

**June 12**

**Committee Meetings**

All meetings will begin at the conclusion of the earlier meeting but not later than the time listed.

**Executive Session** **5:30 p.m.** **Conference Rm 123**  
Discuss Labor Negotiations

**Cedarbrook** **5:55p.m.** **Public Hearing Rm**  
Res. 2019-40: Approving a Professional Services Agreement with St. Luke's Physician Group, Inc. for a Medical Director.

Res. 2019-41: Approving an Amendment to the Professional Services Agreement with SpirtTrust Lutheran Home Care & Hospice (fka Lutheran Home Care and Hospice, Inc. d/b/a Sacred Heart Home Care and Hospice.

**Development** **6:05 p.m.** **Public Hearing Rm**  
Bill 2019-19: Approving CDBG Subrecipient Grants and Re-Allocation of Funding.

Waivers for Quality of Life and Tourism grants

**Human Services** **6:20 p.m.** **Public Hearing Rm**  
Res. 2019-42: Approving a Fourth Amended and Restated Agreement with Magellan Behavioral Health of Pennsylvania, Inc.

**Governance** **6:30 p.m.** **Public Hearing Rm**  
Update on Lehigh County's Census Efforts

Motion Regarding Outside Counsel

Aging & Adult Services	Res. Gus Al-Kahl	Appointment
LCA	Amir Famili	Appointment
MH/ID	Janet Verga	Appointment

Director of Nursing	Teresa Samuels
Asst. Admin. Cedarbrook Ft. Hill	Michelle Julian
Supervisory Accountant Cedarbrook	David Crook
Cedarbrook	

Bill 2019-18: Approving an Amendment to the Articles of Incorporation for the Lehigh County Authority to Extend the Authority's Term of Existence for a Period of Forty-Three Years from Approval by the Department of State.

**Break between meetings** **7:20 p.m.** **Public Hearing Rm**  
**Board of Commissioners** **7:30 p.m.** **Public Hearing Rm**





**Wednesday, June 12, 2019**  
**Lehigh County Board of Commissioners**

**Lehigh County Government Center**  
**Public Hearing Room**  
**17 South Seventh Street**  
**Allentown, PA 18101**  
**7:30 p.m.**

### **1. Preliminary Agenda Items**

---

- 1.1 Meeting Called to Order - Marty Nothstein, Chairman
- 1.2 Meeting Taped for Public Record
- 1.3 Pledge to the Flag
- 1.4 Executive Sessions Held - The Board meet in executive session prior to tonight's meeting to discuss labor negotiations.
- 1.5 Minutes for Approval - Meeting 05/22/19
- 1.6 Citizens Input
- 1.7 Chair's Review - 1) Presentation from the Bethlehem Marine Corps League 2) Lehigh County Youth Advisory Council

### **2. Appointments**

---

#### **3. Old Business - Commissioner Bills Second Reading Discussion & Vote**

---

- 3.1 Bill 2019-14: Amending the 2019-2023 Lehigh County Capital Plan to Include the Purchase of Auto-Indexing Software for the Office of Judicial Records. (Sponsored by Commissioner Osborne)
- 3.2 Bill 2019-16: Approving an Amendment to the Lease Agreement with Roche Partnership, LLP. (Commissioner Dougherty)
- 3.3 Bill 2019-17: Approving a Lease with Community Action Committee of the Lehigh Valley for Forty-Three Acres in Upper and Lower Milford Townships. (Sponsored by Commissioners Dougherty, Brace, Grammes, Hartzell & Zanelli))

#### **4. New Business - Motions, Resolutions, Bills for First Reading**

---

- 4.1 Motion to Appoint Diana Scholl to the Position of Deputy Clerk
- 4.2 Motion to Appoint Outside Counsel
- 4.3 Motion to Waive Grants Policy Requirements for Quality of Life and Tourism Grants
- 4.4 Res. 2019-40: Approving a Professional Services Agreement with St. Luke's Physician Group, Inc. for a Medical Director. (Sponsored by Commissioner Hartzell)
- 4.5 Res. 2019-41: Approving an Amendment to the Professional Services Agreement with SpirtTrust Lutheran Home Care & Hospice (fka Lutheran Home Care and Hospice, Inc. d/b/a Sacred Heart Home Care and Hospice. (Sponsored by Commissioner Hartzell)

