percent (5%) or more ownership disclosure pursuant to Section 5.2 Disclosure of Interests; Conflicts of Interest, of the Agreement.

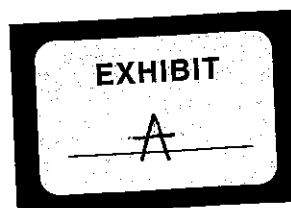
We look forward to continuing our mutually beneficial relationship with Lehigh County.

Very truly yours,


Anne McCabe
CEO & President
Magellan Behavioral Health of Pennsylvania, Inc

cc. Lawrence J. Tabas, Esquire with enclosures

Enclosures



Magellan Behavioral Health of Pennsylvania, Inc. has designated that certain portions of this Amended and Restated Agreement are confidential, proprietary or trade secret in accordance with the cover letter dated May 4, 2016 from Anne McCabe to Matthew Bauder.

AMENDED AND RESTATED AGREEMENT

by and between

COUNTY OF LEHIGH

and

MAGELLAN BEHAVIORAL HEALTH OF PENNSYLVANIA, INC.

Dated July 1, 2016

AMENDED AND RESTATED AGREEMENT
by and between
COUNTY OF LEHIGH
and
MAGELLAN BEHAVIORAL HEALTH OF PENNSYLVANIA, INC.

dated July 1, 2016

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1: RELATIONSHIP OF AND INTENTIONS OF THE PARTIES	3
SECTION 2: INCORPORATION OF DOCUMENTS AND DEFINITIONS.....	4
2.1. Operative Documents.....	4
2.2. Amendment of Terms	6
2.3. Definitions.....	7
SECTION 3: RESPONSIBILITIES OF THE PARTIES	10
3.1. Transfer of Certain Responsibilities; Basic Relationship	10
3.2. Acceptance by MBH of Certain Responsibilities	12
3.3. Management Information System Responsibilities	13
3.4. Employment Restrictions.....	15
3.5. Provider Contracting and Oversight	15
3.6. Program Documents.....	16
3.7. Compliance with Program Evaluation Performance Survey	17
3.8. (untitled).....	17
3.9. (untitled).....	17
3.10. (untitled).....	17
3.11. Pennsylvania Client Placement Criteria.....	18
SECTION 4: APPLICABLE LAWS AND REGULATIONS	19
4.1. Certification and Licensing.....	19
4.2. Specific to MA Program	20
4.3. General Laws and Regulation	21
4.4. Further Limitations on the Department's and COUNTY's Obligations.....	21
SECTION 5: ADDITIONAL REPRESENTATIONS AND WARRANTIES OF THE MBH	22
5.1. Accuracy of MBH Data	22
5.2. Disclosure of Interests, Conflicts of Interest.....	23
5.3. Disclosure of Change in Circumstances	23
SECTION 6: ON-SITE REVIEW	25
6.1. Compliance with On-Site Review	25

SECTION 7:	RECOGNITION AND ACCEPTANCE BY THE MBH OF CERTAIN OBLIGATIONS OF COUNTY	25
7.1.	a.	25
	1. Physical Health Services System	25
	2. Binding Arbitration	26
	b. Licensure	26
	c. External Quality Review and Member Surveys	26
	d. Reinvestment Funds Plan	27
	e. Involuntary Commitment	27
	f. (untitled)	28
	g. Financial Reporting	28
	h. Post-Termination Audit	28
	i. Financial Procedures	29
SECTION 8:	FISCAL RELATIONSHIP	29
8.1.	Payments for Services	29
	a. Provider Payments; Capitation Payments	30
	b. Payments to MBH	30
	c. Other Terms Respecting Initiative Payments	32
	d. Adjustments	34
	e. Financial Responsibility for Dual Eligibles	36
	f. Insolvency Protection	36
	g. Restitution of Funds	37
8.2.	Adjudication of Claims MBH	38
	a. General	38
	b. Claims Adjudication Requirements	38
8.3.	Recipient Cost-Sharing and Third-Party Liability	39
	a. General	39
8.4.	Risk Moderation	40
	a. Risk Protection for High Cost Cases	40
	b. Equity Requirements	40
	c. Annual Contract Audit	41
	d. Negative Covenants	41
SECTION 9:	DURATION OF AGREEMENT AND RENEWAL	41
SECTION 10:	TERMINATION AND DEFAULT	42
10.1.	Termination by COUNTY	42
	a. Upon Termination of COUNTY-DHS Agreement	42
	b. For Cause	42
	c. Without Cause	44
	d. Termination Due to Unavailability of Funds/Approvals	45
10.2.	Termination by MBH	46

10.3.	Responsibilities of MBH upon Termination.....	46
a.	Continuing Service and Payment Obligations.....	46
b.	Notice to Members and Continuity of Care	48
c.	Continuity of Data	48
SECTION 11:	RECORDS	49
11.1.	Financial Records Retention	49
11.2.	Medical Records Retention.....	50
11.3.	Review of Records.....	50
SECTION 12:	SUBCONTRACTUAL RELATIONSHIPS	51
12.1.	Ability to Subcontract.....	51
12.2.	COUNTY Approval of Subcontracts.....	51
12.3.	Compliance with Rule on Physician Incentive Arrangement	52
12.4.	Disclaimer by COUNTY	52
SECTION 13:	QUALITY ASSURANCE AND UTILIZATION MANAGEMENT.....	53
SECTION 14:	GRIEVANCE AND APPEALS	53
14.1.	Member Complaint and Grievance System	53
14.2.	Provider Appeal Procedures	53
SECTION 15:	CONFIDENTIALITY; DATA DISPOSITION.....	53
SECTION 16:	INDEMNIFICATION AND INSURANCE	56
16.1.	Indemnification.....	56
16.2.	Insurance.....	58
SECTION 17:	REPORTS	58
17.1.	General Obligations	58
17.2.	Financial Reporting Requirements	59
17.3.	837 Files.....	59
17.4.	Operational Data Reports.....	59
17.5.	Statutory Reports	59
17.6.	Other Data Elements.....	59
SECTION 18:	SANCTIONS	60
18.1.	Sanctions	60
SECTION 19:	COORDINATION OF COUNTY'S NON-HEALTHCHOICES PROGRAM.....	61
SECTION 20:	FORCE MAJEURE	61
SECTION 21:	GENERAL.....	62
21.1.	Providers' Professional Liability History	62
21.2.	Suspension from Other Programs	62
21.3.	Rights of COUNTY and MBH	63
21.4.	Third Parties.....	63
21.5.	Consent to Jurisdiction and Waiver	63
21.6.	Bankruptcy Covenant.....	63
21.7.	Waiver	64
21.8.	Invalid Provisions and Repealed Laws or Regulations.....	64
21.9.	Governing Law	65

21.10	Notice	65
21.11	Counterparts.....	66
21.12	Headings	66
21.13	Assignment	67
21.14	No Partnership, Agency or Joint Venture	67
21.15	Entire Agreement; Modification.....	67
21.16	Time of the Essence	67
21.17	Guaranty Confirmation	68

APPENDICES
[SUBJECT TO CHANGE]

Appendix 1	DHS Agreement
Appendix 2	Department's Program Standards and Requirements
Appendix 3	COUNTY RFP and MBH Proposal
Appendix 4	Financial Procedures
Appendix 5	Performance Standards and Initiative
Appendix 6	Data Reports
Appendix 7	Correspondence from DHS Regarding Approval of Insolvency Protections
Appendix 8	Statutory Reports
Appendix 9	Insurance Coverages Held by MBH
Appendix 10	Guaranty of Magellan Health, Inc.
Appendix 11	COUNTY Administrative Code Required Conditions for all Contracts
Appendix 12	ACA Health Insurance Providers Fee
Appendix 13	P4P Methodology

AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT ("Agreement") is entered into as of July 1, 2016 (the "Effective Date") between the COUNTY OF LEHIGH, a home rule county of the Third Class of the Commonwealth of Pennsylvania (hereinafter "COUNTY"), and Magellan Behavioral Health of Pennsylvania, Inc., a Pennsylvania corporation with its principal place of business in Pennsylvania (hereinafter "MBH"). The COUNTY and MBH may also be collectively referred to herein as the "Parties," and individually as a "Party."

WITNESSETH:

WHEREAS, the Pennsylvania Department of Human Services ("DHS" – f/k/a Department of Public Welfare) has implemented a mandatory managed care program, under the name HealthChoices Behavioral Health Program (hereinafter, "HealthChoices Program"), for medical assistance ("MA") recipients in counties throughout the Commonwealth, including the COUNTY;

WHEREAS, DHS offered the COUNTY the right to administer the HealthChoices Program within the COUNTY in order to better coordinate MA Behavioral Health Services with other publicly-funded behavioral health and human services;

WHEREAS, DHS and the COUNTY entered into an Agreement, effective July 1, 2011, relating to the COUNTY's participation in the HealthChoices Program, as a Primary Contractor, and said Agreement has been amended including by Amendment #9, effective July 1 2016 (collectively and together with all Appendices and as amended, the "DHS Agreement");

WHEREAS, DHS has issued revised HealthChoices Behavioral Health Program Standards and Requirements – Primary Contractor, effective January 1, 2016, containing the Primary Contractor's participation requirements and the terms and conditions of the HealthChoices Program (together with all of its appendices and exhibits the "PSR");

WHEREAS, COUNTY issued a Request for Proposals (with appendices and exhibits attached thereto), dated September 10, 2014, for a subcontract with a private behavioral health managed care organization as permitted pursuant to the DHS Agreement (the "RFP");

WHEREAS, in response to the RFP, MBH submitted a proposal on October 23, 2014, which proposal included final pricing (the "MBH Proposal"), which COUNTY selected as responsive to the RFP;

WHEREAS, COUNTY and MBH desire to enter into a binding contractual relationship pursuant to which MBH will provide and deliver services to the COUNTY and the HealthChoices Program, as required in the DHS Agreement and the PSR; and

WHEREAS, effective as of July 1, 2016 this Agreement is intended to supersede the prior HealthChoices Program Agreement between the Parties, dated as of July 1, 2015, as amended and extended thereto;

NOW, THEREFORE, the Parties, intending to be legally bound hereby, agree: as follows:

SECTION 1: RELATIONSHIP OF AND INTENTIONS OF THE PARTIES

1.1 The purpose of this Agreement is to set forth the terms of the relationship between COUNTY, as the Primary Contractor with DHS, and MBH, to serve as the COUNTY's licensed Behavioral Health Managed Care Organization or "BH-MCO," pursuant to the DHS Agreement and the PSR. MBH, in its role as the BH-MCO, is prepared to: (i) assume, satisfy, and discharge all liabilities and obligations of COUNTY under the DHS Agreement (except as otherwise herein provided); (ii) to indemnify COUNTY as further set forth herein; and (iii) to provide and deliver the MA Behavioral Health Services contemplated in the DHS Agreement and the PSR. While COUNTY retains ultimate responsibility to DHS for compliance with the HealthChoices Program and its fiscal requirements, it does hereby transfer to MBH, and MBH hereby accepts, all potential adverse financial risks inherent in performing MBH's duties and carrying out its responsibilities hereunder including, without limitation, responsibility for the costs of services provided pursuant to this Agreement and the PSR in excess of the "Risk Attachment Point" (defined below). MBH agrees to accept as its sole compensation for accepting all of its responsibilities under this Agreement the compensation set forth in Section 8 herein. COUNTY also specifically conditions all obligations and payments to MBH under this Agreement upon the fulfillment by DHS of its obligations and payment responsibilities to COUNTY under the DHS Agreement. MBH acknowledges and agrees that it has no right to receive payment from COUNTY apart from its rights under this Agreement.

1.2 As of the Effective Date and subject to the terms and limitations set forth in this Agreement, MBH retains and assumes all of COUNTY's Primary Contractor Service Responsibilities as to risk, liability and responsibility under the HealthChoices Program and pursuant to the DHS Agreement and the PSR as the COUNTY's BH-MCO, for the provision of

Behavioral Health Services as referenced Section 3.2.a herein, and MBH hereby stands behind and affirms its undertakings herein, including the undertakings of all entities with which MBH subcontracts for its obligations hereunder.

1.3 MBH's parent company, Magellan Health, Inc. (hereinafter, "Guarantor"), unconditionally guarantees the obligations, undertakings, agreements, performance and financial obligations in all respects of MBH, any Subcontractor (defined below) in which it or MBH has any ownership interest, all subsidiaries, affiliates and related parties in connection with this Agreement and the HealthChoices Program, as set forth in the Guaranty appended hereto and incorporated herein as Appendix 10.

SECTION 2: INCORPORATION OF DOCUMENTS AND DEFINITIONS

2.1 Operative Documents.

2.1.a. The DHS Agreement is attached hereto as Appendix 1. The PSR is attached hereto as Appendix 2.

2.1.b. The RFP and the MBH Proposal in response to the RFP are attached hereto as Appendix 3.

2.1.c. The Financial Procedures are attached hereto as Appendix 4.

2.1.d. The Performance Standards and Initiative are attached hereto as Appendix 5.

2.1.e. The Data Reports are attached hereto as Appendix 6.

2.1.f. The Correspondence from DHS Regarding Approval of Insolvency Protections is attached hereto as Appendix 7.

2.1.g. The Statutory Reports are attached hereto as Appendix 8.

2.1.h. The Insurance Coverages held by MBH are attached hereto as Appendix 9.

2.1.i. The Guaranty of Magellan Health, Inc. is attached hereto as Appendix 10.

2.1.j. The Addendum required by Section 801.2 of the COUNTY Administrative Code is attached hereto as Appendix 11.

2.1.k. The ACA Health Insurance Providers Fee is attached hereto as Appendix 12.

2.1.l. The P4P Methodology is attached hereto as Appendix 13.

2.1.m. Appendices 1 through 13 are further referenced herein, and together all of the Appendices 1 through 13 are incorporated herein and made a part hereof (the "Appendices").

2.1.n. Rules of Construction. It is hereby being acknowledged and agreed that if there is any conflict between or among this Agreement and the Appendices and/or the terms of the DHS Agreement, the DHS Agreement shall govern as set forth in Section 1.1 of the DHS Agreement. Notwithstanding the foregoing, MBH and COUNTY acknowledge and agree that any time limits and other requirements herein that are more stringent than those in the DHS Agreement, shall not be in conflict with the DHS Agreement and shall control as to the terms and obligations of the Parties under this Agreement.

The terms of this Agreement shall control in the event of any conflict between this Agreement and any other agreement or document incorporated herein except the DHS Agreement. All references to the HealthChoices Program or to the terms "hereunder" or "herein" shall be construed as referring to this Agreement and all documents incorporated herein.

Without limiting the effect of the foregoing, the Parties understand and agree that this Agreement, and any amendment thereto, shall comply with any and all applicable regulations issued by DHS, and all other agencies or instrumentalities of the Commonwealth of Pennsylvania ("State Government Entities"), and shall further comply with any contracts or agreements between COUNTY and DHS or any State Government Entities that are applicable.

Any provision of this Agreement, which is governed by any federal or Commonwealth law or regulation that is amended or modified during the term of this Agreement, shall be deemed amended to conform with the law or regulation as amended or modified, pursuant to the terms of this Agreement, except that, if such change would materially and substantially alter the obligations of the Parties under this Agreement, any such provision shall be renegotiated by the Parties. The effect on any provision of this Agreement of a repealed federal or Commonwealth law or regulation shall be governed by Section 21.8 below.

All provisions herein that specify a period of time are computed by reference to calendar days, unless business days are specifically designated in a provision.

2.2 Amendment of Terms. COUNTY reserves the right to amend this Agreement to conform with terms of or any requirements arising from or with respect to the DHS Agreement and PSR, or any amendments or revisions thereto, or any other requirements of DHS, as and when implemented, subject to MBH's agreement, which will not be unreasonably withheld or delayed. The Parties acknowledge and agree, however, that the fact that any such amendment would result in a material increase in MBH's cost of providing services under this Agreement shall be a reasonable basis for withholding agreement by MBH, unless the Parties reach mutual written agreement on an appropriate reimbursement adjustment.

2.3 **Definitions.** All capitalized terms herein shall have the same meanings as set forth or referred to in the DHS Agreement and the PSR; unless otherwise defined or modified in this Agreement. The definition of terms herein applies to said terms in the singular and plural.

The following additional definitions shall apply:

“Affiliate” shall mean any corporation, partnership, sole proprietorship or other entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with a specified entity. For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the entity.

“Behavioral Health Services” shall mean those behavioral health services contemplated in the DHS Agreement and the PSR.

“Commonwealth” shall mean the Commonwealth of Pennsylvania.

“COUNTY Program” or “Program” shall mean COUNTY’s HealthChoices Behavioral Health Program.

“CMS Waiver” shall mean the waiver obtained by DHS from the federal Department of Health and Human Services, Center for Medicare and Medicaid Services (“CMS”) to implement the HealthChoices Program under Section 1915(b) of Title XIX of the Social Security Act.

“Department Payments” shall mean all DHS capitation payments to COUNTY made under the DHS Agreement, and as further defined in Section 8.1 below.

"Federal Government Entities" shall mean any department, agency or instrumentality of the federal government.

"HIPAA" shall be defined as the Health Insurance and Portability and Accountability Act of 1996, Pub.L.No.104-191, and all of its implementation rules and regulations.

"Initiative" shall mean the initiative payment MBH is eligible to receive under this Agreement, as described in Section 8 and Appendix 5.

"Insurance Department" and "Department of Health" shall refer to those entities as a Department of the Commonwealth.

"Material," "material impact," or "material adverse effect" shall mean any change, event, circumstance, fact or effects that is reasonably likely, in magnitude and scope, to have a substantial and adverse impact on the continued on-going business, assets, financial condition or operations of MBH taken as a whole or COUNTY to perform their respective obligations under this Agreement; provided, however, the following shall not be considered a "material," "material impact," or a "material adverse effect": (i) changes, events, circumstances, facts or effects that are caused by conditions affecting the United States and the Commonwealth economies as a whole; or (ii) changes, events, circumstances, facts or effects that are caused by conditions generally affecting the Commonwealth HealthChoices Program.

"Medical Costs" shall be defined as all costs for all State Plan and Supplemental Services and continuity of care services (described in the PSR and this Agreement), inclusive of reinsurance costs, as further defined in 8.1.a.1 and 8.1.a.2. below and in Appendix 4.