4.6 Res. 2019-42: Approving a Fourth Amended and Restated Agreement with Magellan Behavioral Health of Pennsylvania, Inc. (Sponsored by Commissioner Grammes)

4.7 Bill 2019-18: Approving an Amendment to the Articles of Incorporation for the Lehigh County Authority to Extend the Authority's Term of Existence for a Period of Forty-Three Years from Approval by the Department of State. (Sponsored by Commissioners Brace & Osborne)

4.8 Bill 2019-19: Approving CDBG Subrecipient Grants and Re-Allocation of Funding. (Sponsored by Commissioner Brace)

## **5. Closing Agenda Items**

---

5.1 Committee Reports

5.2 Citizens Input on Committee Reports

5.3 Commissioner Announcements

5.4 Citizens Input

5.5 Motion to Adjourn

**Motion for June 12, 2019 Board Meeting**

I move to approve the recommendation of the Board of Commissioners' Personnel Committee to appoint Diana Scholl to the position of Deputy Clerk to the Board, at Grade 25, Step 1 salary of \$67,725.



## Motion for Appointment of Outside Counsel

Pursuant to §407(b) of the Home Rule Charter, I move to approve the transfer of Lehigh County's representation in the matter of *The County of Lehigh v. PPG Industries, Inc., et al.* from Anapol Weiss to First Law Strategy Group, LLC, with the terms of engagement identical to those set forth in the contingency fee letter agreement with Anapol Weiss dated August 28, 2018, and executed on September 28, 2018, as clarified by letter dated November 9, 2018.

**Background information for hiring outside counsel**

The County engaged Anapol Weiss as special counsel in connection with the claims against Sherwin Williams Company, NL Industries f/k/a National Lead Company, and others relating to the County's claims for remediation, Declaratory relief and public nuisance resulting from the manufacturing, marketing and use of lead paint. David Senoff, lead counsel in the County's representation, has recently left Anapol Weiss and started an independent firm.

The Solicitor, in conjunction with the Department of General Services, wishes to remain a client of David Senoff, Esq. at First Law Strategy Group, LLC to continue the litigation on behalf of the County.



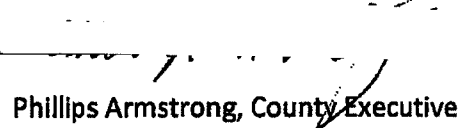




**Waiver for Information as Required by  
Ordinance 2017-131**

The County Executive and the Department of Community & Economic Development recommends the following requirement(s) be waived for the organization listed below:

1. **Organization: Lehigh Valley Musicians Local 45**
2. **Requirements to waive with reason for request: No Audits-Organization does not have completed. Works as a pass through to the bands in the organization**
3. **Additional pertinent information:**
4. **Grant/Program: 2020 Quality of Life Grant**

  
Phillips Armstrong, County Executive

6/6/19

Date

**Motion for June 12, 2019 Board Meeting**

In accordance with Section 610.C.3. of the Lehigh County  
Administrative Code, I move that the attached Waiver for Information  
pertaining to Lehigh Valley Musicians Local 45 is hereby granted.

**Motion for June 12, 2019 Board Meeting**

In accordance with Section 610.C.3. of the Lehigh County  
Administrative Code, I move that the attached Waivers for Information  
pertaining to the 2020 Tourism Development Grants are hereby granted.

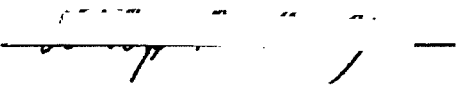




**Waiver for Information as Required by  
Ordinance 2017-131**

The County Executive and the Department of Community & Economic Development recommends the following requirement(s) be waived for the organization listed below:

1. Organization: **Martin Luther & Coretta Scott King Memorial**
2. Requirements to waive with reason for request: **No Audits-Organization does not have completed due to expense**
3. Additional pertinent information:
4. Grant/Program: **2020 Tourism Development Grant**

  
Phillips Armstrong, County Executive

6/6/19

Date






**Waiver for Information as Required by  
Ordinance 2017-131**

The County Executive and the Department of Community & Economic Development recommends the following requirement(s) be waived for the organization listed below:

1. **Organization: Macungie Memorial Park**
2. **Requirements to waive with reason for request: No Audits-Organization does not have completed due to expense**
3. **Additional pertinent information:**
4. **Grant/Program: 2020 Tourism Development Grant**

  
Phillips Armstrong, County Executive

6/6/19

Date





**COUNTY OF LEHIGH, PENNSYLVANIA  
RESOLUTION NO. 2019 - 40  
SPONSORED BY COMMISSIONER HARTZELL  
REQUESTED DATE: MAY 16, 2019**

---

**APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH  
ST. LUKE'S PHYSICIAN GROUP, INC. FOR A MEDICAL DIRECTOR**

---

**WHEREAS**, §801.1(B) of the Administrative Code of the County of Lehigh requires resolution approval for nonbid professional service agreements over ten thousand dollars (\$10,000.00); and

**WHEREAS**, Cedarbrook Senior Care and Rehabilitation requests that the County of Lehigh enter into an agreement with St. Luke's Physician Group, Inc. to provide one of its physicians, acceptable to County as Medical Director for Cedarbrook Senior Care and Rehabilitation – Fountain Hill.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH, PENNSYLVANIA THAT:**

1. The proposed agreement for professional services with St. Luke's Physician Group, Inc., marked Exhibit "A" attached hereto and made a part hereof by this reference, is hereby approved.
2. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Resolution.
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 \_\_\_\_\_, 2019, by the following vote:

**Commissioners**

**AYE**

**NAY**

Geoff Brace  
Nathan Brown  
Percy H. Dougherty  
Marc Grammes  
Dan Hartzell  
Amanda Holt  
Marty Nothstein  
Brad Osborne  
Amy Zanelli

ATTEST: \_\_\_\_\_  
Clerk to the Board of Commissioners

**COUNTY OF LEHIGH  
CEDARBROOK SENIOR CARE AND REHABILITATION**

**Medical Director for Cedarbrook Senior Care and  
Rehabilitation – Fountain Hill**

THIS AGREEMENT, made this            day of            , 2019, by and between  
**COUNTY OF LEHIGH**, a Home Rule County of the Third Class, with offices at 17 South  
Seventh Street, Allentown, Lehigh County, Pennsylvania 18101-2400, (hereinafter referred to as  
"COUNTY"), and **ST. LUKE'S PHYSICIAN GROUP, INC.**, a Pennsylvania corporation with  
offices at 801 Ostrum Street, Fountain Hill, Pennsylvania, 18015, (hereinafter referred to as  
"SLPG").

**WHEREAS**, COUNTY is the owner and operator of a long term care facility known as  
Cedarbrook Senior Care and Rehabilitation (Cedarbrook), with facilities at 350 S. Cedarbrook  
Road, Allentown, Pennsylvania 18104 and 724 Delaware Avenue, Fountain Hill, Pennsylvania  
18015. This Agreement relates solely to the Fountain Hill facility (hereinafter referred to as  
Cedarbrook - Fountain Hill); and

**WHEREAS**, Cedarbrook - Fountain Hill desires to retain SLPG to provide one of its  
physicians, acceptable to COUNTY as Medical Director for Cedarbrook - Fountain Hill; and

**WHEREAS**, SLPG desires to provide such services.

**NOW, THEREFORE**, the parties mutually agree as follows:

1. **Engagement.** COUNTY hereby engages SLPG to provide a physician to serve as  
Medical Director of Cedarbrook - Fountain Hill and agrees that such Medical Director shall  
provide the services set forth on **Schedule A** attached hereto and made a part of this Agreement