"Medical Costs Threshold" was defined as \$75.72 PMPM for the First Program Year (July 1, 2015 to June 30, 2016), and shall be defined as \$74.12 PMPM for the Second Program Year (July 1, 2016 to June 30, 2017), and as further described in Appendix 4. For future Program Years, MBH and COUNTY will mutually reasonably agree to the PMPM dollar amount for each such Program Year prior to the start of the applicable Program Year. In addition, the Medical Costs Threshold PMPM dollar amount is subject to adjustment each Program Year as set forth in Section 8.1.d.2.

"Member" shall mean a resident of COUNTY who is eligible for Medical Assistance benefits and whom DHS has enrolled in the HealthChoices Program.

"Net Department Payments" shall mean all DHS capitation payments to COUNTY less amounts designated as the Gross Receipts Tax payable by the COUNTY to the Commonwealth Department of Revenue, as required in the DHS Agreement, and as further described in Section 8.1 below.

"PMPM" shall mean Per Member Per Month.

"Program" shall mean the COUNTY HealthChoices Behavioral Health Program.

"Program Year" shall mean each twelve-month period under the Term of this Agreement, which commenced July 1, 2015, and/or such lesser period if this Agreement terminates for any reason prior to the completion of a full twelve-month period, or such longer period if the Agreement is extended beyond its initial thirty-six-month term as provided in Section 9 below. Each of the three Program Years under this Agreement shall also be referred to respectively as the "First Program Year" for the period July 1, 2015 through June 30, 2016; "Second Program Year" for the period July 1, 2016 through June 30, 2017; and "Third Program Year" for the period July 1, 2017 through June 30, 2018.

“Provider” or “Providers” shall mean providers of healthcare services (also encompassing Behavioral Health Services), including, but not limited to: provider groups and individual providers, whether physicians or non-physician practices, operating as corporations or any other legally permissible entity structure, who have been credentialed by and have entered into a contract (“Provider Agreement”) with MBH, or Subcontractors of MBH, to provide Behavioral Health Services to Members under the Program.

“Risk Attachment Point” for the First Program Year was defined as \$80.26 PMPM and shall be defined as \$79.27 PMPM for the Second Program Year. For subsequent Program Years under this Agreement, it will be agreed to as set forth in Section 8.1.c.7 below.

“State Plan and Supplemental Services” shall be as defined in the PSR. For each Program Year, such services shall be further described in Section 8 herein.

“Subcontractor” individually and “Subcontractors” collectively shall refer to all Providers and other subcontractors and agents or affiliates of MBH, and the employees and agents of each of them.

SECTION 3: RESPONSIBILITIES OF THE PARTIES

3.1 **Transfer of Certain Responsibilities: Basic Relationship.** COUNTY, as the Primary Contractor, is responsible for all services of the HealthChoices Program as described in the DHS Agreement and PSR (“Primary Contractor Services Responsibilities”). MBH agrees to assume all of the Primary Contractor Services Responsibilities as set forth in this Agreement.

3.1.a. MBH, its Subcontractors, and their respective employees, servants, agents and representatives, shall not be considered and shall not hold themselves out as the employees,

subcontractors, servants, agents or representatives of COUNTY, DHS, or the Commonwealth. MBH, its Subcontractors, and their respective employees, servants, agents and representatives, do not have the authority to bind DHS, the Commonwealth, or the COUNTY, and they shall not make any claim or demand for any right or privilege applicable to an officer or employee of the COUNTY, DHS, or the Commonwealth. In furtherance of the foregoing, MBH acknowledges that no workers' compensation or unemployment insurance coverage shall be provided by COUNTY or DHS to MBH or its Subcontractors for employees, servants, agents, and representatives of MBH or any of its Subcontractors. MBH shall be responsible for maintaining for itself, its employees, and for requiring that all of its Subcontractors, employees, servants, agents, and representatives who deliver services in connection with the COUNTY Program to maintain, during the Term, professional liability, general liability, workers' compensation and unemployment compensation insurance in such amounts as may be required by law or as otherwise required from time to time by COUNTY and/or DHS.

3.1.b. Inasmuch as MBH is entering into this Agreement as an "independent contractor," MBH acknowledges and agrees that it shall have full and sole responsibility for all taxes and withholdings of all of its employees and any other person or entity with which it is affiliated or with which it subcontracts. In the event that any employee or representative of MBH or any Subcontractor is deemed an employee of COUNTY or DHS by any taxing authority or other governmental agency, MBH agrees to indemnify COUNTY and DHS for any taxes, penalties or interest imposed upon COUNTY or DHS by such taxing authority or other governmental agency, relating to the HealthChoices Program, in accordance with Section 16 of this Agreement and Section 12.1 of the DHS Agreement.

3.2 Acceptance by MBH of Certain Responsibilities

3.2.a. Pursuant to this Agreement and also subject to the specific requirements set forth herein and in the Appendices hereto, MBH, with COUNTY's oversight, shall arrange for provision of Behavioral Health Services to MA recipients through qualified behavioral health Providers in accordance with the terms and conditions of the DHS Agreement, the PSR, and this Agreement.

3.2.b. In discharging its responsibilities under this Agreement, MBH shall comply fully with the terms and conditions of the DHS Agreement, the PSR, and this Agreement.

3.2.c. MBH acknowledges that this Agreement and any amendments hereto must be approved by DHS prior to implementation and MBH agrees that it shall discharge COUNTY's responsibilities and obligations under the DHS Agreement, consistent with the DHS Agreement. COUNTY acknowledges and agrees that the execution of this Agreement shall not diminish or alter COUNTY's responsibilities under the DHS Agreement. However, the foregoing shall not release, limit or discharge any liabilities or obligations of MBH or Guarantor to COUNTY as provided in this Agreement. MBH hereby accepts all financial risk, of any type or nature, as specifically assigned to and assumed by it herein, for the services provided as set forth in this Agreement and its Appendices.

3.2.d. MBH agrees to cause all its Subcontractors to comply fully with all applicable terms and conditions of the DHS Agreement, the PSR, and this Agreement and to be liable to and indemnify COUNTY and DHS in the event it or any Subcontractor fails to so comply as further provided in Section 16.1 below.

3.3 Management Information System Responsibilities.

3.3.a. MBH agrees to utilize and provide and have in operation as of the Effective Date and thereafter throughout the term and after termination of the Agreement as provided below, an established, state-of-the-art management information system, fully compliant with all the applicable requirements of HIPAA, as further described herein ("MIS"), in performing its obligations hereunder. The MIS shall include, without cost to COUNTY: (i) an electronic data transfer system capability in a file format acceptable to COUNTY that is compatible with DHS's and the COUNTY Program's information systems; (ii) immediately available on-line access to all relevant data by relevant COUNTY personnel, including arrangements for a fully functioning and capable communication line to facilitate said access; (iii) training of COUNTY and MBH users (and their agents who use the MIS) and (iv) data security and confidentiality elements in full compliance with COUNTY, DHS and all other legal and contractual requirements, including those set forth in the PSR, and as required by all applicable federal and Commonwealth laws and regulations. MBH represents and warrants that the computer network supporting the MIS shall be operational: (i) with enterprise-wide availability, defined as 24 hours per day, 7 days per week, 365 days per year (the "Scheduled Uptime") and (ii) at the level of functionality as described herein and in the PSR for 95% of its Scheduled Uptime during the term of this Agreement and for any period post termination of this Agreement during which MBH has any responsibilities under this Agreement, excluding such time as is necessary for scheduled computer downtime required for routine maintenance (such maintenance to be performed other than during working hours insofar as possible).

3.3.b. MBH's MIS will permit prompt retrieval of relevant records, including records relating to individual Members. MBH's MIS also will permit development of statutory reports

required by the DHS Agreement, or other formalized or informal reports requested by COUNTY, within the time frames set forth in Sections 17.1 and 17.5 below. MBH represents and warrants that by license or otherwise, it has full and unfettered ability, with no restrictions or limitations whatsoever, to perform and provide all MIS functions herein, including those set forth here and elsewhere in this Agreement, the Appendices, and incorporated documents.

3.3.c. MBH, upon receipt of eligibility data files from DHS, will perform feeds, processes, edits, and create error reports on each file according to scheduled import schedule. The daily and monthly eligibility data files and quarterly Third Party Liability file will be fed into client membership record in MBH's production system, which is called "CAPS."

3.3.d. MBH agrees to give COUNTY at least ten (10) days' prior written notification (the "Notice Period") of any proposed or expected change in or circumstance arising with the MIS, which may have material impact on any aspect of performance under this Agreement. In the event that the expected change will have a material negative impact on the performance of MIS, MBH will deliver within the Notice Period a written corrective action plan acceptable in form and substance to COUNTY.

3.3.e. Events with material impact shall include, without limitation, any change or threatened change respecting MBH's and/or COUNTY's legal or contractual ability to use the MIS for all functions herein, or any proposed material change in the MIS system itself (in which case COUNTY shall have a right of review and consultation before a new or revised MIS system is implemented). In the case of any material impact or other circumstance, which arises such that the above notice within the Notice Period is not possible, MBH will notify COUNTY at its earliest knowledge of the change or circumstance. MBH in any such event will provide all

relevant data and adequate resources to allow COUNTY to assess a proposed change or address one which arises suddenly.

3.3.f. MBH agrees that no MIS system conversion or material change of similar magnitude to the MIS system, which may have material impact on any aspect of performance under this Agreement, will be made without prior written approval of the COUNTY, which approval shall not be unreasonably withheld.

3.3.g. MBH agrees to provide COUNTY with an electronic data transfer necessary to monitor the Agreement as well as the technical supporting documentation, including but not limited to file structures, data dictionaries, process flows and entity relationship diagrams (collectively, the "Monitor Data"), ten (10) business days from the date of a COUNTY request (see also Sections 10.3.C and 15.5 below). In addition, MBH shall provide all data required and requested by COUNTY in means, format, and content reasonably acceptable to COUNTY.

3.4 **Employment Restrictions.** MBH agrees not to recruit, offer employment to, or employ any COUNTY employee, during the term of this Agreement, including any extension hereto, and for a twenty-four (24) month period after the termination of this Agreement, unless otherwise approved in writing by the County Executive of COUNTY. This provision will not apply to public advertisements of openings/positions.

3.5 **Provider Contracting and Oversight.** The Parties agree that MBH shall develop various contractual arrangements with Providers for the Program, including, but not limited, to fee for services arrangements, capitation and other alternative payment arrangements ("APAs"), and performance-based contracts (defined above as the Provider Agreements). All proposed APAs shall be reviewed and approved by COUNTY and DHS prior to implantation, and shall conform

to all applicable laws and regulations, and to the Provider selection, credentialing, delegation and other requirements of the DHS Agreement. MBH shall be responsible to develop, create, and manage a Provider network for the Program and the delivery of the Behavioral Health Services in accordance with the terms of this Agreement, the DHS Agreement, and the PSR. MBH warrants and represents to COUNTY that all Providers, while performing any services under the Provider Agreements, will be properly licensed as required by law, in good standing with all licensing boards, and fully and properly credentialed by MBH. MBH shall also credential all individual Providers, including those working for or with a Provider entity, either as an employee, independent contractor, or otherwise.

3.6 Program Documents. MBH, working with COUNTY, shall develop and maintain the Program documents listed below:

- Quality Management Program Plan;
- Member Handbook;
- Provider Manual;
- General Information to Members document;
- Compliance Plan addressing fraud and abuse; and
- Behavioral Health Managed Care Organization policies.

In addition, MBH shall develop a Compliance Plan guidance, directives, and oversight policies for all Providers and Subcontractors.

3.7 Compliance with Program Evaluation Performance Survey. MBH acknowledges that it must comply with DHS's Program Evaluation Performance Survey ("PEPS") and resulting activities, including, but not limited to, Program Improvement Plans ("PIPs"). In addition, Cost Driver Analysis, Root Cause Analysis and Quality Improvement Activities, as required by DHS and Mercer Government Human Services Consulting, DHS's consultant, is a condition of participation in the HealthChoices Program and MBH agrees to comply with PEPS, including assistance in preparation for and during on-site reviews by DHS and preparation of and timely implementation of corrective action plans, contingent upon COUNTY review and approval, for requirements deemed partially met or not met by DHS.

3.8 MBH will maintain procedures for immediate response and appropriate reporting of any suspected or substantiated fraud or abuse by its Providers or any other Subcontractors in accordance with the provisions of the PSR. Such reporting responsibilities shall include prompt notice to the COUNTY.

3.9 MBH agrees to ensure in the Provider Agreements that Providers comply with Medical Assistance regulations, and that Providers understand and agree that they are subject to enforcement actions directly initiated by DHS under its regulations, including termination and restitution actions, among others, in addition to the enforcement of rights and remedies available to the COUNTY and MBH.

3.10 MBH shall prepare and maintain an annual plan of orientation and ongoing training for network Providers, which plan shall be subject to the prior review and approval of COUNTY (the "Annual Plan"). The Annual Plan for the First Program Year was presented to the COUNTY for its approval no later than September 1, 2015. Any revisions to the Annual Plan after the First

Program Year shall be submitted to the COUNTY on or before September 1st prior to the start of the Second Program Year, Third Program Year, or other future Program Years, respectively. The Annual Plan training shall include, but not be limited to: CASSP and CAP principles and BDAP treatment philosophy; priority and Special Needs Population issues such as children in substitute care and/or juvenile probations; Prior Authorization of services; continuity of care; payment procedures; Complaint and Grievance rights and procedures; coordination requirements with PHSS and PCPs; coordination requirements with COUNTY behavioral health and human services systems; current clinical best practice; and community service resources and advocacy organizations.

3.11 Pennsylvania Client Placement Criteria. Where the single county authority for drug and alcohol services, or its designee, has conducted a full assessment for drug and/or alcohol addiction utilizing the Pennsylvania Client Placement Criteria, MBH shall provide coverage for the level of care and duration of stay recommended therein. Prior to making any decision reducing the level of care or length of stay, or coverage thereof, MBH must obtain the specific written approval of the COUNTY. Where the referral to, or participation in, treatment was part of a criminal sentence, or a juvenile adjudication, MBH shall also, in an evidentiary hearing before the sentencing judge, be required to establish by a preponderance of the evidence that any reduction in the level of care or length of stay is clinically appropriate under the Pennsylvania Client Placement Criteria.

SECTION 4: APPLICABLE LAWS AND REGULATIONS

4.1 Certification and Licensing.

4.1.a. During the Term, MBH agrees to, and shall include in all its Provider Agreements provisions that require the Providers to: (a) comply with all applicable federal and Commonwealth laws and regulations, including certification and licensing laws and regulations (as may be amended from time to time); (b) comply with all federal and Commonwealth fraud and abuse laws, regulations, and requirements; (c) perform services in accordance with the standard of care to which each entity or individual is held at law; (d) adhere to all applicable Behavioral Health Services Program regulations and policy directives, unless a waiver is granted by DHS; and (e) adhere to all of the compliance terms and conditions as set forth in the PSR. MBH agrees that it has enrolled in the MA Program and will require all Providers for the COUNTY's Program to enroll in the MA Program. MBH agrees not to employ or engage, or to permit any of its Subcontractors to employ or engage the services of any Provider who is ineligible to participate in the MA Program. MBH will also ensure that all Providers are properly licensed and credentialed and will confirm through the Provider self-reporting that all individuals employed or contracted by a Provider who are required to be licensed are properly licensed and credentialed if they provide any Behavioral Health Services to the Program either directly or through a Provider.

4.1.b. MBH will require in all its Provider Agreements that Providers must prepare, maintain and implement written compliance plans and procedures, which shall include regularly scheduled training programs, addressing all applicable federal and Commonwealth fraud and abuse laws and regulations, and as further described in the PSR, and all privacy laws and

regulations. During any on-site Provider audits, including, but not limited to, quality audits, FWA audits/reviews, and credentialing/re-credentialing site visits, MBH will document the existence and presence on-site of a Provider compliance plan and required training. MBH also agrees to provide COUNTY with any Provider's compliance plan and supporting documents and materials at any time as requested by the COUNTY.

4.2 Specific to MA Program.

4.2.a. MBH agrees to participate in the MA Program and to arrange for the provision of those Behavioral Health Services included in the DHS Agreement and the PSR, and to comply fully with all federal and Commonwealth laws generally and specifically governing participation in the MA Program, subject to any applicable waivers granted by the Commonwealth or the federal Centers for Medicare and Medicaid Services ("CMS"). MBH agrees it shall comply fully with all applicable laws and regulations promulgated under such laws, including, but not limited to, 42 U.S.C.A., Subsection 1396 *et seq.*; the Act of June 13, 1967, P.L. 31, No. 21, as amended (62 P.S., Subsection 101 *et seq.*); Parts 431 through 481 of Title 42 and Parts 74 (Appendix G), 80, and 84 of Title 45 of the Code of Federal Regulations, and all applicable regulations of the Departments of Health and Insurance and DHS. MBH further agrees that it shall cause each of its Subcontractors to comply fully with this Section.

4.2.b. MBH agrees to comply fully with the requirements of the CMS Waiver, and to require corresponding compliance by all its Subcontractors and Providers.

4.3 General Laws and Regulations.

4.3.a. MBH shall comply fully with Titles VI and VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Pennsylvania Human Relations Act of 1955, as amended; the Americans with Disabilities Act of 1990; and Title 45, Code of Federal Regulations ("CFR"), Part 74 (Appendix A), and Parts 160, 162 and 164.

4.3.b. MBH also shall comply fully with the Commonwealth's Contract Compliance Regulations set forth at 16 Pa. Code §49.101.

4.3.c. MBH also shall comply fully with all applicable laws, regulations and policies of the Department of Health, Insurance Department, and DHS, as currently in effect and as may be amended.

4.3.d. MBH further agrees that it shall cause each of its Subcontractors to comply fully with this Section 4.3, including compliance with all applicable laws, policies, and regulations and with all other terms and provisions of this Agreement and the DHS Agreement.

4.4 Further Limitations on DHS's and COUNTY's Obligations to MBH.

4.4.a. MBH acknowledges that obligations of DHS under the DHS Agreement are limited and subject to the availability of funds appropriated by the General Assembly of the Commonwealth, and certified by the Comptroller of DHS. MBH agrees that this limitation will not discharge any of MBH's obligations under the Agreement, except as otherwise provided herein. MBH further acknowledges that the COUNTY's fiscal obligations, as set forth in Section 8, are limited and subject to the receipt of funds from DHS in a timely manner, and

neither MBH, or any person or entity claiming by, through or under MBH (including, without limitation, any Subcontractor), or any other person or entity, shall have any claim or cause of action against COUNTY under or with respect to this Agreement or the matters encompassed herein (including, without limitation, claims for penalties, interest or other charges) except to the extent that funds actually are received by COUNTY from DHS as aforesaid.

4.4.b. In the event that MBH provides services under this Agreement for which DHS and COUNTY are unable to make timely payment due to unavailability of funds, COUNTY agrees to make all such missed payments when the funds become available and are actually received by COUNTY from DHS.

SECTION 5: ADDITIONAL REPRESENTATIONS AND WARRANTIES OF MBH

In addition to other representations and warranties of MBH herein, including those respecting the MIS as set forth in Section 3.2 and its subsections herein, MBH represents and warrants as follows:

5.1 **Accuracy of MBH Data.** MBH further represents and warrants that all of the information submitted to the COUNTY by MBH (including, but not limited to, the MBH Proposal) and submitted through and with the COUNTY to DHS, in any form or manner or for any purpose, is and will be true, accurate and complete in all material respects as of the date submitted. MBH agrees that such representations shall be continuing ones, and that it is MBH's obligation to notify COUNTY within five (5) days, in writing, of any material fact, event or condition that arises or is discovered after the date of this Agreement, which affects the truth, accuracy or completeness of such representations.

5.2 **Disclosure of Interests; Conflicts of Interest.** MBH and each of its Affiliates and Related Parties agree to disclose to COUNTY in writing, as of the Effective Date of this Agreement, the name of any person or entity having a direct or indirect ownership or control interest of five percent (5%) or more in MBH or the Affiliate or Related Party, and whether any of the persons named is related to another as spouse, parent, child or sibling. MBH and each of its Affiliates and Related Parties also shall inform COUNTY promptly, in writing, of any change in or addition to its ownership or control. Such disclosure shall be made within fifty (50) days of the change or addition. MBH and each of its Affiliates and Related Parties acknowledge and agree that any failure to comply with this provision, or the making of any misrepresentation or failure to disclose, which would cause it to be and which does preclude it from participation in the MA Program, shall entitle COUNTY to recover all payments made to MBH subsequent to the date of the preclusion from participation. MBH further warrants that it and its Affiliates and Related Parties have no interest, and will not acquire any interest, direct or indirect, which would in any way restrict MBH's ability to perform any of its responsibilities hereunder, and agrees to disclose promptly to COUNTY any such conflict hereafter threatened or arising. MBH further represents that no member of its Board of Directors or equivalent authorized governing body, any of its officers, or employees who have any management role with the COUNTY Program, has such an adverse interest, or will during the Term of this Agreement.

5.3 **Disclosure of Change in Circumstances.** MBH agrees to report in writing to COUNTY, as well as to DHS and the Department of Health and Insurance Department, within seven (7) days of its actual knowledge of same (except for those disclosures required under sections 5.3.A and 5.3.B, which shall be made immediately), concerning any change in circumstances that may have a material adverse effect upon its, or Guarantor's financial or operational conditions. Such

reporting shall be triggered by and include, by way of example and without limitation, the following events, any of which shall be presumed to be material and adverse:

5.3.a. Suspension or debarment of MBH, the Guarantor, or any Affiliate or Related Party of either of them, by any state or the federal government;

5.3.b. Notice of suspension or debarment or notice of an intent to suspend/debar issued by any state or the federal government to MBH, the Guarantor, or any Affiliate or Related Party of either of them;

5.3.c. Any lawsuits, investigations, audits or reviews by any Federal Government Entities, State Government Entities, the Commonwealth, any county other than COUNTY, or any other state, involving MBH, the Guarantor, or any Affiliate or Related Party of either of them, which could have a material impact upon any of the aforesaid entities' financial condition or ability to perform under this Agreement; and

5.3.d. Any other change in circumstances involving MBH, the Guarantor, or any Affiliate or Related Party of either of them, that is reasonably likely, in magnitude and scope, to have a material adverse effect on the financial condition or operations of, or the ability to provide behavioral health services by MBH, the Guarantor, or any Affiliate or Related Party of either of them, which could affect the ability of the aforesaid entities to perform their respective obligations under this Agreement. Such notice shall be triggered by the types of events deemed to be material ("Material Events") within the meaning of Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Rule"), as such Rule may be amended from time to time, and MBH shall provide notice of any such Material Events in a manner consistent with the Rule.

SECTION 6: ON-SITE REVIEW

6.1. **Compliance with On-Site Review.** MBH agrees that compliance with the On-Site Review, as set forth in Section 5 of the DHS Agreement, is a condition of participation in the HealthChoices Program and agrees to at all times to support, assist, and cooperate with COUNTY in complying with such On-Site Review as required by DHS, including but not limited to implementing any corrective actions and other on-going On-Site Review requirements (as defined in the PSR and in the DHS Agreement). MBH agrees to comply with and/or discharge requirements, conditions or sanctions, if any, imposed by DHS from time to time pursuant to Sections 5.2-B and 14 of the DHS Agreement, including submission and implementation of any corrective action plan.

SECTION 7: RECOGNITION AND ACCEPTANCE BY MBH OF CERTAIN OBLIGATIONS OF COUNTY

7.1 MBH agrees to comply fully, and to cause its Subcontractors to comply fully, with the terms and conditions set forth in the PSR. MBH acknowledges and agrees to cooperate with COUNTY in fulfilling COUNTY's obligations to DHS as set forth in the DHS Agreement, including, but not limited to:

7.1.a.1. Physical Health Services System ("PHSS")

MBH agrees both itself to and to cause its Providers and Subcontractors to maintain letter agreements with COUNTY'S Program Area Physical Health Service System ("PHSS"), as specified by DHS. In the event of a dispute between MBH and any PHSS contractor under a contract with DHS, the parties shall resolve the dispute consistent with the applicable letter of agreement.

7.1.a.2. Binding Arbitration. MBH agrees to submit to a binding independent arbitration process, at no expense to COUNTY, in the event of a dispute between COUNTY or MBH and any person or entity providing physical health services to the HealthChoices Program ("Physical Health Contractor") under contract with DHS, as provided in the PSR and specified Coordination Agreements among COUNTY, MBH and the Physical Health Contractors. MBH, in its Member services enrollment procedures, as part of the enrollment assistance programs, shall make no references to Physical Health Contractors, and references to HealthChoices Behavioral Health Services Providers which serve as Physical Health Contractors shall designate only their Behavioral Health Services.

7.1.b. Licensure. MBH agrees to comply with the requirements regarding licensure as a BH-MCO, which are set forth in the PSR and shall possess and maintain a current HMO or risk-bearing PPO license (as defined in 31 Pa. Code § 152.2) in the Commonwealth and be otherwise acceptable to DHS and the Department of Health and Insurance Department, throughout the Term.

7.1.c. External Quality Review and Member Surveys

7.1.c.1. MBH, with COUNTY, shall cooperate with DHS's independent external quality review organization.

7.1.c.2. MBH, with COUNTY, will implement procedures satisfactory to COUNTY and DHS to routinely assess Member satisfaction. These procedures shall provide, but not be limited to, an annual survey of Member satisfaction, which includes face-to-face structured and unstructured interviews with Members and their families. Members and their families shall participate in the design of the survey process, the review of findings, and the determination of

quality improvements to be undertaken based on the findings. MBH will have mechanisms that ensure that Member comments concerning Provider performance can be tracked in the aggregate and issued as a component of Provider profiling. In addition, MBH will cooperate with DHS's independent consumer and family satisfaction assessments. MBH also will cause each of its Subcontractors to comply fully with this Section.

7.1.c.3 MBH shall develop and maintain written policies and procedures regarding the care and the transition of Members entitled to care and treatment under this Agreement (the "Plan"). Protocols for authorization, denial of authorization and transfer to alternative facilities or Providers must be included in the Plan. The Plan also must address approval for services and inclusion of providers in the network as required for continuity of care of Members in those instances in which disruption of services would have a negative impact on a Member. MBH Member enrollment and transition procedures shall address assignment of a "point of contract" (which may be by providing a toll-free telephone contact number) for each Member in the Plan, to explain available services and assist the Member in achieving access to such services.

7.1.d. Reinvestment Funds Plan. Promptly after the start of this Agreement, MBH shall cooperate with COUNTY in developing Reinvestment Funds plans consistent with the PSR, and of each subsequent year of this Agreement if renewed. The amount of Reinvestment Funds available at the end of each year shall be determined according to the provisions set forth at Section 8 of this Agreement and pursuant to the DHS Agreement.

7.1.e. Involuntary Commitment. MBH shall ensure that whenever a Member is subject to involuntary examination and treatment in a HealthChoices county other than COUNTY, MBH shall be responsible for the cost of examination and treatment provided in such other county, and

MBH shall abide by the examination and treatment decisions made in such other county.

Whenever a Member residing in a HealthChoices county other than COUNTY is made subject to involuntary examination and treatment in COUNTY, MBH will reasonably cooperate with the other county or the behavioral health managed care organization of the other county to the extent of MBH's knowledge. MBH shall honor any resultant involuntary commitment and perform continued stay review as appropriate.

7.1.f. MBH shall reasonably cooperate with and reasonably assist COUNTY in complying with the DHS Agreement to meet and maintain COUNTY's commitment to Small Disadvantaged Businesses and shall cause its Providers and Subcontractors to assist in such program.

7.1.g. Financial Reporting. MBH will follow established procedures for accurately recording, tracking and monitoring administrative expenses, Medical Costs, reinsurance costs, and any other costs of the State-Plan and Supplemental Services for the COUNTY Program, separate from such expenses for any other HealthChoices Program. MBH shall provide to the COUNTY (i) the financial reports required by this Agreement and the PSR; (ii) supplemental reports reasonably necessary to clarify or explain such required financial reports; and (iii) any financial reports necessary in connection with the annual, independent audit of this Agreement conducted by COUNTY's auditors. COUNTY has the right to audit MBH's financial reports at any time.

7.1.h. Post-Termination Audit. The provisions of Section 7.1.g. relating to the COUNTY's audit rights and reviews shall survive termination of this Agreement for the period of time that MBH is required to submit to such audits and reviews as required by applicable law.

7.1.i. Financial Procedures. The COUNTY and MBH shall use the following procedures for the funding and processing of claims for State Plan and Supplemental Services below the Risk Attachment Point ("Covered Claims"). MBH shall establish a zero balance account for the purposes of paying Covered Claims (the "Magellan Claims Account"). The Magellan Claims Account shall be linked to a COUNTY account (the "County Claims Account") as set forth below. Prior to each provider check run or electronic fund transfer ("EFT"), which normally occurs on Fridays, MBH shall send to the COUNTY on or before Friday afternoon a check register or EFT list, in a mutually agreeable format, showing the aggregate amount of the checks or EFTs that MBH intends to pay, together with a list of the payers and the dollar amounts. Unless the COUNTY objects by 12:00 noon EST on that Friday to the payment of any or all of the checks or EFTs, MBH shall write checks or transact EFTs for Covered Claims from the Magellan Claims Account. As such checks are presented to the bank for payment or the EFTs are processed, the County Claims Account shall automatically fund the Magellan Claims Account to cover the checks or EFTs presented. An outline of specific banking procedures as well as other exchanges of information is set forth in Appendix 4, "Financial Procedures," attached hereto and incorporated herein by this reference.

SECTION 8: FISCAL RELATIONSHIP

8.1. Payments for Services. MBH acknowledges that the obligation of DHS to make payments to COUNTY is limited to capitation payments and any other payments provided by the DHS Agreement as set forth therein (previously defined in Section 2.3 as the "Department Payments"). The Department Payments less the Gross Receipt Tax payments made by the COUNTY to the Department of Revenue per the DHS Agreement, are the "Net Department Payments" and the Parties agree that the COUNTY shall have the unfettered ability to retain and

utilize the specified portion of Department Payments necessary to pay the required Gross Receipt Tax. In addition, the Parties agree that the Department Payments to the Primary Contractor to cover the federal tax liability, known as the "health insurance providers fee" (or HIPF), plus the federal and state income tax liabilities on such capitation rate increases as required under the provisions of the PSR, shall be set forth in Appendix 12, which is attached hereto and incorporated herein.

8.1.a. Provider Payments; Capitation Payments.

8.1.a.1 MBH shall make timely and accurate payments to Providers.

8.1.a.2. MBH agrees to provide the State Plan and Supplemental Services and Administrative Services as described herein and in the DHS Agreement and the PSR, as well as other necessary Supplemental Services as previously agreed to by the Parties and approved by DHS.

8.1.a.3. MBH agrees to accept full risk for providing all of its Administrative Services (including staff, office space, equipment, and logistical support) and for such of the Medical Costs in excess of the "Risk Attachment Point," as set forth in Appendix 4.

8.1.b. Payments to MBH.

8.1.b.1. Subject to timely receipt of the Department Payments and further subject to COUNTY'S right to withhold administrative payments pursuant to Section 18 hereto (Sanctions), and the COUNTY's Gross Receipts Tax, COUNTY agrees to pay MBH an administrative fee ("Administrative Fee") of Six Dollars and ninety-two Cents (\$6.92 PMPM) for the First Program Year of the Initial Term, and Six Dollars and ninety-two Cents (\$6.92) PMPM for the Second Program Year and Third Program Year. The Administrative Fee shall be

calculated by COUNTY, by using the Member Month Equivalents ("MMEs") as provided to COUNTY by DHS on the monthly capitation data file, times the \$6.92 PMPM fee for each Program Year, during the Term of this Agreement. In exchange for the Administrative Fee, MBH agrees to provide the State Plan and Supplemental Services described in this Agreement, the Department Agreement, and the PSR. MBH shall be responsible for the cost of the State Plan and Supplemental Services in excess of the Risk Attachment Point. COUNTY shall be responsible for the cost of State Plan and Supplemental Services up to the Risk Attachment Point.

8.1.b.2. During each Program Year MBH will be eligible for an initiative payment ("Initiative Payment") only if audited paid claims for State Plan and Supplemental Services do not exceed the Medical Costs Threshold. MBH will be eligible for the initiative Payment on a formula basis and to the maximum as set forth below, only in the event that the actual costs of paid claims for State Plan and Supplemental Services, as audited, are below the Medical Costs Threshold, up to a maximum initiative fund of \$600,000 (which is the equivalent to the actual Medical Costs being \$74.12 PMPM) and herein after referred to as the "Initiative Fund," and, in part, to the extent, as reasonably determined by COUNTY, that MBH meets the Performance Initiative Requirement(s) set forth in the Performance Initiative, in Appendix 5, attached hereto, hereinafter referred to as the "Performance Initiatives"). The right to earn any Initiative Payment hereunder from the Initiative Fund is strictly conditioned upon the audited paid claims for State Plan and Supplemental Services not exceeding the Medical Costs Threshold applicable for the Program Year. If the foregoing condition has been met for a Program Year, MBH shall receive an Initiative Payment of \$400,000 as a result of the audited claims being equal to or below the Medical Costs Threshold, and up to \$200,000, to the extent MBH meets the

Performance Initiative as set forth in Section 8.5 herein (the percentage worth of each of the Performance Initiative specified in Appendix 5 that MBH meets the requirements of will be aggregated and paid to MBH). If the audited paid claims for State Plan and Supplemental Services exceed the Medical Costs Threshold applicable for the Program Year, then MBH shall receive no Initiative Payment whatsoever.

8.1.b.3. As set forth in Appendix E of the PSR, DHS is implementing a Pay for Performance ("P4P") Program as part of an Integrated Care Plan Program ("ICP Program"). DHS shall allocate funding for payment of performance incentives as set forth in Appendix E of the PSR. In order to be eligible for payments under the ICP Program, MBH must meet the requirements as set forth in Appendix E of the Revised PSR. Within 60 days of the implementation of the ICP Program, COUNTY will meet with MBH to discuss the development and implementation of a shared savings methodology, which shall include a methodology for allocating any funds received by COUNTY for the payment of performance incentives by DHS (the "P4P Methodology"). The P4P Methodology shall be submitted for review and approval to DHS's Office of Mental Health and Substance Abuse Services ("OMHSAS"). Upon receipt of OMHSAS's approval, the P4P Methodology shall be attached hereto as Appendix 13 and incorporated herein.

8.1.c. Other Terms Respecting Initiative Payments.

8.1.c.1. Initiative Payments (if any) shall be completed one hundred eighty (180) or less days after the end of the given Program Year (or at such later time as the Parties agree is reasonably necessary to assure that outstanding claims have been submitted).

8.1.c.2. Any net amounts of the Initiative Payment remaining at the end of a Program Year and properly not paid to MBH as an Initiative Payment or used for the payment of State

Plan or Supplemental Services as contemplated herein, shall be retained by COUNTY for its administrative costs, and/or for reinvestment pursuant to a DHS approved reinvestment plan, and/or for the COUNTY's Risk and Contingency as defined in the PSR, or for a County HealthChoices restricted reserve (as approved by DHS.)

8.1.c.3. MBH must process and pay claims for Providers on a timely basis for covered services, even in the event that COUNTY has not paid MBH in the circumstances outlined in Section 8.1.A.1 above.

8.1.c.4. MBH shall adhere to all financial reporting and audit requirements as required by DHS. MBH shall rely on GAAP, AICPA or government accounting standards, and applicable Pennsylvania Department of Insurance reporting requirements, in preparation of all financial reporting documents and in the annual audit. (See also Section 17 below.)

8.1.c.5. MBH shall cooperate with COUNTY in calculating, compiling, documenting, interpreting and presenting any data to support rate negotiations and adjustments as contemplated by the DHS Department Agreement, including but not limited to, the rate adjustment circumstances set forth therein.

8.1.c.6. MBH and COUNTY shall establish and thereafter at least annually shall review and as necessary adjust (by May 1 of in the event of any subsequent Program Year after the Term), further procedures and recordkeeping for accurately tracking State Plan and Supplemental Services transactions, including medical management elements of State Plan and Supplemental Services. Nothing in this sub-section shall require MBH to disclose salaries of individual employees. MBH shall be permitted to retain any portion of the Administrative Fee not spent on medical management or general administration nor required to cover the costs of State Plan and Supplemental Services above the Risk Attachment Point.