**EXHIBIT**

A

upon the terms and conditions hereinafter stated, and SLPG hereby accepts such engagement and agrees that the physician selected shall perform such services diligently, competently and to the best of his/her professional ability. SLPG and COUNTY have agreed that Alaa-Eldin Mira, M.D, CMD. shall provide Medical Director services under this Agreement. In the event Alaa-Eldin Mira, M.D, CMD is unwilling or unable to perform these services and COUNTY and SLPG cannot agree on a substitute physician within thirty (30) days from the date notice is given that Alaa-Eldin Mira, M.D. or any subsequent Medical Director can no longer perform or is unwilling or unable to perform such services, this Agreement shall terminate and Cedarbrook - Fountain Hill shall select and appoint a Medical Director without reference to this Agreement.

2. **Performance of Services.** SLPG shall provide professional services to the residents of Cedarbrook - Fountain Hill at such times as shall be mutually agreed by the parties. In performing the services under this Agreement, SLPG and its physicians providing services under this Agreement shall comply with all federal and state laws, rules and regulations and all rules, regulations and policies of the County of Lehigh and Cedarbrook Senior Care and Rehabilitation.

3. **Compensation.** SLPG shall receive no compensation of any kind from the COUNTY or Cedarbrook for providing services under this Agreement.

4. **Worker's Compensation; Insurance.** In the performance of the duties assumed by SLPG under this Agreement, it is mutually understood and agreed that SLPG is and shall be deemed an independent contractor, and shall be solely responsible for payment of all withholding taxes, Social Security Taxes, Unemployment Compensation, Worker's Compensation, Occupation

Taxes, and similar taxes and governmental charges pertaining to the provision of services by its physicians under this Agreement and shall indemnify COUNTY against any governmental claims for such taxes or charges.

SLPG shall maintain such general liability and professional insurance coverage in such amounts as required under the laws of the Commonwealth of Pennsylvania. Certificates of such insurance shall be filed with the Administrator.

5. **Indemnification.** SLPG shall bear full responsibility and risk for all services performed by its physicians under this Agreement and agrees to indemnify and hold the COUNTY and Cedarbrook harmless from and against all claims asserted against either party on account of all services performed by SLPG to the extent such damages are caused solely by the actions of SLPG physicians providing services under the Agreement. In order to receive the indemnification, COUNTY must timely notify SLPG of any actions that trigger the obligation to indemnify and cooperate in good faith in the defense of any action where indemnification is sought. SLPG shall have the right to control the defense, select counsel and settle any matter in which the obligation to indemnify applies.

6. **Taxes.**

a. SLPG hereby certifies, as a condition precedent to the execution of this Agreement and as an inducement for the COUNTY to execute same, that it is not delinquent on any taxes owed to the COUNTY. 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. SLPG 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 SLPG become delinquent on any taxes it owes to the COUNTY during the term of this Agreement, SLPG may be deemed to be in breach of this Agreement by the COUNTY.

7. **Undue Influence.** SLPG agrees not to hire any County Personnel who may exercise or has exercised discretion in the awarding, administration, or continuance of this Agreement for up to and including one (1) year following the termination of the employee from COUNTY service. Failure to abide by this provision shall constitute a breach of this Agreement.

8. **Term.** This Agreement shall continue in full force and effect for a term of one (1) year, from July 1, 2019 to June 30, 2020, unless sooner terminated as set forth in paragraph 9. This Agreement shall be automatically renewed for three (3) successive one (1) year terms thereafter unless either party serves written notice to the other of its intent to terminate the Agreement at least ninety (90) days prior to the end of the initial term or any one year extended term.

9. **Termination.** This Agreement may be terminated by the COUNTY or SLPG for any reason or no reason at any time upon thirty (30) days written notice of an intent to terminate the Agreement.