8.1.c.7. On or before March 15 prior to the start of any Program Years after the First Program Year, the Parties shall begin the process of mutually determining in good faith and commercially reasonable fairness, the Risk Attachment Point and the maximum Initiative Payments for any succeeding Program Years.

8.1.c.8. All financial data required by this Agreement, the DHS Agreement and the PSR shall be provided to COUNTY by MBH on a timely basis, and not less than fifteen (15) days prior to the date such data must be provided to DHS and shall be subject to monthly review and certification as necessary by COUNTY. At a minimum, MBH shall submit reports to the COUNTY in compliance with the DHS Agreement, the PSR, and COUNTY financial policies. In addition to the data reports set forth in Appendix 6, MBH shall submit financial reports as requested by COUNTY, which are timely and in sufficient detail to determine achievement of the report submission dates required by DHS. MBH reports may be audited by COUNTY's own independent auditor at COUNTY's expense provided COUNTY's auditor enters into a confidentiality agreement reasonably acceptable to MBH. Any failure by MBH to provide timely or complete data hereunder is subject to the sanctions set forth in Section 18.

8.1.d. Adjustments.

8.1.d.1. Payments by COUNTY to MBH, will be adjusted by COUNTY should DHS exercise any of its rights, pursuant to the DHS Agreement, directly affecting COUNTY's ability to pay, including without limitation DHS's right therein to adjust rates, to delay certain capitation payments, or to recover or retroactively adjust capitation payments.

8.1.d.2. The Net Department Payments is a projected amount based on assumptions prior to each Program Year. For the First Program Year, the projected amount was \$85.62 PMPM ("2015/2016 Projected Net DHS Payment"). For the Second Program Year, the projected amount

is \$84.59 PMPM ("2016/2017 Projected Net DHS Payment"). MBH and COUNTY have used the 2015/2016 Projected Net DHS Payment and the 2016/2017 Projected Net DHS Payment at arriving at their calculations for the Risk Attachment Point and Medical Costs Threshold for the First and Second Program Years. If the actual Net Department Payment at the end of the First Program Year varies by more than one half of one percent (0.5%) plus or minus from this estimate, then the Risk Attachment will be adjusted to ninety-three and seventy-four one hundredths percent (93.74%) of the actual Net Department Payments for the Program Year. If the actual Net Department Payment at the end of the Second Program Year varies by more than one half of one percent (0.5%) plus or minus from this estimate, then the Risk Attachment Point will be adjusted to ninety-three and seventy-two one hundredths percent (93.72%) of the actual Net Department Payments for the Program Year (each, an "Adjusted Risk Attachment Point").

The same concept will apply to any subsequent Program Years. Whatever the projected amount is, based on the assumptions of the Net Department Payments for each Program Year, the Risk Attachment Point will be based on a percent of the projected Net Department Payments amount and the Risk Attachment Point will be adjusted at the end of each Program Year based on the actual Net Department Payments each Program Year times the percent used to establish the Risk Attachment Point based on the projected amount.

For the First Program Year, if the Risk Attachment Point is adjusted as set forth above, the Medical Costs Threshold will be also be adjusted to eighty eight and forty-four one hundredths percent (88.44%) of the actual Net Department Payments for the First Program Year. For the Second Program Year, if the Risk Attachment Point is adjusted as set forth above, the Medical Costs Threshold will be also be adjusted to eighty eight and forty-one one hundredths percent (88.41%) of the actual Net Department Payments for the Second Program Year.

Likewise, there will be an equitable and proportional adjustment to the Medical Costs Threshold in any subsequent Program Years if the Risk Attachment Point is adjusted for the subsequent Program Year.

8.1.e. Financial Responsibility for Dual Eligibles.

As further set forth in the PSR, State Plan Services include Medicare deductibles and coinsurance amounts relating to any Medicare covered service for qualified Medicare beneficiaries up to the contracted MBH rate for the service of network Providers. If no contracted rate exists or if the Provider of the services is an out-of-network Provider, MBH must pay deductibles and coinsurance up to the applicable MA fee schedule amount for the service. For Medicare services that are not covered by either MA or MBH, MBH must pay cost-sharing to the extent that the payment made by MBH does not exceed 80% of the Medicare-approved amount. In the event that payment for a service is not covered by Medicare, MBH may require prior authorization as a condition of payment for the service.

8.1.f. Insolvency Protection.

8.1.f.1. MBH agrees to comply with the requirements set forth in the PSR pertaining to DHS's insolvency arrangement requirement (the "Insolvency Arrangement") during the term of this Agreement. MBH shall meet the Insolvency Arrangement by providing protection in the following manner:

8.1.f.1.a. The Guaranty of Magellan Health, Inc., attached hereto as Appendix 10, stands behind the performance of MBH as set forth therein.

8.1.f.1.b. Attached herewith as Appendix 7 is the 2016 letter of DHS's Terry Mardis, affirming COUNTY's compliance with DHS's "solvency" requirements for the Second Program Year.

8.1.f.1.c. MBH represents that it is and shall remain in compliance with the Insurance Department Risk Based Capital requirements.

8.1.f.1.d. MBH represents to COUNTY that MBH has not guaranteed and will not guarantee any of the debts, obligations, costs or expenses of its Guarantor or any other Affiliate or Related Party or Subcontractor.

8.1.f.1.e. Except as required under Sections 4.4.a., 4.4.b., 8.1.a, and 8.1.a.2 herein, under no circumstance shall MBH's collateral or security be used to fund the cost of State Plan and Supplemental Services below the Risk Attachment Point.

8.1.g. Restitution of Funds. Any provision of this Agreement to the contrary notwithstanding, MBH agrees to return to COUNTY within ten (10) days of COUNTY's demand therefore, any funds previously paid by COUNTY to MBH (including, but not limited to, any amounts paid by MBH to Providers and Subcontractors), which COUNTY subsequently is required to return to DHS pursuant to the terms of the DHS Agreement as a result of an error or omission or a knowing and willful violation of this Agreement by MBH (as such funds are identified by COUNTY), and MBH further shall have no claim against COUNTY for any such returned funds except to the extent that such funds ultimately are returned to COUNTY by DHS; and further MBH shall be responsible for all fines, penalties, and damages resulting from MBH's performance (or failure to perform) of MBH's obligations under this Agreement, and/or assessed

against COUNTY under this Agreement as a result of an error or omission or a knowing and willful violation of this Agreement by MBH.

8.2. Adjudication of claims by MBH.

8.2.a. General. MBH shall ensure timely and accurate adjudication of Providers' claims. In addition to any federal requirements or standards included in Provider agreements or subcontracts, MBH shall adjudicate fee-for-service claims consistent with the requirements below.

8.2.b. Claims Adjudication Requirements.

8.2.b.1. Adjudication Timeliness Standards:

8.2.b.1.a. 90% of clean claims must be adjudicated within 30 days.

8.2.b.1.b. 100% of clean claims must be adjudicated within 45 days.

8.2.b.1.c. 100% of all claims must be adjudicated within 90 days.

8.2.b.2. "Adjudicated" means to have paid or rejected a claim. A "clean claim" is a claim that can be processed without obtaining additional information from the Provider or from a third party. It includes a claim with errors originating in MBH's claims processing computer system, and those originating from human errors. It does not include a claim under review for medical necessity, or a claim that is from a Provider who is under investigation by Federal Government Entities, State Government Entities, MBH and/or COUNTY for fraud or abuse. However, if the Provider is under investigation by MBH, COUNTY and DHS must be given written notification of the investigation promptly upon its commencement in accordance with the PSR.

8.2.b.3. MBH must identify, on every claim processed, the date the claim was received. This date must be carried on claims records in the claims processing computer system. Each hard-copy claim or electronic claim received by MBH must be date-stamped or otherwise date-designated, with the date of receipt not later than the first work day after the date of receipt.

8.2.b.4. Each claim entered into MBH's claims processing computer system must be Adjudicated.

8.2.b.5 MBH must maintain an electronic file of both accepted and rejected claims, inclusive of the data submitted, date of rejection or acceptance, dollar amount of rejected claims, reason code for rejection, and date of resubmission.

8.2.b.6. The amount of time required to Adjudicate a paid claim is computed by comparing the date the claim was received, either in the mail or via electronic filing, with the date the check was created, or electronic funds transfer date. The amount of time required to Adjudicate a rejected claim is computed by comparing the date the claim was received with the date the denial notice was created, or the transmission date of an electronic denial notice. If claims processing is the responsibility of MBH the date of the initial receipt, either at MBH or at its claims processing Subcontractor, is the date applicable to these requirements.

8.3 Recipient Cost-Sharing and Third-Party Liability.

8.3.a. General. MBH shall comply and require its Subcontractors to comply with the procedures implemented by DHS with regard to Third-Party Liability (hereinafter "TPL") as set forth in the PSR. MBH will be responsible for TPL administration, subject to COUNTY oversight, and shall establish procedures for regular and comprehensive tracking of TPL to promote recoveries.

8.4. Risk Moderation

8.4.a. Risk Protection for High Cost Cases. COUNTY agrees to comply with the requirements set forth in the PSR, pertaining to costs incurred by a Member over a specified monetary threshold by acquiring at COUNTY's expense individual stop-loss reinsurance in such amounts and according to the terms as specified in the PSR (the "Stop-Loss Reinsurance"). COUNTY shall notify MBH (and COUNTY will notify DHS) forty-five (45) days prior to any change in its Stop-Loss Reinsurance coverage. COUNTY shall notify MBH immediately upon any failure of COUNTY to pay the premium due with respect to such coverage, and shall implement any change in the Stop-Loss Reinsurance requirements if DHS requires such changes.

8.4.b. Equity Requirements. MBH warrants and represents that it meets and will continue to meet during the term of this Agreement, the equity requirements set forth in the PSR, and that it will comply and assist COUNTY to comply with all financial requirements of the Program and of the Department of Insurance. Further, MBH will cooperate with COUNTY and/or DHS in their review of such equity and financial requirements and comply with any revised requirements established by DHS. MBH will discuss its equity and other financial analyses with COUNTY, including COUNTY's auditors, and will provide timely review of all relevant supporting data. MBH shall report to COUNTY on a timely basis as required by the PSR. MBH will bear the costs or reimburse COUNTY for the reasonable out-of-pocket expense of periodic audits of MBH's equity and financial analyses if: (i) MBH fails to submit timely financial reports requested by COUNTY after three (3) business days' notice from COUNTY, or (ii) an audit reveals that any financial report submitted by MBH to COUNTY was materially inaccurate or incomplete.

8.4.c. Annual Contract Audit. As set forth in the PSR, all costs incurred under this Agreement are subject to audit by DHS and COUNTY or their respective designees, for final approval and acceptability, in accordance with industry standards, applicable accounting and auditing principles, and federal and state regulations and policies. Further, MBH will make its and its Affiliates' records relating to the Program available for audit, review or evaluation by DHS, COUNTY, and their designated representatives.

8.4.d. Negative Covenants. MBH shall not be liable, directly or indirectly, primarily or secondarily, matured or contingent in any matter whether as guarantor, surety, accommodation maker or otherwise for the existing or future indebtedness of any kind of any other Person.

SECTION 9: DURATION OF AGREEMENT AND RENEWAL

This Agreement shall have an initial term of thirty-six (36) months, which commenced on July 1, 2015 and ending June 30, 2018 (the "Initial Term"), unless sooner terminated in accordance with this Section 9 or Section 10 hereof; provided however, that no court order, administrative decision, or action by any other instrumentality of the United States of America or the Commonwealth is outstanding, which otherwise prevents implementation of the Agreement, in which instance the Initial Term may be delayed. As of July 1, 2016, there is a period of twenty-four (24) months remaining in the Initial Term. Notwithstanding the foregoing, the Second Program Year and the Third Program Year are each subject to the prior approval of the COUNTY's Board of Commissioners to be given on or before January 15th of the year prior to the beginning of the respective Second Program Year and Third Program Year. The COUNTY's Board of Commissioners granted approval for the Second Program Year on December 16, 2015.

After the Initial Term, the Agreement may be renewed for two additional one-year periods upon such terms and conditions as mutually agreed to by the Parties (each a "Renewal Term"). The Initial Term and any Renewal Term shall be collectively referred to as the "Term."

SECTION 10: TERMINATION AND DEFAULT

10.1. **Termination by COUNTY.** COUNTY may terminate this Agreement upon the occurrence of any of the following events and upon compliance with the notice provisions set forth below:

10.1.a. **Upon Termination of DHS Agreement.** COUNTY may terminate the Agreement if COUNTY or DHS has terminated the DHS Agreement without cause, upon giving at least sixty (60) days' prior written notice to MBH, or if DHS has terminated the DHS Agreement for cause, upon thirty (30) days' written notice to MBH.

10.1.b. **For Cause.** COUNTY may terminate this Agreement for cause upon forty-five (45) days written notice to MBH, which notice will set forth the grounds for termination and, with the exception of termination under Section 10.1.B.5 or 10.1.B.7 below, will provide MBH with forty-five (45) days in which to submit to the COUNTY a written Corrective Action Plan and initiate corrective action and cure the deficiency (the "Cure Period"). If corrective action, as set forth in the Corrective Action Plan, is not completed to the reasonable satisfaction of the COUNTY within the Cure Period, the termination will be effective at the expiration of the Cure Period. In the event COUNTY determines that the deficiency by its nature cannot be cured within the Cure Period, COUNTY may agree not to terminate this Agreement, provided corrective action is implemented within the Cure Period and MBH diligently and without interruption proceeds to completion of the corrective action. In any event, COUNTY may allow

the Cure Period to extend beyond forty-five (45) days if COUNTY determines that MBH has demonstrated substantial progress and a substantial need for additional time. "Cause" shall be defined as follows for the purposes of this Agreement (each of the following constituting an "Event of Default" hereunder):

10.1.b.1. MBH is in default in the performance of any material duties or obligations hereunder or is in material breach of any provision of this Agreement, whether or not such default or material breach results from an action or omission of a Subcontractor; or

10.1.b.2. MBH fails to provide coverage to a Member for reasons which are eventually determined to constitute intentional misconduct or gross negligence of MBH; or

10.1.b.3. MBH fails to pay any judgment against it resulting from a failure to provide coverage to a Member, which judgment remains unpaid for ten (10) days after it becomes final; or

10.1.b.4. MBH fails to administer the COUNTY Program in accordance with this Agreement and such failure results in an audit exception, sanction or claim that is not paid within ten (10) days after MBH receives notice that payment is due; provided that MBH or COUNTY, at MBH's request and expense, is not contesting or appealing in good faith an audit exception, sanction or claim that is not required to be paid in advance of such contest or appeal, as provided in the DHS Agreement or as otherwise provided by law; or

10.1.b.5. MBH commits an act of theft or fraud against COUNTY or DHS, or DHS requests replacement or termination of MBH for any reason in DHS's sole discretion; or

10.1.b.6. An adverse material change in circumstances respecting MBH, or the Guarantor, occurs, as further described in Section 5.3 above; provided, however, that with respect to those circumstances, which only involve an Affiliate or Related Party of MBH (other than Guarantor), COUNTY will not declare an Event of Default unless DHS terminates the DHS Agreement; or

10.1.b.7. If MBH or the Guarantor, shall dissolve, become Insolvent, make an assignment for the benefit of its creditors, or there shall be instituted by or against MBH or the Guarantor a petition initiating any case under the Bankruptcy Code or analogous state law relating to insolvency or relief for debtors, or a petition for the appointment of a receiver, trustee or other representative or for similar relief under any federal or state law, or if a receiver, trustee or other judicial representative is appointed for either of them or a material portion of the assets of either of them; provided, however, that if any of the above proceedings are commenced against MBH or Guarantor, and MBH and/or Guarantor contest such proceedings, such event shall not constitute "Cause" hereunder unless such proceedings are not dismissed within ninety (90) days of commencement; or

10.1.b.8. MBH fails to provide services in accordance with this Agreement; or

10.1.b.9. Suspension or debarment of MBH, Guarantor or any Affiliate of them, by any Federal Government Entities or State Government Entities.

10.1.c. Without Cause. COUNTY may terminate this Agreement at any time upon giving at least one hundred eighty (180) days' prior written notice to MBH.

10.1.d. Termination Due to Unavailability of Funds/Approvals. COUNTY upon notification by DHS that any of the following events has occurred may terminate this Agreement on such date as shall be designated by COUNTY, consistent with the terms of the notice it receives from DHS, concerning any of these events:

10.1.d.1. Notification by the United States Department of Health and Human Services of the withdrawal of federal financial participation in all or a material part of the cost hereof for covered services/contracts; or

10.1.d.2. Notification that there will be a material unavailability of funds available for the HealthChoices Program such that COUNTY and MBH will be unable to deliver the State Plan and Supplemental Services to the Members, as described in this Agreement, the DHS Agreement and the PSR; or

10.1.d.3. Notification that the federal approvals necessary to operate the HealthChoices Program will not be retained, obtained or renewed; or

10.1.d.4. Notification by the Department of Health, the Department of Insurance or DHS that the authority under which MBH operates is subject to suspension or revocation proceedings or sanctions, has been suspended, limited or curtailed to any extent, or has been revoked, or has expired and will not be renewed; or

10.1.d.5. If an action constituting cause for termination is the result of actions or inactions of a Subcontractor, COUNTY may request approval from DHS to replace that Subcontractor, and Department's approval will not be unreasonably withheld.

10.2 Termination by MBH. MBH may terminate this Agreement at any time upon giving at least one hundred and eighty (180) days' prior written notice to COUNTY; provided, however, that in the event that any capitation payments due to MBH hereunder are not made due to the failure of the DHS to make payment to COUNTY, and COUNTY has given DHS notice to terminate the DHS Agreement, MBH may terminate this Agreement upon one hundred twenty (120) days prior written notice to COUNTY.

10.3 Responsibilities of MBH upon Termination.

10.3.a. Continuing Service and Payment Obligations. MBH, consistent with its acceptance of all service and fiscal responsibilities, accepts all its continuing service and payment obligations, as described herein, upon termination of this Agreement as further set forth in the PSR, and the DHS Agreement. Termination of this Agreement for any reason shall not discharge the obligations of MBH with respect to services or items furnished prior to termination, including payments to Providers, retention of records, verification of overpayments or underpayments, and its other obligations as a licensed BH-MCO, and those additional obligations contained in the DHS Agreement, and the PSR. In addition to these obligations, upon termination MBH must:

10.3.a.1. Provide COUNTY and DHS with all information deemed necessary by COUNTY or DHS within five (5) business days upon request, but MBH, with proper cause, may ask COUNTY to extend the five (5) business days to provide the information, which consent shall not be unreasonably withheld.

10.3.a.2. Be financially responsible for Member claims with dates of service through the day of termination, except as provided in 10.3.a.3. below, including those submitted within established time limits after the day of termination;

10.3.a.3. Be financially responsible for Member claims through the period as set forth in DHS's Recipient Coverage Policy as outlined in the PSR and such services will be included in the Department Payments covering the period prior to termination including, without limitation, for State Plan and Supplemental Services, Administrative Fee and Incentive Payment;

10.3.a.4. Be financially responsible for Member claims for services rendered through the end of the day of termination, except as provided in subparagraph 10.3.a.3 above, for which payment is denied by MBH and subsequently approved upon appeal by the Provider;

10.3.a.5. For thirty-one (31) days after termination, be financially responsible to pay for any services for any recipient appeal of an adverse decision rendered by MBH, which adverse decision is subsequently overturned and such services will be included in the Department Payments covering the period prior to termination including without limitation for State Plan and Supplemental Services, Administrative Fee and Incentive Payment;

10.3.a.6. MBH must also include in all of its Provider contracts a continuation of benefits clause, which states that the Provider agrees, that in the event of MBH's Insolvency or other cessation of operations, the Provider will continue to provide benefits to the Members through the period for which the premium has been paid, or authorization given, including Members in inpatient and residential facilities:

10.3.a.7. Other than as set forth above, COUNTY shall be financially responsible for the cost of all State Plan and Supplemental Services with dates of service after the date of termination of this Agreement.

10.3.b. Notice to Members and Continuity of Care. In the event that this Agreement is terminated pursuant to Sections 10.1 or 10.2 above, MBH shall notify all Members of such termination, at least forty-five (45) days in advance of the effective date of termination if practicable, and said notice must be in a form and manner approved in advance by COUNTY and DHS. MBH thereafter shall be responsible for coordinating the continuation of care in accordance with DHS's Recipient Coverage Policy and Section 10.3.a.6 above, for all Members who, on the effective date of the termination of this Agreement, are actively receiving In-Plan and Supplemental Services pursuant to the COUNTY Program.

10.3.c. Continuity of Data. Upon termination, cancellation, or non-renewal of this Agreement by COUNTY or MBH for any reason, MBH hereby agrees to ensure continuity of the COUNTY Program, including the continuity of data collection and processing as required to meet the requirements of the HealthChoices Program, to cover the State Plan and Supplemental Services to the Members provided to the termination date, and beyond as set forth below. This includes, but is not limited to; data entry, data maintenance, regular submission of data to COUNTY as required under Section 3.3.g. above, and report production related to client authorization, payment of claims, utilization, and financial status. Such requirements will be performed by MBH in an accurate and timely manner through the termination date and beyond to ensure that all COUNTY and DHS required utilization and financial reports related to the State Plan and Supplemental Services provided up to date of termination are produced. COUNTY reserves the right to withhold the Administrative Fee payable to MBH if MBH does

not comply with this requirement. As part of MBH's obligations in this Section 10.3.c., MBH agrees to provide COUNTY with "view only" access to MBH's clinical operations and claims payment systems from a remote location (the "Termination Access"), for a reasonable specified period of time after the termination of this Agreement as mutually agreed (the "Termination Access Period"). The Parties shall agree upon a market price including all factors for the Termination Access to be determined prior to the Termination Access Period, and in the event that the Parties cannot agree to the market price, then the Parties will submit the establishment of the market price for the Termination Access to binding arbitration by Judicial Arbitration & Mediation Services ("JAMS"), located at 1717 Arch Street, Bell Atlantic Tower, Suite 4010, Philadelphia, PA 19103, and accessible at www.jamsadr.com. (See also Section 15.5 below).

SECTION 11: RECORDS

11.1. Financial Records Retention.

11.1.a. MBH shall maintain and shall cause its Subcontractors to maintain all books, records and other evidence pertaining to revenues, expenditures and other financial activity pursuant to this Agreement in accordance with the standards and procedures specified in the PSR, and its Appendix W.

11.1.b. In accordance with 42 C.F.R. §420.302, MBH agrees to submit to COUNTY, to DHS or to the Secretary of Health and Human Services or their designees, within twenty-five (25) days of any request, information related to MBH's business transactions as it relates to this Agreement, which if requested shall include full and complete information regarding:

11.1.b.1. MBH's ownership of any Subcontractor with whom MBH has had business transactions totaling more than twenty-five thousand dollars (\$25,000.00) during the twelve (12) month period ending on the date of the request; and

11.1.b.2. Any business transactions totaling more than twenty-five thousand dollars (\$25,000.00) in any twelve (12) month period between MBH and any wholly-owned supplier or between MBH and any Provider, vendor, or Subcontractor during the five (5) year period ending on the date of the request.

11.1.c. MBH agrees to include the requirements set forth at Sections 11.1.a and b. above in all contracts and agreements with its Subcontractors, and to ensure that all persons and/or entities with whom it so contracts agree to comply with said provisions.

11.2. Medical Records Retention. MBH shall maintain and shall cause its Subcontractors to maintain all medical records in accordance with the procedures outlined in the PSR, and as otherwise required by applicable law.

11.3. Review of Records.

11.3.a. During the Term of this Agreement, MBH shall make and shall cause its Subcontractors to make all records relating to COUNTY and the COUNTY Program, including but not limited to the records referenced in this Section 11, available upon reasonable notice for audit, review or evaluation by COUNTY or DHS, their designated representatives or Federal Government Entities. Such records shall be made available during normal business hours at a location specified by DHS or COUNTY.

11.3.b. In the event that COUNTY, DHS, Federal Government Entities, or their designated representatives request access to records after the expiration or termination of this Agreement or at such time that the records no longer are required by the terms of this Agreement or the DHS Agreement to be maintained at MBH's location, but in any case before the expiration of the period for which COUNTY is required to retain records, MBH, at its own expense, shall retrieve and send copies of the requested records to the requesting entity within fifteen (15) days of such request.

SECTION 12: SUBCONTRACTUAL RELATIONSHIPS

12.1. **Ability to Subcontract.** In fulfilling its obligations hereunder, MBH shall have the right to subcontract with persons or entities to provide services hereunder subject to COUNTY's prior written consent, which consent shall not be unreasonably withheld; provided, however, consent is not required where MBH subcontracts with Affiliates or Related Parties. MBH agrees to provide to COUNTY copies of all such subcontracts and material modifications of said subcontracts not less than fifteen (15) days prior to the effective date thereof and at the same time or earlier to disclose to COUNTY any direct or indirect ownership interest of MBH, the Guarantor, Affiliates or Related Parties, in such Subcontractor or said Subcontractor's parent, Affiliates, partners or Related Parties. MBH further acknowledges and agrees that the execution of subcontracts shall not diminish or alter MBH's responsibilities under this Agreement.

12.2. COUNTY Approval of Contracts with Providers.

12.2.a. COUNTY reserves the right to review and approve all forms of contracts with Providers as to services and rates. However, notwithstanding the foregoing in no circumstances shall this create any privity of contract by and between the COUNTY and Provider, as MBH is

responsible for developing and managing the Provider Network and entering into a Provider Agreement with all Providers. COUNTY acknowledges that MBH may recommend rates for State Plan and Supplemental Services. Rates and Providers as recommended by MBH will be approved unless inconsistent with Program objectives or requirements.

12.2.b. MBH also agrees to submit the forms of its proposed Provider contracts to COUNTY and to cooperate with COUNTY and DHS in its review of Provider contracts as further provided in Section 10.2 of the DHS Agreement. MBH will submit to COUNTY and DHS for prior approval any material modifications in said Provider contracts. COUNTY reserves and retains the right to add Providers that meet MBH's credentialing requirements.

12.3. Compliance with Rule on Physician Incentive Arrangements. MBH agrees that all its contracts with Providers shall be in compliance with (a) the Final Rule regarding Physician Incentive Arrangements, which was issued by CMS (formerly HCFA) on March 27, 1996 (61 Fed. Reg. 13430), as may be amended from time to time.

12.4. Disclaimer by COUNTY. MBH acknowledges and agrees that MBH shall have sole responsibility and liability for the payment of, performance of, and compliance with MBH's obligations to all Subcontractors, and that COUNTY shall have no liability with respect to such obligations. In the event of any claim against COUNTY by a Subcontractor or Provider with respect to any obligation of MBH under its agreement with such Subcontractor or Provider, MBH shall indemnify COUNTY in accordance with Section 16.1 of this Agreement.

SECTION 13: QUALITY ASSURANCE AND UTILIZATION MANAGEMENT

MBH agrees to fully comply with the DHS's Quality Assurance and Utilization Management standards found in the PSR.

SECTION 14: GRIEVANCE AND APPEALS

14.1. **Member Complaint and Grievance System.** MBH with COUNTY shall maintain a complaint and grievance system, which provides for informal settlement of Members' complaints and grievances at the lowest administrative level and a formal process for appeal ("Member Complaint and Grievance System"). The development and implementation of the Member Complaint and Grievance System shall be in complete accordance with the PSR and with Act 68, 40 P.S. §§991.2001 *et seq.* The Member Handbook will contain a description of the Member Complaint and Grievance System. MBH will require its Subcontractors to comply with the Member Complaint and Grievance System.

14.2. **Provider Appeal Procedures.** MBH with COUNTY shall maintain a Provider complaint and appeals system, which provides for informal settlement of Providers' complaints at the lowest level and a formal process for appeal ("Provider Complaint and Appeal System"). The implementation of the Provider Complaint and Appeal System shall be in accordance with the PSR. The Provider Manual shall contain a description of the Provider Complaint and Appeal System.

SECTION 15: CONFIDENTIALITY; DATA DISPOSITION

15.1. MBH shall establish and maintain written policies and procedures to maintain the confidentiality of Members' protected health information ("PHI") and clinical records and to

delineate the rights of access of Members and others to Members' PHI and clinical records, consistent with applicable state and federal confidentiality requirements, including, but not limited to, HIPAA and all applicable rules and regulations thereunder.

15.2 COUNTY and the DHS shall be afforded prompt access by MBH to all Members' PHI and clinical records, whether in electronic or paper format, in compliance with the PSR. Further, MBH and its Subcontractors must establish written procedures restricting the use or disclosure of PHI and all other information concerning Members, applicants, recipients, and claim information, as well as written procedures and established safeguards to limit physical access to data processing systems equipment, claims information, reports, confidential materials and software systems.

15.3 MBH and COUNTY shall comply with all applicable federal and state laws regarding the confidentiality of medical records, including the Privacy and Security Rules set forth at 45 CFR Parts 160 and 164, subsections A, C, and E ("HIPAA"). MBH shall also cause each of its Subcontractors to comply with HIPAA and all other applicable federal and state laws regarding PHI and the confidentiality of medical records. Notwithstanding any provision in this Agreement to the contrary, for the purposes of access to confidential Members' records and PHI, COUNTY and MBH shall be authorized to access same. MBH acknowledges and agrees that the foregoing authorization for such access by COUNTY and MBH shall be contained in all Provider contracts.

15.4. MBH shall be liable for any state or federal fines, financial penalties or damages levied upon COUNTY (including the COUNTY's reasonable attorneys fees incurred therein) or DHS

resulting from a breach of PHI and/or confidentiality through MBH's systems, staff, or other area of responsibility, including those of its Subcontractors.

15.5. Data (Information) Ownership: Use on Termination.

15.5.a. Upon termination of this Agreement for any reason, MBH agrees to return promptly to COUNTY, or directly to DHS at COUNTY's direction, consistent with HIPAA and all applicable state and federal confidentiality laws, all data relating to Members, all clinical operations and claims payment data and all material and data obtained, and all Monitor Data developed, produced and/or generated in connection with this Agreement and the implementation thereof (hereinafter "Information"). However, copies of the Information needed for Members' continuity of care upon termination of this Agreement may be retained by MBH until those concerns have been addressed, at which time the aforementioned copies of such Information shall be returned immediately to COUNTY. Except as expressly permitted by the foregoing, no other Information may be used by MBH for any purpose after expiration or termination of this Agreement. MBH agrees to transfer all such Information at the direction of COUNTY to any subsequent BH-MCO subcontractor engaged by COUNTY. All such information, records, reports and data shall be and remain the property of COUNTY.

15.5.b. Notwithstanding the above, (i) MBH shall not be required to deliver its own personnel records to COUNTY; and (ii) MBH will be entitled to retain copies of all such Information for historical, audit, record keeping and/or archival purposes, or for such other purposes as allowed by and with the prior written consent of the COUNTY.

15.5.c. COUNTY is entitled to utilize the Information received from MBH, which MBH may deem to be proprietary, without restrictions or costs imposed or asserted by MBH (the

"Proprietary Information"). Unless otherwise required by law, COUNTY shall not disclose and MBH shall not be required to disclose such Proprietary Information to any entity competitive with MBH, including, but not limited to, any subsequent BH-MCO or vendor of COUNTY (if the subsequent BH-MCO or vendor or other competitive entity is an entity or instrumentality created by COUNTY, restrictions on disclosure shall not apply). However, MBH agrees to reasonably cooperate with County and any subsequent BH-MCO or vendor to provide the Information required for transition purposes under this Agreement. As of the date of termination of this Agreement, MBH shall advise COUNTY in writing of any such Information it deems Proprietary Information, although such designation by MBH is not binding on COUNTY and may be subject to dispute. MBH agrees not to assert any claims against COUNTY with respect to any Information, whether or not deemed and designated as Proprietary Information, except for claims (if any) related to the above restrictions on uses of Information deemed and designated as Proprietary Information by MBH.

15.5.d. All Information shall belong to and is owned by the COUNTY, and MBH shall have no rights to the Information except as set forth in this Agreement.

SECTION 16: INDEMNIFICATION AND INSURANCE

16.1. Indemnification.

16.1.a. MBH shall indemnify and hold COUNTY, the COUNTY Program, DHS and the Commonwealth, and their respective employees, agents, providers, other subcontractors and representatives, free and harmless from and against any and all liabilities, losses, settlements, claims, demands and expenses of any kind (including, but not limited to, court costs and attorneys' fees), which may result or arise out of any one or more of the following: (1) MBH, its

agents', employees', Subcontractors' or representatives' actions or omissions hereunder, including, but not limited, to any breach of this Agreement; (2) any dispute with or claims by Members (including Members' families) and/or Providers, agents, clients, Subcontractors or other contractors; and (3) any defamation, breach of contract, malpractice, fraud, negligence or intentional misconduct caused or alleged to have been caused by MBH or its agents, employees, Subcontractors or representatives in the performance or omission of any act or responsibility assumed by MBH pursuant to this Agreement. MBH's obligations under this Section 16.1.a shall survive termination or cancellation of this Agreement.

16.1.b. MBH shall indemnify and hold harmless COUNTY, the COUNTY Program, DHS, and the Commonwealth, and their respective employees, agents, providers, other subcontractors and representatives, free and harmless from and against any and all liabilities, losses, settlements, claims, demands and expenses of any kind (including, but not limited to, court costs and attorneys' fees) which may result or arise out of any audit, investigation or review conducted by DHS or any Federal Government Entities or State Government Entities arising from negligence and/or knowing and willful misconduct of MBH. The indemnification herein shall not extend to disallowances resulting from a determination by the federal government that terms of the DHS Agreement are not in accordance with federal law. MBH's obligations under this Section 16.1.B shall survive termination or cancellation of this Agreement.

16.1.c. Notwithstanding anything contained herein to the contrary, MBH shall not be held responsible for negligent actions taken by COUNTY, its employees or its agents, or for the knowing and willful violation by COUNTY, its employees or agents of any federal, state or local law or the knowing and willful violation by COUNTY of this Agreement.

16.2. Insurance. MBH shall maintain for itself and each of its employees, agents and representatives, professional liability, general liability and any other types and amounts of insurance, including, but not limited to, tail insurance coverage where appropriate, as reasonably required by COUNTY, DHS and all applicable laws. MBH shall provide to COUNTY on or prior to the date hereof, a certificate of insurance demonstrating that MBH has obtained the insurance coverages required by COUNTY and stating that the insurer shall provide with respect to each policy described on such certificate ten (10) days' prior written notice to COUNTY of the cancellation of any policy, the amendment, modification or other change to any policy and the failure to make any premium payment when due. MBH further agrees to notify COUNTY in writing of any oral or written claim made under any insurance policy described on such certificates, such notice to be provided by MBH within one (1) business day after MBH learns of such claim. In addition, MBH shall require that each of its Subcontractors maintains professional liability and all other types and amounts of insurance (including tail coverage policies) in such amounts and on such terms as required by COUNTY, DHS and all applicable laws, and provide such certificates to COUNTY on or prior to the Effective Date. This requirement is continuing for all Subcontractors arising after the Effective Date. Appendix 9, which is incorporated herein and made a part hereof, sets forth MBH's current insurance coverages. All such insurance coverage as referenced in this Section 16.2 shall name COUNTY as an additional insured for MBH's negligent acts or omissions as the policies may provide.

SECTION 17: REPORTS

17.1. General Obligations. MBH shall furnish to COUNTY ad hoc reports requiring a simple query and records access requested in writing by the COUNTY at least seven (7) calendar days from the date that MBH and COUNTY agree on format and data elements of the reports and

records. Other requested reports requiring multiple databases and/or new applications to be written will be provided within a mutually-agreed timeframe, not to exceed thirty (30) calendar days. The COUNTY agrees that the volume of reports requested in any given month will be at a level that does not interfere with meeting the standard monthly/quarterly reporting requirements.

17.2. **Financial Reporting Requirements.** MBH shall furnish all financial reports in the time and manner prescribed by COUNTY, as described in Appendix P of the PSR. Financial reports shall be submitted on the currently applicable Financial Reporting Requirement Forms or any subsequent reporting forms issued to COUNTY by DHS.

17.3. **837 Files.** MBH must submit 837 Files at a time and in a manner prescribed by DHS, in accordance with the PSR, as may be further revised by DHS.