This Agreement may be terminated by the COUNTY at any time for any of the following reasons, upon forty-eight (48) hour notice to SLPG.

a. Personal dishonesty including, but not limited to, fraud, misappropriation of funds, embezzlement or the like;

b. The abuse or dependency of or upon any "controlled substance" as that term is defined in "The Controlled Substance, Drug, Device and Cosmetic Act," 35 Pa. C.S.A. §75.101, et seq., as amended;

c. Willful and material breach, or gross neglect, by SLPG of any of its duties or obligations;

d. Breach of fiduciary duty involving personal profit;

e. Conviction of a felony;

f. Gross incompetence;

g. Loss by SLPG of insurance coverage against claims for professional liability.

h. The suspension or revocation of SLPG's license to practice medicine in the Commonwealth of Pennsylvania, for any reason if COUNTY and SLPG are unable to agree upon a replacement physician;

i. Termination, revocation or suspension of Medical Director's privileges at any Hospital, managed care organization or at Cedarbrook - Fountain Hill.

j. Violation of any Medicare/Medicaid statute, rule or regulation which results in or could result in the imposition of civil penalties or exclusion from the Medicare/Medicaid program.

k. Failure to comply with the provisions of the Older Adults Protective Services Act, or a determination in a protective services report that SLPG physician providing services has abused, neglected, exploited or abandoned a resident.

10. **Confidentiality.** SLPG shall, in the performance of its duties, insure that records, names, and identities of persons to whom services are or have been provided, shall remain confidential except as disclosure is permitted or required by law. Termination of this Agreement for any reason shall not relieve SLPG of the obligations of this paragraph.

11. **Non-Discrimination Clause.**

In carrying out the terms of this Agreement, both parties agree not to discriminate against any employee or client or other person on account of race, color, religion, gender, national origin, age, marital status, political affiliation, sexual orientation, gender identity or expression, or physical or mental disabilities as set forth in the Americans With Disabilities Act of 1990. SLPG and COUNTY shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49, with any pertinent Executive Order of the Governor and with all laws prohibiting discrimination in hiring or employment opportunities.

The provisions of this section must also be included in any sub-contract SLPG enters into to perform the scope of this Agreement.

12. **Disclosure of Contributions.**

Disclosures required by Section 801.5 (Open and Public Process) of the Lehigh County Administrative Code, a copy of which SLPG acknowledges has been provided to it. SLPG shall agree that Contributions will not be made which would render SLPG ineligible to be considered for the Agreement. The Agreement shall require that SLPG disclose any Contribution made by SLPG, sub-contractor or Consultant to any Candidate for Elective County Office or to an



Incumbent during the term of the contract and for one (1) year thereafter. Such disclosures shall be made in writing on a form provided by the COUNTY, and shall be delivered to the COUNTY, within (5) business days of the Contribution. This COUNTY disclosure form shall be delivered by SLPG to the COUNTY contact person identified in the contract, who shall forward copies to the Clerk to the Board of Commissioners, the Controller and the County Fiscal Officer.

13. **Right-To-Know.**

A. SLPG understands that this Agreement and records related to or arising out of this Agreement are subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. Sections 67.101-3104, ("RTKL").

B. If the COUNTY needs SLPG's assistance in any matter arising out of the RTKL related to this Agreement, COUNTY shall notify SLPG using the legal contact information provided in this Agreement. SLPG, at any time, may designate a different contact for such purpose upon reasonable prior written notice to COUNTY.

C. Upon written notification from the COUNTY that it requires SLPG's assistance in responding to a request under the RTKL for information related to this Agreement that may be in SLPG's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), SLPG shall:

1. Provide the COUNTY, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in SLPG's

15. Assignment. This Agreement may not be assigned or transferred by SLPG or COUNTY without the prior written consent of the other party.

16. Miscellaneous Provisions.

A. The following "Access to Records" clause is included herein because of the possible application of Section 186(v)(1)(I) of the Social Security Act; if that Section should be found inapplicable to this Agreement, then this clause shall be deemed not to be part of this Agreement and shall be null and void.