17.4. **Operational Data Reports.** MBH shall maintain and shall cause its Subcontractors to maintain all of their records (in whatever format) used for data reports in accordance with the procedures specified in Part II.5.C.7 (b) of the PSR (the "Source Records"). Upon termination of this Agreement, MBH shall turn over to COUNTY all such Source Records, in a format as designated by COUNTY.

17.5. **Statutory Reports.** Program and Financial statutory reports (those required by DHS) will be delivered by MBH to COUNTY or its agent, by the due dates listed in **Appendix 8** "Timeliness of Statutory Report Submission," attached hereto.

17.6. **Other Data Elements.** MBH's MIS will permit development of data elements or reports as COUNTY or DHS reasonably may request, demonstrating Program outcomes. Further, such

MIS will permit prompt retrieval of relevant records including records relating to individual Members.

SECTION 18: SANCTIONS

18.1 **Sanctions.** COUNTY may impose sanctions on MBH for MBH's noncompliance with any requirements under this Agreement, including, but not limited to: the inability of MBH to fully perform its obligations under this Agreement, late filing of any reports required herein, or breach of time limits for provision of requested records as required herein.

The sanctions that can be imposed by COUNTY will depend on the nature and severity of the breach described in the preceeding paragraph, which COUNTY, in its sole discretion, shall determine.

Sanctions will be imposed in progressive fashion and, with the exception of gross violations, will begin with 18.1.a. below; **provided**, however, that if DHS imposes a penalty on COUNTY, COUNTY shall not impose an additional penalty or penalties on MBH for the same offense (other than the COUNTY's reasonable costs for responding to the DHS penalty), and instead shall require MBH to pay the penalty as imposed by DHS, if such penalty arises from negligence and/or knowing and willful misconduct of MBH. If any penalty imposed by DHS arises from the negligence and/or knowing and willful misconduct of both MBH and COUNTY, the payment of such penalty shall be proportional to the Parties' responsibility for the penalty. Sanctions may include, but are not limited to, the following:

18.1.a. Fines of up to \$1,000.00 per day; provided, however, that if DHS modifies the counterpart section (14.1) of the DHS Agreement, this subparagraph B will be identically modified by the parties hereto;

18.1.b. Suspension of payments (in whole or in part); or

18.1.c. Termination of this Agreement in accordance with Section 10.1 hereof upon notice to MBH.

Where permitted by DHS (or other State Government Entities), and for good cause shown in writing by MBH, COUNTY may in its sole discretion allow MBH a reasonable extension of time in which to comply with a reporting requirement as set forth in Section 17 above, before imposing a fine on MBH as set forth in this Section 18.1.

SECTION 19: COORDINATION OF COUNTY'S NON-HEALTHCHOICES PROGRAM

COUNTY and MBH will work closely to coordinate COUNTY's existing (non-HealthChoices) behavioral health programs, committees and services, with the HealthChoices Program.

SECTION 20: FORCE MAJEURE

In the event of a major disaster or epidemic as declared by the Governor of the Commonwealth of Pennsylvania that is applicable to COUNTY, MBH shall cause its employees, all Providers, and other Subcontractors with whom it subcontracts to render all services provided for herein as is practical within the limits of their facilities and available staff as a result of the

Governor's declaration. MBH shall not be liable or be deemed to be in default for any Provider's failure to provide services or for any delay in the provision of services when such failure or delay is the direct or proximate result of the depletion of staff or facilities by a major disaster or epidemic; provided, however, in the event that the provision of services is substantially interrupted, COUNTY shall have the right to terminate this Agreement upon ten (10) days' written notice to MBH.

SECTION 21: GENERAL

21.1 **Providers' Professional Liability History.** MBH will inquire of all existing and any applying Provider as to professional liability history and will reject any applicant whose previous professional liability history raises substantial questions of competence. Each Provider shall be required to immediately report to MBH all allegations of professional liability made against such Provider or any individual licensed professional employed or contracted by, or associated with the Provider. MBH shall include in their Provider agreements a requirement that all Providers maintain professional liability coverage of at least \$1million/\$3million.

21.2. **Suspension from Other Programs.** In the event that MBH learns that a healthcare practitioner with whom MBH contracts as either a Provider or Subcontractor (directly or indirectly) is suspended or terminated from participation in the Medical Assistance program of another state or from the Medicare Program, MBH shall promptly notify COUNTY and DHS, in writing, of such suspension or termination. No payment shall be due or retained by MBH for any services rendered by Provider during the period MBH knew or should have known such Provider was suspended or terminated from participation in the Medical Assistance Program of this or another state or the Medicare Program.

21.3. Rights of COUNTY and MBH. The rights and remedies of the Parties provided herein shall not be exclusive and are in addition to any rights and remedies provided by law.

21.4. Third Parties. No rights, causes of action, claims or obligations are intended to be created for the benefit of any third party by this Agreement, except as otherwise stated herein, in the DHS Agreement and the PSR. Nothing herein is intended to waive or dilute the applicable sovereign immunities of COUNTY, DHS, or the Commonwealth.

21.5. Consent to Jurisdiction and Waiver. Each of MBH and the Guarantor, irrevocably consents that any claim, legal action or proceeding against it or initiated by it under, arising out of or in any manner relating to this Agreement may be brought in the Court of Common Pleas of COUNTY. MBH, by the execution and delivery of this Agreement, and Guarantor, by the execution and delivery of the Guaranty, expressly and irrevocably consent and submit on their behalf to the personal jurisdiction of such court in any such action or proceeding. Each of MBH and Guarantor further irrevocably consents to the service of any complaint, summons, notice or other process relating to any such action or proceeding by delivery thereof to it by hand or by any other manner provided for in Section 22.11 (Notice) hereof. Each of MBH and Guarantor hereby expressly and irrevocably waives any claim or defense in any such action or proceeding based on any alleged lack of personal jurisdiction, improper venue or *forum non conveniens* or any similar basis. Nothing in this Section shall affect or impair in any manner or to any extent the right of COUNTY to commence legal proceedings or otherwise proceed against MBH or Guarantor in any jurisdiction or venue, or to serve process in any manner permitted by law.

21.6. Bankruptcy Covenant. MBH, each of its Affiliates, subsidiaries and Related Parties (collectively the "MBH" for purposes of this Section) and Guarantor agree and covenant that in

the event MBH or Guarantor files or is compelled to file a petition under any Chapter of Title 11 of the United States Code (the "Bankruptcy Code"), or seeks relief in any analogous state law insolvency proceeding, or is the subject of any petition seeking any type of reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act, law or regulation relating to bankruptcy, insolvency or other relief for debtors, then neither MBH nor Guarantor will assert or request or cause any other party in interest to assert the automatic stay imposed by 11 U.S.C. §362 or any analogous stay or any injunction entered in any analogous state law insolvency proceeding against COUNTY. Without limitation to its rights hereunder and under this Agreement, COUNTY shall be entitled, and MBH and Guarantor irrevocably consent, to an Order granting COUNTY relief from all stays and injunctions, including the automatic stay imposed by 11 U.S.C. §362, and any stay that MBH and/or its Guarantor seeks to impose for the benefit of themselves or a third party under 11 U.S.C. § 105.

21.7. Waiver. No waiver or delay in enforcement by COUNTY of a breach or default of this Agreement by MBH shall be construed as a waiver of any or other subsequent breach or default.

21.8. Invalid Provisions and Repealed Laws or Regulations.

21.8.a. Any provision of this Agreement, which is in violation of any state or federal law or regulation shall be deemed amended to conform with such law or regulation pursuant to the terms of this Agreement, except that if such change would materially and substantially alter the obligations of the Parties under this Agreement, any such provision shall be renegotiated by the Parties. The invalidity or unenforceability of any terms or provisions

hereof shall in no way affect the validity or enforceability of any other terms or provisions hereof.

21.8.b. In the event any federal or state law or regulation that governs any provision of this Agreement is repealed ("Repealed Law or Regulation") during the term of this Agreement, the Parties shall jointly seek the guidance of DHS as to the effect of such repeal on the affected provision(s) and if such change would materially and substantially alter the obligations of the Parties under this Agreement, any such provision shall be renegotiated by the Parties. However, a Repealed Law or Regulation shall in no way affect the validity or enforceability of any other terms or provisions hereof.

21.9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth.

21.10. Notice. Any notice, request, demand or other communication required or permitted hereunder shall be given in writing by certified mail, communication charges prepaid, to the Party to be notified, or by a national overnight express carrier such as Federal Express, or by facsimile with receipt confirmed by sender telephoning recipient. All communications shall be deemed given and received upon delivery or attempted delivery to the address specified herein, as from time to time amended. The addresses for the Parties for the purposes of such communication are:

To COUNTY:

Matthew Bauder
Lehigh County Health Choices Administrator
Lehigh County Government Center
17 S. 7th Street
Allentown, PA 18101

With copies to:

Lawrence J. Tabas, Esquire
Obermayer Rebmann Maxwell & Hippel LLP
Centre Square West
1500 Market Street, Suite 3400
Philadelphia, PA 19102

To MBH:

President
Magellan Behavioral Health of Pennsylvania, Inc.
55 Nod Road
Avon, CT 06001

With copies to:

Magellan Health, Inc.
Attn: General Counsel
55 Nod Road
Avon, CT 06001

21.11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original for all purposes, and all of which, when taken together shall constitute but one and the same instrument.

21.12. Headings. The Section headings used herein are for reference and convenience only, and shall not enter into the interpretation of this Agreement.

21.13. Assignment. Neither this Agreement nor any of the Parties' rights hereunder shall be assignable by either Party hereto without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld.

21.14. No Partnership, Agency or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between COUNTY, its successors and assigns, on the one part, and MBH, its Subcontractors and its successors and permitted assigns, on the other part. It is expressly understood and agreed by the Parties hereto that MBH and its agents shall at all times during the performance of services pursuant to this Agreement be acting as independent contractors to COUNTY.

21.15. Entire Agreement; Modification. This Agreement constitutes the entire understanding of the Parties hereto as to the subject matters herein and supersedes any and all other written or oral agreements, representations, or understandings. Specifically, but without limitation, this Agreement supersedes and replaces the HealthChoices Agreement between the Parties, dated July 1, 2010, and all amendments thereto. No modifications, discharges, amendments, or alterations shall be effective unless evidenced by an instrument in writing signed by both Parties. Furthermore, neither this Agreement nor any modifications, discharges, amendments or alterations thereof shall be considered executed by or binding upon any Party unless and until signed by a duly authorized officer of those Parties.

21.16. Time of the Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

21.17 Guarantor Confirmation. Magellan Health, Inc. (the Guarantor), by its signature below, confirms the attached Guaranty is in full force and effect through the Term. The Guaranty is attached hereto and incorporated herein as Appendix 10.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the Parties have executed this Agreement as of
the 5th day of May, 2016.

Attest:

COUNTY OF LEHIGH

By: _____


Tom Muller
Lehigh County Executive

Attest:



MAGELLAN BEHAVIORAL HEALTH OF
PENNSYLVANIA, INC.

By: _____

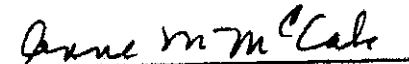

Printed Name: Anne McCabe
Title: CEO & President

Attest:



MAGELLAN HEALTH, INC.
(as to Guaranty)

By: _____


Printed Name: Anne McCabe
Title: President, Public Markets

Agreement – County of Lehigh and Magellan Behavioral Health of Pennsylvania, Inc. ("MBH")
Dated July 1, 2016

Appendix 1

County – Department of Human Services ("DHS") Agreement.

Intentionally blank

Appendix 1 is on Disc

Appendix 2 – Department's Program Standards and Requirements

Reference is made to the Commonwealth of Pennsylvania, Department of Human Services, HealthChoices Behavioral Health Program, Program Standards and Requirements – Primary Contractor, dated January 1, 2016 ("PSR"). The PSR (including all of its Appendices) are incorporated herein by reference as if fully set forth herein.

Appendix 3 – COUNTY REP and MBH Proposal

COUNTY RFP

Reference is made to the Request For Proposals, Lehigh County HealthChoices Program with an Issue Date of September 10, 2014, the first three pages of which are attached hereto ("RFP"). The RFP (including its Exhibits A through F) are incorporated herein by reference as if fully set forth herein.

MBH Proposal

Reference is made to the MBH Proposal with a Submission Date of October 23, 2014 (the cover letter of which is attached hereto) as amended and/or supplemented, and it is incorporated herein by reference as if fully set forth herein.

REQUEST FOR PROPOSALS
(the "RFP")
LEHIGH COUNTY HEALTHCHOICES PROGRAM

ISSUED BY: County of Lehigh
Department of Human Services
Administrative Services/Health Choices

ISSUE DATE: Tentative September 30, 2014

RESPONSE DUE DATE: October 23, 2014 at 4:00PM

Deliver: 2 complete sets of Program and IS/Fiscal responses
4 copies of Program response -only
2 copies of Fiscal/IS response -only
2 copies of Pricing Proposal - only
An electronic copy of all responses to RFP
Above is collectively the "Proposal"

Lehigh County Controller's Office
Lehigh County Government Center
17 South 7th St.
Room 465
Allentown, PA 18101

TABLE OF CONTENTS **[TO BE FINALIZED]**

	Page
I. Definitions	1
II. Acronyms	7
III. General Information	9
A. Introduction.....	9
B. Minimum Eligibility Criteria	10
C. Contact Information	11
D. Exhibits to RFP	12
E. Timeline	12
F. Proposal Format.....	13
G. Guidelines	14
IV. Proposed Model.....	15
A. Lehigh HealthChoices Vision.....	15
B. Program Overview	16
C. County Specific Data	19
V. Information Required from Participating BH-MCOs.....	19
A. Cover Letter	19
B. Information about the Managed Care Organization	20
C. Programmatic Section	20
D. Managed Care Organization	21
E. Implementation of Programs and Services.....	22
F. Plan for Transition and Timeline.....	26
G. Legal and Financial.....	27
H. Information Technology and Systems	28
I. Cost Proposal.....	31
J. Special Considerations for Scoring	32

VI. Criteria for Selection	32
VII. Specific RFP Conditions	32
VIII. Exhibit A: Pricing Proposal	36
IX. Exhibit B: Legal and Financial Due Diligence Questionnaire	39
X. Exhibit C: BH-MCO Non-Solicitation Policy	44
XI. Exhibit D: Enrollment and Penetration Rates	46
XII. Exhibit E: 2014-2015 Forecasts and Projections	47
XIII. Exhibit F: Other Required RFP Information for Submission	48



October 23, 2014

Ms. Jill Slivka
Lehigh County Controller's Office
Lehigh County Government Center
17 South Seventh Street, Room 465
Allentown, PA 18101

Dear Ms. Slivka,

Magellan Behavioral Health of Pennsylvania, Inc. ("Magellan") is pleased to present our proposal to continue our successful partnership with Lehigh County as the Behavioral Health - Managed Care Organization (BH-MCO) for the County. We are submitting this proposal in response to the Request for Proposal for the Lehigh County HealthChoices program issued by the County of Lehigh, Department of Human Services on September 10, 2014.

Magellan has demonstrated through our thirteen year tenure as the BH-MCO for Lehigh County that we are uniquely qualified to perform the services described in the RFP. It is through the leadership of the County, combined with Magellan's managed care tools and well established relationships with providers and stakeholders that the Lehigh County HealthChoices program will continue to meet the behavioral health needs of Lehigh County HealthChoices Members. Through this letter, Magellan certifies the following:

- Magellan shall comply with the applicable DPW HealthChoices Behavioral Health Program Standards and Requirements, dated July 1, 2014.
- Magellan shall continue to enroll all providers designated by the County as the provider network and shall enter into contracts with providers for the fees designated by the County.
- Neither Magellan nor any entity with which Magellan is affiliated is under suspension or debarment by the County, the Commonwealth of Pennsylvania, any other state, or the federal government.
- Agreement to the above is incorporated and made part of the attached proposal.

As the current BH-MCO, with a fully functioning care management center, credentialed provider network, and established relationships with County stakeholders, Magellan is uniquely positioned to move forward in partnership with the County to achieve the County's vision for the ongoing evolution of the Lehigh County behavioral health system.

During our present contract tenure, Magellan has collaborated with the County, our network providers, and Members, to introduce and implement a variety of innovations to improve health outcomes for Members and their families. To highlight just a few, our system improvements have included:

- **Reinvestment funds in excess of \$24 million generated over the past five years through responsible and effective management of the HealthChoices program.** These reinvestment dollars have contributed to the development of numerous programs and services for Lehigh County Members, including Assertive Community Treatment (ACT) Teams, Medical Mobile Crisis, Supported Apartment Living, Respite Services for Children, an All-Inclusive Residential Program, and Extended Acute Care (EAC).

- **Strong performance in meeting cost of care targets.** Magellan has consistently achieved performance incentives at 100%.
- **Community integration and successful alternatives to the shuttered state hospital.** When Allentown State Hospital closed in 2010, Magellan collaborated with the state, Lehigh and Northampton Counties, providers, and community members to implement Extended Acute Care (EAC) programs to serve HealthChoices Members. As of December, 2013, 95 members have been served by the EAC programs and discharged to community-based services.
- **Co-Location to advance physical health and behavioral health care integration.** Magellan partnered with Haven House and the Neighborhood Center of the Lehigh Valley to implement a co-located health home in February, 2014. Haven House is providing outpatient psychiatric counseling services on site at the Neighborhood Health Center FQHC, which provides primary and preventive healthcare. HealthChoices referrals to the integrated program are increasing and are achieving penetration into the underserved Latino population.

We are committed to continuing to bring innovations and system enhancements to benefit HealthChoices Members and the communities of Lehigh County. Among the enhancements we propose for the new contract period, Magellan offers the following:

- **Enhanced oversight of services provided to the Mental Health - Intellectual Disabilities (MH-ID) population.** Magellan is partnering with Northwestern Human Services (NHS) to implement Dual Diagnosis Treatment Teams (DDTT) in 2015 for Members diagnosed with MH-ID who have frequent admissions to acute inpatient hospitals or emergency department services. These multi-disciplinary teams will work collaboratively to improve efficiency and effectiveness of service delivery to this high risk population.
- **Implementation of best practices for transition age youth.** Magellan is expanding implementation of the Transition to Independence Process (TIP) model to Lehigh and Northampton counties. The youth-driven TIP model is designed for youth ages 18-26 that are living with mental illness and/or intellectual disabilities. Through TIP, youth and young adults are assisted in achieving increased self-sufficiency in life domains such as employment, education, personal well-being, and community life functioning.
- **Development of School-Based Outpatient programs.** In partnership with Lehigh County and the Allentown School District, Magellan released a Request for Information in August, 2014 to local children's providers to solicit proposals to develop school-based outpatient mental health programs within Allentown School District. Magellan will work with the County and Allentown School District to review proposals, select the most qualified provider, and begin implementing the programs by January, 2015.
- **Enhanced clinical care management and care coordination model, eMbraceCare.** Magellan's eMbraceCare clinical model supports Population Health Management activities for HealthChoices members, including the populations considered most vulnerable by the County - adults with serious and persistent mental illness, youth who have, or who are at risk for, serious emotional disturbance; and individuals abusing alcohol or other substances. eMbraceCare focuses on whole health wellness and incorporates tiers of care coordination matched to level of risk and the role of peer recovery navigators to improve health outcomes for high risk members through enhanced engagement and follow-up.
- **Support for peer-delivered services through PSWHR training, Certified Peer Specialist Survey, and the addition of a Peer Navigator role.** Magellan conducted a Peer Support Whole Health and Resiliency (PSWHR) training for Certified Peer Specialists (CPS) in September, 2014. Magellan will provide ongoing technical assistance and resources for PSWHR facilitators. To further support the role of CPSs, in collaboration with the County, Magellan has developed a regional survey of members

receiving CPS services to be administered in 2015. This questionnaire is based on the SAMHSA-recommended Peer Outcomes Protocol (POP), an instrument designed to measure service and programmatic outcomes of self-help, peer support, and consumer-operated programs in mental health. In 2015, the Lehigh Valley CMC will be adding a new position of Peer Recovery Navigator to the clinical team. This position will work with care managers within our eMhanceCare model to reduce hospital readmissions through supporting high risk members in transitioning from inpatient treatment to community-based services.

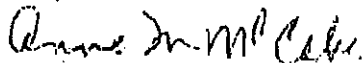
As the highlights mentioned above illustrate, Magellan's partnership with Lehigh County has been and will continue to be focused on our shared vision of improved health outcomes for Lehigh County HealthChoices members through improved accessibility and quality of services, while controlling costs.

Proprietary Information

In accordance with the requirements of the RFP (including the Q & A), we have identified in our proposal through gray shading or with a cover sheet note (for attachments and appendices) those portions of the proposal that Magellan asserts are protected and exempt from the Pennsylvania Right-to-Know Law ("Law") enacted on February 14, 2008, 65 P.S. § 67.101-67.3104, as "confidential proprietary information" or a "trade secret" as defined in the Law. These include portions of Sections V, C, E, I, G and J, Exhibit A-Price Proposal, Exhibit E-Lehigh FY 14-15 Forecast Totals; portions of our answers to questions D1c, D2a, D2c, D2d, D2e, D2j, F1-F6, F8, F11, F12, H2, H7, H8, H11, H12, H14, H15-18, Exhibit B Sections E, IIA & D, III, IV, V, VI, and VIII.B and portions of numerous attachments and appendices indicated by the above referenced cover sheet note. Accordingly, we respectfully request that all such information not be publicly disclosed in accordance with the Law.

We look forward to our continued collaboration with Lehigh County. Through our strong partnership and relationships founded in mutual respect, Lehigh County and Magellan will continue to make a positive difference in the lives of persons in recovery, their families, and the community.

Sincerely,



Anne M. McCabe
Chief Executive Officer
Magellan Behavioral Health of Pennsylvania, Inc.

APPENDIX 4

**FINANCIAL PROCEDURES
ATTACHED**

Agreement-County of Lehigh and MBH
Dated July 1, 2016
Appendix 4
Financial Procedures

Process for check run funding:

1. Each Friday, MBH provides electronic check run file or electronic funds transfer ("EFT") file with check number, provider names, and the dollar amounts to fund the checks are sent to the County HC Accountant and HC Administrator.
2. MBH faxes signed copy of the request to fund Lehigh Disbursement account to the Lehigh HC Accountant and HC Administrator.
3. Lehigh HC Accountant reviews the data and prepares the Bank Transfer Approval Form.
4. Bank Transfer Approval Form is reviewed and signed off by Lehigh HC Administrator and DHS Administrative Director.
5. Lehigh HC Accountant delivers the Bank Transfer Approval Form to Lehigh County Fiscal Office for approval.
6. Lehigh Fiscal Office sends authorization form to Cash Department to wire weekly check run amount to HC Provider Claims Payment Account.
7. Funds are transferred from HC Provider Claims Payment Account to MBH's Lehigh County Claim Disbursement account to cover Providers' claim checks or EFT transactions/EFTs processed.

Agreement-County of Lehigh and MBH
Dated July 1, 2016
Appendix 4
Financial Procedures

For MBH Contract:		
Gross Capitation	\$89.89	
GRT	\$ (5.30)	-5.90%
Net DPW Payment	\$84.59	
MBH Admin	(\$6.92)	8.18%
Stop Loss	(\$0.25)	0.30%
LH Admin	(\$2.63)	3.11%
\$600k Initiative	(\$0.67)	0.79%
Medical Cost Threshold	\$74.12	87.62%
No Initiative if medical expense exceeds	\$74.79	88.41%
Magellan Risk Attachment 106%	\$79.27	93.72%

Member Months

	MM Annualized Mar16
1 TANF/HB/MAGI - Child	385,359
2 TANF/HB/MAGI - Adult	82,736
3 SSI and HH w/ Medicare	93,200
4 SSI and HH w/o Med - Child	61,620
5 SSI and HH w/o Med - Adult	69,297
6 HC Expansion	204,478
Total	896,690

APPENDIX 5

PERFORMANCE INITIATIVES ATTACHED

Appendix 5

Performance Initiatives for Program Year 2016-2017

There are three (3) Performance Initiatives [PI] for program year 2016-2017. Each PI is worth 1/3 of the total up to \$200,000 if the requirements are met by Magellan (MBH) as determined by the Lehigh County HealthChoices Program.

1. Drug and Alcohol strategy identification and implementation

Magellan will identify at least one clear strategy to address the on-going and growing needs of Lehigh HealthChoices members with Drug and Alcohol service needs. Possible strategies to explore for implementation include but are not limited to: a Co-Occurring Disorder Learning Collaborative, Medication Assisted Treatment (MAT) enhancements, brief interventions at the FQHC level, Recovery Specialist program, other D&A levels of care that are available within existing service parameters, etc. Magellan may build upon the strategies that have been discussed through the 1st and 2nd Quarters of 2016 and will move toward implementation of at least one strategy prior to June 2017. A final report will be prepared and presented to the County to include the strategy/ies that were identified, rationale for such, and success in implementation of strategy/ies (with outcomes to assess effectiveness also identified). The report will be due to the County in June 2017.

2. Forensic Population strategy identification and implementation

Magellan will identify a clear strategy to address the on-going needs of Lehigh HealthChoices members with Forensic/Justice involved needs. Possible strategies to explore for implementation include but are not limited to: Brief Interventions during Pre-Trial status, Forensic Peer Services, Forensic ACT services, Forensic ICM services, other MH levels of care or services that are available within existing services parameters, etc. Magellan may build upon the strategies that have been discussed through the 1st and 2nd Quarters of 2016 and will move toward implementation of at least one strategy prior to June 2017. A final report will be prepared and presented to the County to include the strategy/ies that were identified, rationale for such, and success in implementation of strategy/ies (with outcomes to assess effectiveness also identified). The report will be due to the County in June 2017.

3. Autism Plan Year One Implementation

Magellan will begin implementing the Year one recommendations as identified in their comprehensive, analytic report of Autism Service Gap and Opportunity Analysis. Year one implementation may include the addition of possible pilot programs that exist within the existing service parameters as well as anticipated outcomes related to the programs. Magellan will prepare an annual report that outlines their successes in year one implementation as well as the next steps that

shall be taken to continue implementation of Magellan's three (3) year plan related to members with an Autism Diagnosis. The report will be due to the county in June 2017.

APPENDIX 6

**DATA REPORTS
ATTACHED**

Agreement – County of Lehigh and MBH
Dated July 1, 2016
Appendix 6
Data reports

Name of report	Type of Report	Date Due to County of Lehigh	Date Due to State
Population Reports	Monthly	5 days before OPS Mtg.	5 th of following month
Denial Log	Monthly	8 th	15 th
Federalized CIA	Monthly	30 th of Previous month	15 th
PRV640	Monthly	9 th	14 th
BHRS	Monthly	20 th	22 nd
BHRS TSS	Monthly	23 rd	30 th
Special Court Ordered Report	Semi-Annual		
Complaint and Grievance	Monthly	23 rd	30 th
Prescribing Practitioner	Quarterly	Jan., Apr., Jul., & Oct 8 th	Jan., Apr., Jul., & Oct 15 th
POMS	Quarterly	Jan., Apr., Jul., & Oct 23 rd	Jan., Apr., Jul., & Oct 30 th
PLE	Quarterly	Jan., Apr., Jul., & Oct 23 rd	Jan., Apr., Jul., & Oct 30 th
Satisfaction Survey	Quarterly	Quarterly	135 days after report period end
Quarterly Monitoring Report	Quarterly	Feb., May, Aug., & Nov. 12 th	Feb., May, Aug., & Nov. 15 th
Data Files			
Name of File	How Often	Date Due to County of Lehigh	Comments
Fee Schedule (B2)	Monthly	10 th	2006mmdd_LE_FeeKeys.txt
Authorization File	Daily		2006mmdd_Pa_CountyAuthFeed_LE.txt
Notes File	Daily		2006mmdd_Pa_Note_LH.txt
Claims File	Weekly	Monday's before 11:00 am	2006mmdd_PaClaim_LE.txt

The SUBCONTRACTOR will provide COUNTY a mirrored copy of all data necessary to monitor the contract and also will provide the technical supporting documentation, including, but not limited to file structures, data dictionaries, process flows, and entity relationship diagrams,

Agreement-County of Lehigh and MBH

Dated July 1, 2016

Appendix 7

Correspondence from DHS Regarding approval of Insolvency Protections

Intentionally blank

To date correspondence not received from DHS

Appendix 7- Correspondence from DHS Regarding Approval of Insolvency Protections

As of the date of the execution of this Agreement by the parties, the letter from Terry Mardis of DHS has not been received. As soon as it is received, per the agreement of the parties, the letter will be attached after this page.

APPENDIX 8

STATUTORY REPORTS

ATTACHED

Agreement - County of Lehigh and MBH
Dated July 1, 2016
Appendix 8
Statutory Reports

Statutory Program Reporting Requirements

PIPS due Quarterly

QM Summary due Quarterly: The QM summary is due 45 days after the end of the reporting quarter.

CFST Reports and Narratives due Quarterly

PEPS (various) due annually 4/15 or when requested by state.

Work Plan and Program Description due 3/1

Program Evaluation due 4/15

Denial log is due to the state within 15 days after the end of the reporting period

Financial Reporting Requirements Table

Title	Report #	Due Date	Frequency
Enrollment Table	1	15 th of the second month after period end (i.e. period ending 03/31/xx, reports are due 5/15/xx)	M or Q
Primary Contractor Summary of Transactions	2	15 th of the second month after period end	M or Q
Subcontractor Summary of Transactions	3	15 th of the second month after period end	M or Q
Related Party Transactions and Obligations	4	15 th of the second month after period end	M or Q
Risk Pool Analysis	5	15 th of the second month after period end	M or Q
Claims Payable (RBUCs and IBNRs)	6	15 th of the second month after period end	M
Lag Reports	7	15 th of the second month after period end	M
Claims Processing report	8	15 th of the second month after period end	M
Analysis of Revenues and Expenses	9	15 th of the second month after period end	M or Q
Coordination of Benefits Report	11	15 th of the second month after period end	M
Reinvestment Report	12	15 th of the second month after period end	M
Balance Sheet	13	15 th of the second month after period end	M, Q, or A
Statement of Revenues, Expenses, and Changes in	14	15 th of the second month after period	M, Q, or A

Retained Earnings (Deficit)/Fund Balance		end	
Statement of Cash Flows	15	15 th of the second month after period end	M, Q, or A
Federalized GA Report	16	15 th of the second month after period end	M
Contract Reserves Compliance Report	17	15 th of the second month after period end	Q
Insurance Department Quarterly Filing	18	15 th of the second month after period end	Q
Adult Outpatient Services in Alternative Settings	19	15 th of the second month after period end	Q
Annual Counterpart Report	20	LC/NE/NC – Sept 1 st	A
Annual HealthChoices Behavioral Health Contract Audit	21	LC/NE/NC – Nov. 15 th	A
Audited General Purpose Financial Statements	22	9 months after the county's audit year end	A
Annual Entity Wide Audit	23	180 days after FYE	A
Insurance Department Annual Filing	24	March 1 st	A
Insurance Department Annual Audited Financial Statements	26	June 30 th	A
Physician Incentive Arrangement		Last date of contract year	A
Equity Requirement		LC/NE/NC – May 15 th	A
Insolvency Protection Agreement		LC/NE/NC – May 1 st	A
Risk Protection (Stop-Loss Reinsurance)		LC/NE/NC – May 1 st	A
Reinsurance Experience – Estimated		LC/NE/NC – October 1 st	A
Reinsurance Experience - Actual		LC/NE/NC – July 1 st	A

APPENDIX 9

INSURANCE REQUIREMENTS

ATTACHED

Agreement – County of Lehigh and MBH
Dated July 1, 2016
Appendix 9
Insurance Requirements

Magellan Behavioral Health of Pennsylvania, Inc agrees to maintain the following insurance limits with county of Lehigh names as an additional insured. Insurance limits may not go below the following:

General Liability:

Each occurrence \$1,000,000
Damage to rented Premises \$1,000,000
Med Exp \$5000
Personal & Adv Injury \$1,000,000
General Aggregate \$3,000,000
Products-Comp/OP Agg \$1,000,000

Automobile Liability: waiver is granted from current mandatory requirements as MBH does not transport clients

Excess/Umbrella Liability:

Each occurrence \$10,000,000
Aggregate \$10,000,000

Workers Compensation and Employers' Liability:

E.L. Each Accident \$1,000,000
E.L. Disease-EA Employee \$1,000,000
E.L. Disease – Policy Limit \$1,000,000

Other (ManageCare Liability):

Each Occurrence \$10,000,000
Aggregate \$10,000,000

Magellan Behavioral Health is not required by County of Lehigh to be listed as add insured for the umbrella requirement.

Magellan Behavioral Health of Pennsylvania, Inc agrees to provide at least annual updated insurance certificates or when limits change. Failure to submit current insurance certificates will result in withheld payments.



CERTIFICATE OF LIABILITY INSURANCE

6/17/2016

DATE (MM/DD/YYYY)

9/18/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 1185 Avenue of the Americas, Suite 2010 New York 10036 646-572-7300	CONTACT NAME:	
	PHONE (A/C No. Ext.): FAX (A/C No.):	
INSURED 1345009 MAGELLAN HEALTH, INC. 4800 N. SCOTTSDALE ROAD SCOTTSDALE AZ 85251	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Lexington Insurance Company	19437
	INSURER B: Liberty Mutual Fire Insurance Company	23035
	INSURER C: Liberty Insurance Corporation	42404
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES MAGHE01 **CERTIFICATE NUMBER:** 11461365 **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	N	7055341	6/17/2015	6/17/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> COMP. \$1,000 <input checked="" type="checkbox"/> COLL. \$1,000	N	N	AS2-651-004219-115 *	10/1/2015	10/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$
A	UMBRELLA LIAB <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> CLAIMS-MADE DED RETENTION \$	N	N	7055342	6/17/2015	6/17/2016	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ XXXXXXXX
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC7-651-004219-105	10/1/2015	10/1/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A A A	MANAGECARE LIAB. CLAIMS MADE	N	N	01-415-68-82 SIR applies per policy terms & conditions	6/17/2015	6/17/2016	\$10,000,000 per Med Incident \$10,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
COUNTY OF LEHIGH IS INCLUDED AS ADDITIONAL INSURED.

CERTIFICATE HOLDER

11461365
COUNTY OF LEHIGH
DEPARTMENT OF LAW
ATTN: CATHARRINE M. ROSENBERRY, ESQUIRE
CHIEF DEPUTY SOLICITOR
17 S. 7TH STREET
ALLENTOWN PA 18101

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2014 ACORD CORPORATION. All rights reserved.

APPENDIX 10

GUARANTY

ATTACHED

Appendix 10

GUARANTY

A. Magellan Health, Inc., its successors and assigns ("Guarantor"), hereby unconditionally and irrevocably guarantees to County of Lehigh, a home rule county of the Third Class of the Commonwealth of Pennsylvania ("COUNTY"), and becomes surety to COUNTY for, the performance and payment of all of the obligations of its subsidiary Magellan Behavioral Health of Pennsylvania, Inc. ("MBH") under the Agreement dated as of July 1, 2015 between MBH and COUNTY ("Agreement"). If any such obligation is not performed, subject to any applicable notice and grace period, Guarantor will, upon COUNTY's demand, immediately perform such obligation or cause the same to be performed strictly in accordance with the terms of the Agreement and this Guaranty or make the payment required. All capitalized terms used and not defined herein shall have the meaning given such terms in the Agreement. In furtherance of the foregoing, Guarantor hereby represents, warrants and covenants that:

1. It understands the regulatory and contractual net worth, equity reserve and other financial stability and solvency requirements of the Pennsylvania Department of Insurance and the Pennsylvania Department of Human Services under the HealthChoices Program; and
2. It guarantees that MBH will maintain the requirements referenced in the preceding paragraph.

B. This Guaranty is a continuing, absolute and unconditional guaranty and surety of performance and payment and not of collection. This shall be an instrument of


Appendix 10

suretyship as well as a guaranty, and Guarantor agrees that this Guaranty may be enforced by COUNTY without the necessity at any time of resorting to or exhausting any other security given in connection with the Agreement, and recovery hereunder shall not be limited to such security. Guarantor hereby irrevocably waives any right of subrogation and notice of acceptance of this Guaranty. Guarantor, by its execution hereof, agrees to be bound by Section 21.5 (Consent to Jurisdiction and Waiver) and Section 21.6 (Bankruptcy Covenant) of the foregoing Agreement.