Until the expiration of seven (7) years after the furnishing of services pursuant to this Agreement, SLPG shall make available, upon written request of the Secretary of Health and Human Services or the U.S. Comptroller General or any of their duly authorized representatives, this Agreement, and books, documents and records of SLPG that are necessary to verify the nature and extent of costs incurred by SLPG under this Agreement.

If SLPG carries out any of the duties of this Agreement with a value of Ten Thousand Dollars (\$10,000.00 ) or more over a twelve (12) month period through a subcontract with a related organization, such contract must contain a clause to the effect that until the expiration of seven (7) years after the furnishing of services under the subcontract, the related organization shall make available, upon written request of the Secretary of Health and Human Services, the U.S. Comptroller General, or any of their authorized representatives, the subcontract, and books, documents and records of the related organization that are necessary to verify the nature and extent of costs incurred by SLPG under the subcontract.

and valid under applicable law, but if any provision of this Agreement shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have set their hands and seals the day and year first above written.

WITNESS:

COUNTY OF LEHIGH

\_\_\_\_\_  
BY: \_\_\_\_\_  
Phillips M. Armstrong,  
County Executive

WITNESS:

ST. LUKE'S PHYSICIAN GROUP, INC.

(  
\_\_\_\_\_  
BY: \_\_\_\_\_  
\_\_\_\_\_  
Print Name/Title

B. This Agreement shall not exempt the Medical Director from applying for Medical Staff privileges at Cedarbrook - Fountain Hill and from maintaining such privileges during the time this Agreement is in effect.

17. **Entire Agreement.** This Agreement constitutes the entire greement between the parties hereto with respect to the transactions contemplated herein and may not be changed or modified except in writing duly executed by all parties to this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, successors and assigns.

18. **Notices.** All notices required or permitted to be given under this Agreement shall be sufficient if in writing and shall be deemed to have been duly given if delivered or mailed, first class, postage pre-paid, certified or registered mail, return receipt requested, in either case, as follows:

**Provider**

St Luke's Physician Group, Inc.  
Attn: Alaa-Eldin Mira, M.D, CMD  
801 Ostrum St  
Fountain Hill, PA 18015  
Tel: 610-969-3390  
Fax: 610-969-3393

**County**

Jason Cumello, Administrator  
Cedarbrook Senior Care and Rehab.  
350 S. Cedarbrook Road  
Allentown, PA 18104  
Tel: 610-336-5610  
Fax: 610-867-2332

19. **Applicable Law.** This Agreement shall be construed under the laws of the Commonwealth of Pennsylvania.

20. **Severability.** This Agreement shall be interpreted in such manner as to be effective

## **SCHEDULE "A"**

### **DUTIES OF THE MEDICAL DIRECTOR OF CEDARBROOK SENIOR CARE AND REHABILITATION - FOUNTAIN HILL**

Physician as Medical Director of Cedarbrook - Fountain Hill shall perform the following services:

1. Implementation of resident care policies and coordination of the medical care in Cedarbrook - Fountain Hill to assist Cedarbrook - Fountain Hill in ensuring the adequacy and appropriateness of medical services provided to the residents;
2. Coordinate the care of residents provided by attending physicians and assisting to aid Cedarbrook in ensuring compliance with Cedarbrook - Fountain Hill's bylaws and rules and regulations and assisting Cedarbrook - Fountain Hill in the taking of steps necessary to correct any non-compliance;
3. Review incidents and accidents that occur on the premises and provide assistance in addressing the health and safety hazards of Cedarbrook - Fountain Hill;
4. Provide input in the development of written medical by-laws, rules and regulations which are approved by the governing body of Cedarbrook - Fountain Hill, and include delineation of the responsibilities of the attending physician and the physician extenders;
5. Participate with the professional staff of Cedarbrook - Fountain Hill in the development of other institutional medical policies, rules and regulations to govern the nursing care and related medical and other health services provided;
6. Participate as necessary or mandated by regulations on committees at Cedarbrook - Fountain Hill such as Quality Assurance Process Improvement (QAPI), Pharmaceutical Services, Infection Control, Patient Care and Physician Meetings;
7. Employ methods to keep the quality of care under constant surveillance;
8. Periodically evaluate the adequacy and appropriateness of professional and supportive staff services and make recommendations for improvements to Cedarbrook;

9. Execute patient care policies as they relate to the residents' total plan of care;
10. Participate in in-service training programs which pertain to medical care; and
11. Directs resident care in the absence of the attending physician.