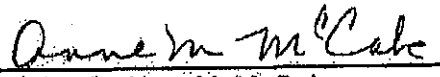
C. This Guaranty shall survive termination of the Agreement and Guarantor's obligations hereunder exist independent of MBH's operations and shall continue in full force and effect for so long as COUNTY or MBH remain subject to liability resulting from any audit, investigation or review, claim, liability or expense relating to the HealthChoices Program.

Attest:

MAGELLAN HEALTH, INC.



Daniel N. Gregoire
General Counsel

By: 
Printed Name: Anne M. McCabe
Title: President, Public Sector Solutions

APPENDIX 11

**COUNTY ADMINISTRATIVE CODE REQUIRED CONDITIONS
FOR ALL CONTRACTS**

ATTACHED

Section 801.2 - REQUIRED CONDITIONS FOR ALL CONTRACTS

- (A) Every contract shall specifically state that it is contingent upon the availability of appropriated funds from which payment can be made.
- (B) The County of Lehigh shall not make contractual arrangements with a vendor who is delinquent on any taxes due the County until the taxes are paid in full. Delinquent shall herein be defined as the point when the taxes owed become the responsibility of the Tax Claim Bureau to collect.
- (C) Every contract shall state that if the vendor becomes delinquent on taxes owed the County during the term of the agreement, vendor shall be in breach of the agreement and the County shall withhold vendor payments in lieu of taxes until taxes are paid in full.
- (D) The Department of Administration shall issue written notice to the Board of Commissioners within 60 days of the end of the fiscal year if a vendor or lessee is found to be delinquent on any taxes due the County. As directed pursuant to contract language authorized by this section, the County shall withhold payments until the taxes are paid in full.
- (E) The County of Lehigh shall not make contractual arrangements with a vendor who is also a lessee of the County until the rent due the County is paid in full as provided for in the terms of the lease agreement.
- (F) Every contract shall specifically state that the vendor agrees not to hire County personnel who may exercise discretion in the awarding, administration or continuance of that vendor's contract. The prohibition shall be in force for up to and including one year following the termination of the employee from County service. A vendor's failure to abide by this provision shall constitute a breach of the contract, and the agreement shall so state.

APPENDIX 11

ADDENDUM

Magellan Behavioral Health of Pennsylvania, Inc. (hereinafter "SUBCONTRACTOR") and the County of Lehigh (hereinafter "COUNTY") agree to the following additional provisions for the Agreement by and between them dated July 1, 2016 (the "Agreement").

I. TAXES

- A. The SUBCONTRACTOR hereby certifies, as a condition precedent to the execution of the Agreement and as an inducement for the COUNTY to execute same, that it is not "delinquent" on any taxes owed to the County of Lehigh. "Delinquent" is hereby defined as the point in time at which the collection of the tax becomes the responsibility of the Lehigh County Tax Claim Bureau.
- B. The SUBCONTRACTOR further agrees, as a specific condition of this Agreement, that it shall remain current on all of the taxes it owes to the COUNTY. Should the SUBCONTRACTOR become delinquent on any taxes it owes to the COUNTY during the term of the Agreement, the SUBCONTRACTOR may be deemed to be in breach of the Agreement by the COUNTY and, in addition to any other remedies at law for such breach, the SUBCONTRACTOR hereby specifically agrees and authorizes the COUNTY to apply all funds when due to the SUBCONTRACTOR directly to the taxes owed to the COUNTY until said taxes are paid in full.
- C. In the event the SUBCONTRACTOR becomes delinquent, it hereby authorizes the COUNTY to make payments to the taxing authority for the COUNTY to bring the SUBCONTRACTOR's COUNTY taxes current.

II. UNDUE INFLUENCE

The SUBCONTRACTOR agrees not to hire any COUNTY personnel who may exercise or has exercised discretion in the awarding, administration, or continuance of the Agreement for up to and including two years following the termination of the employee from COUNTY service. Failure to abide by this provision shall constitute a breach of the Agreement.

III. APPROPRIATED FUNDS

The SUBCONTRACTOR agrees that any and all payments due from the COUNTY as required under the terms of the Agreement are contingent upon the availability of the appropriated funds. If any or all of the funds which are due to the SUBCONTRACTOR emanate from State or Federal sources, payment is also contingent upon the COUNTY receiving such moneys from the State or Federal Government.

IV. FINAL REPORT

If a final report or study is delivered to COUNTY pursuant to the Agreement, a copy of the final report or study shall be provided directly by the SUBCONTRACTOR to the Board of Commissioners. SUBCONTRACTOR agrees to present publicly the final report or study should a committee of the Board of Commissioners so desire.

Magellan Behavioral Health of Pennsylvania, Inc.

By: Anne McCabe

Title: Anne McCabe
CEO & President

Date: 5-05-2016



Witness

COUNTY OF LEHIGH
(SEAL)

By: _____

Tom Muller
County Executive

Date: _____

Witness

APPENDIX 12

ACA HEALTH INSURANCE PROVIDERS FEE

ATTACHED

APPENDIX 12

ACA Health Insurance Providers Fee

The Parties seek to implement the provisions of the DHS Agreement specifically as set forth in its Appendix 5 as to the inclusion of amounts in the capitation rates reflected in DHS's Payments to the Primary Contractor sufficient to cover the federal tax liability, as to the "health insurance providers fee" (or HIPF as further defined herein), plus the federal and state income tax liabilities on such capitation rate increases, on any BH-MCO under an agreement between the COUNTY as Primary Contractor and that BH-MCO, as a Subcontractor under the provisions of the PSR, to the full extent of such BH-MCO's federal tax liability under the provisions of the Section 9010 Patient Protection and Affordable Care Act of 2010 ("ACA"), plus the federal and state income tax liabilities on such capitation rate increases.

The Parties agree that MBH as the BH-MCO under this Agreement has certain tax liabilities (including tax liabilities on the payments contemplated under Appendix 5) as to that HIPF as defined in the ACA and the DHS Agreement in Appendix 5 and further defined herein.

The Parties desire to incorporate in this Agreement the terms of Appendix 5 to the DHS Agreement, as to the calculation of and inclusion of such tax liabilities in DHS's Payments from the COUNTY to MBH, as set forth in Appendix 5 to the DHS Agreement as such Appendix 5 is attached hereto.

The Parties intend that the COUNTY shall pass through to MBH the full amount of such liability of MBH as to the HIPF plus the federal and state income tax liabilities on such capitation rate increases (for clarification purposes all references herein to the liability of MBH as to the HIPF and payment thereof by the COUNTY to MBH includes the additional federal and state income tax liabilities on such capitation increases), but only to the extent as paid by DHS to the COUNTY and as calculated under the terms of Appendix 5 to the DHS Agreement attached hereto in each Program Year; and

The Parties further intend that should the full amount of such liability of MBH as to the HIPF for and in any Program Year, as paid by DHS to the COUNTY and as calculated under the terms of Appendix 5 to the DHS Agreement attached hereto, not be received by the COUNTY from DHS prior to the termination of the Initial Term on June 30, 2018, or at the termination of any renewal term(s) thereafter as set forth in Section 9 of the Agreement, such liability of MBH as to the HIPF shall thereafter promptly be paid by the COUNTY to MBH after such termination, but only to the extent and after receipt by the COUNTY of such supplemental capitation payments received from DHS pursuant to Section 8.1 and Appendix 5.

The Parties agree to the attached Appendix 5 and obligation of the COUNTY to pass through such amounts, added by DHS to the Capitation rates and thus DHS's

Payments in each Program Year, as to the HITP as defined therein and MBH agrees to the methodology set forth in Appendix 5.

The COUNTY agrees that in the event that the full amount of such liability of MBH as to the HIPF, as paid by DHS to the COUNTY and as calculated under the terms of Appendix 5 to the DHS Agreement attached hereto, is not calculated and received by the COUNTY from DHS prior to the termination of the Initial Term on June 30, 2018 or at the termination of any renewal term(s) thereafter as set forth in Section 9 of the Agreement, such amounts due shall promptly be paid by the COUNTY to MBH after such termination and after receipt by the COUNTY of such supplemental capitation payments received from DHS pursuant to Section 8.1 and Appendix 5.

ACA Health Insurance Providers Fee

This Appendix provides for potential payments by the Department to the impacted BH Primary Contractors related to the Health Insurance Providers Fee (HIPF).

Fee Year – The year in which a HIPF payment is due from the BH-MCO to the Internal Revenue Service (IRS) is referred to as the Fee Year.

Data Year – The IRS calculates HIPF due in the Fee Year using submitted information on net premiums written for the previous calendar year, which is referred to as the Data Year.

- A. If a BH-MCO is a covered entity or a member of a controlled group under Section 9010 of the Affordable Care Act (ACA) that is required to file IRS Form 8963, Report of Health Insurance Provider Information (Report 8963), the BH-MCO must perform the following steps. If a BH-MCO is a Primary Contractor of DPW, the BH-MCO must provide the required materials directly to the Office of Mental Health and Substance Abuse Services (OMHSAS). If a BH-MCO is a subcontractor to a Primary Contractor, the BH-MCO shall provide their Primary Contractor with the required materials and the Primary Contractor shall simultaneously provide the materials to OMHSAS. Submission is not required if the BH-MCO is exempt from the HIPF.
1. By April 30th of each calendar year, the BH-MCO shall provide OMHSAS (directly or via the Primary Contractor) with a copy of Form 8963 submitted to the IRS. The BH-MCO shall also provide, for each line on Form 8963 that reports premiums written, the amount of HealthChoices premium included on that line. For BH-MCOs with multiple HC BH agreements, the BH-MCO shall provide the breakdown of HealthChoices premium reported on Form 8963 separately for each agreement.
 2. The BH-MCO will provide to OMHSAS (directly or via the Primary Contractor) a copy of the IRS Annual Fee on Health Insurance Providers for 20xx notice within ten (10) business days of its receipt from the IRS.
 3. If a corrected Form 8963 is submitted to the IRS during the error correction period, the BH-MCO shall provide OMHSAS (directly or via the Primary Contractor) with a copy of all such reports within 10 business days of submission to the IRS. The BH-MCO shall also provide, for each line on a corrected Form 8963 that reports premiums written, the amount of HC BH premium that is included on that line.

4. The BH-MCO will provide OMHSAS (directly or via the Primary Contractor) with a copy of the IRS Annual Fee on Health Insurance Providers for 20xx notice for that Fee Year within five (5) business days of receipt from the IRS.
5. If the BH-MCO's net income is subject to federal income tax and the BH-MCO desires OMHSAS to consider this in its calculation of the payment amount, the BH-MCO shall provide the average federal income tax rate that applies to its income for the Data Year. The BH-MCO will also provide the amount of taxable income subject to federal income tax and the amount of federal income tax paid for the most recent income tax year for which a tax filing has been made. The BH-MCO will specify the tax year and will provide the information by June 30 or by August 30 pursuant to a permitted IRS extension as to such tax filing.
6. If the BH-MCO's net income is subject to Pennsylvania (PA) corporate net income tax and the BH-MCO desires OMHSAS to consider this in its calculation of the payment amount, the BH-MCO shall provide the average state income tax rate that applies to its PA corporate net income for the Data Year. The BH-MCO will also provide the amount of taxable income subject to PA corporate net income tax and the amount of PA corporate net income tax paid for the most recent income tax year for which a tax filing has been made. The BH-MCO will specify the tax year and will provide the information by June 30 or by August 30 pursuant to a permitted IRS extension as to such tax filing for the Fee Year.

B. OMHSAS will:

1. Review each submitted document and notify the Primary Contractor and/or the BH-MCO of any questions. The BH-MCO must respond to questions from OMHSAS within five work days.
2. By September 30 of each Fee Year, OMHSAS and its actuary will calculate revised Data Year capitation rates and rate ranges to account for the HealthChoices portion (specific to this Agreement) of the BH-MCO's HIPF obligation per the IRS Annual Fee on Health Insurance Providers for 20xx notice (as noted in A.2 above). In October of each year, OMHSAS will provide each impacted Primary Contractor with the capitation rate adjustments incorporating the HIPF. OMHSAS will process capitation payment adjustments after receiving approval of the revised rates from CMS. To calculate the capitation payment adjustment, the OMHSAS will:
 - a. Calculate the HIPF obligation rate (the "HIPF%") from information on the IRS Annual Fee on Health Insurance Providers for 20xx notice, where 20xx is the Fee Year. For a BH-MCO that is a single-person covered entity, the IRS will send this document to the BH-MCO. For a BH-MCO that is a member of controlled group, the IRS will send this

document to the designated entity of the controlled group on behalf of all members of the controlled group.

Single-person covered entity or controlled group HIPF% = Amount labeled "Your share of fee" / Amount labeled "Sum of total net premiums written as reported"

The amount "Sum of total net premiums written as reported" is before the reduction of 100% of the first \$25 million of premium and 60% of the next \$25 million of premium. The single-person covered entity or controlled group HIPF% is unique to each entity that is subject to the HIPF. The above formula produces the HIPF% to be used in subsequent steps of the calculation in the following circumstances:

- i. The BH-MCO is a single-person covered entity.
- ii. The BH-MCO is a member of a controlled group and none of the controlled group's premiums are reported as "Premiums eligible for partial exclusion for certain exempt activities" (listed on Form 8963 as attributable to 501(c)3, (c)4, (c)26, or (c)29 entities).
- iii. The BH-MCO is a member of a controlled group and all of the controlled group's premiums are reported as "Premiums eligible for partial exclusion for certain exempt activities" (listed on Form 8963 as attributable to 501(c)3, (c)4, (c)26, or (c)29 entities).

If the document "Annual Fee on Health Insurance Providers for 20xx" has an amount for the "Premiums eligible for partial exclusion for certain exempt activities" that is not zero and not equal to the amount "Sum of total net premiums written as reported", then information from Form 8963 on the premiums attributable to 501(c)3, (c)4, (c)26, or (c)29 entities will be used to develop a non-profit HIPF% for the 501(c)3, (c)4, (c)26, or (c)29 entities that is 60% of the HIPF% for the other (for-profit) entities, where the application of the two rates to the respective premiums produces the amount "Your share of fee". The HIPF% to be used in subsequent steps of the calculations is either the non-profit or for-profit HIPF%, as determined by the status of the PH-MCO.

- b. Calculate Figure A. Figure A is the total revenue for coverage in the Data Year that OMHSAS or the Primary Contractor has provided the BH-MCO for this Agreement, as known through payments made by August 1 of the Fee Year. The Figure A amount has no provision for the HIPF obligation.

- c. Calculate Figure B. Figure B is the portion of Figure A that is for services subject to the HIPF. Capitation revenue for services that are excludable under Section 9010, such as long-term care services, will not be included in Figure B. The Figure B amount has no provision for the HIPF obligation.
- d. Calculate Figure C. Figure C is the calculation of total revenue that incorporates provision for the HIPF and other taxes. OMHSAS will use the following formula to calculate Figure C. If the BH-MCO has not provided satisfactory documentation of federal income tax obligations under section A.5, then the Average Federal Income Tax Rate (AvgFIT%) in the formula will be zero. If the BH-MCO has not provided satisfactory documentation of Pennsylvania corporate net income tax obligations under section A.6, then the Average State Income Tax Rate (AvgSIT%) in the formula will be zero. However, the BH-MCO and the Primary Contractor shall be notified by the Department in writing of any determination that the submitted documentation is not satisfactory, and the basis for that determination, and the BH-MCO shall have thirty (30) days from receipt of such notification to provide additional documentation to support its federal or state tax obligations under section A.5, and for the calculation under this section B.2.d. The applicable Gross Receipts Tax percentage (GRT%) is inclusive of any applicable PURTA percentage. If Gross Receipts Tax does not apply, then the GRT% amount is zero.

$$\frac{\text{Figure B} \times (1 - \text{GRT}\%)}{1 - \text{GRT}\% - (\text{HIPF}\% / (1 - \text{AvgSIT}\% - \text{AvgFIT}\% \times (1 - \text{AvgSIT}\%)))}$$

- e. Calculate Figure D. OMHSAS will calculate Figure D by subtracting Figure B from Figure C. This is the final HIPF adjustment amount that will serve as the basis for OMHSAS payment to the impacted Primary Contractors. For BH-MCOs with multiple agreements, the HIPF will be allocated across the agreements based on revenue and separate payments will be made.
- f. OMHSAS will compare Figure D with Figure B to calculate the percentage adjustment to the Data Year capitation rates and rate ranges for submission to CMS for approval. For BH-MCOs with multiple agreements, the HIPF will be allocated across the agreements based on revenue. The Data Year may encompass multiple rating periods.

3. To assist with prompt payment to the Primary Contractors, OMHSAS will provide the Primary Contractor with the estimated impact of the HIPF on the Data Year capitation payments based upon the June IRS-estimated amount. OMHSAS will provide the estimate on or before August 15 of the Fee Year, if the BH-MCO has provided the information in Sections A, 2., 3. (if applicable), 5., and 6 by June 30. The Primary Contractor and its BH-MCO, if applicable, will review this calculation and notify the State of any identified discrepancies within 10 business days.
- C. OMHSAS will perform the steps provided by this Appendix 5 for any year that a BH-MCO pays a HIPF, even if the BH-MCO is no longer providing HealthChoices BH services during that Fee Year.
- D. The BH-MCO shall notify OMHSAS (directly or via the Primary Contractor) if the HIPF actually paid is less than the amount in the IRS final fee calculation notice or if the IRS refunds any portion of the HIPF. If such changes affect the calculations provided in Appendix 5, OMHSAS will recalculate its obligation and the BH-MCO will refund the difference.
- E. OMHSAS will not make a payment per this Appendix 5 if the BH-MCO is not subject to the HIPF.
- F. OMHSAS will have no obligation to the BH-MCO per this Appendix 5 unless CMS has approved the Agreement that includes this appendix.

Agreement – County of Lehigh and Magellan Behavioral Health of Pennsylvania, Inc. (“MBH”)
Dated July 1, 2016
Appendix 13
P4P Methodology

Intentionally Blank

To date, the P4P methodology has not been submitted to or approved by
DHS.

Appendix 13 – P4P Methodology

As of the date of the execution of this Agreement by the parties, the P4P methodology has not yet been submitted to the DHS for approval. As soon as the approval is received, per the agreement of the parties, the approval will be attached after this page.