**COUNTY OF LEHIGH, PENNSYLVANIA  
RESOLUTION NO. 2019 - 41  
SPONSORED BY COMMISSIONER HARTZELL  
REQUESTED DATE: MAY 16, 2019**

---

**APPROVING AN AMENDMENT TO THE PROFESSIONAL SERVICES  
AGREEMENT WITH SPIRITRUST LUTHERAN HOME CARE & HOSPICE  
(fka LUTHERAN HOME CARE AND HOSPICE, INC. d/b/a SACRED HEART  
HOME CARE AND HOSPICE)**

---

**WHEREAS**, §801.1(B) of the Administrative Code of the County of Lehigh requires resolution approval for nonbid professional service agreements over ten thousand dollars (\$10,000.00); and

**WHEREAS**, Cedarbrook Senior Care and Rehabilitation requests that the County of Lehigh (County) enter into an amended agreement with Spiritrust Lutheran Home Care & Hospice (fka Lutheran Home Care and Hospice, Inc. d/b/a Sacred Heart Home Care and Hospice) to provide routine hospice services to eligible residents of Cedarbrook Senior Care and Rehabilitation.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF  
COMMISSIONERS OF THE COUNTY OF LEHIGH, PENNSYLVANIA THAT:**

1. The proposed amendment to the agreement for professional services with Spiritrust Lutheran Home Care & Hospice (fka Lutheran Home Care and Hospice, Inc. d/b/a Sacred Heart Home Care and Hospice) marked Exhibit "A" attached hereto and made a part hereof by this reference, is hereby approved.

2. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary

transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Resolution.

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 \_\_\_\_\_, 2019, by the following vote:

**Commissioners**

**AYE**

**NAY**

Geoff Brace  
Nathan Brown  
Percy H. Dougherty  
Marc Grammes  
Dan Hartzell  
Amanda Holt  
Marty Nothstein  
Brad Osborne  
Amy Zanelli

ATTEST: \_\_\_\_\_  
Clerk to the Board of Commissioners



Contract Number: \_\_\_\_\_

Copy ID#: \_\_\_\_\_

Completed: \_\_\_\_\_

## COUNTY OF LEHIGH

### AMENDMENT OF

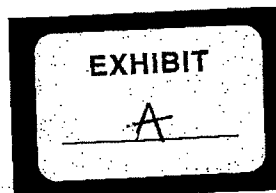
### CONTRACT FOR PROFESSIONAL SERVICES

PURPOSE OF CONTRACT: To provide routine hospice services to eligible residents of Cedarbrook Senior Care and Rehabilitation.

AWARDED TO: SpiriTrust Lutheran Home Care & Hospice (fka Lutheran Home Care and Hospice, Inc. d/b/a Sacred Heart Home Care and Hospice)

BEGINNING DATE OF ORIGINAL CONTRACT: July 1, 2016

Federal ID: 25-1689293  
Telephone: (717) 264.8178  
Fax: (717) 264.6347



This amendment of the Contract for Professional Services is made and entered into this day of \_\_\_\_\_, 2019 by and between **COUNTY OF LEHIGH**, a Home Rule County of the third class, with offices at 17 South Seventh Street, Allentown, PA, 18101-2401 hereinafter referred to as the COUNTY, and **SPIRITRUST LUTHERAN HOME CARE & HOSPICE (fka LUTHERAN HOME CARE AND HOSPICE, INC. d/b/a SACRED HEART HOME CARE & HOSPICE)**, with a mailing address of 2700 Luther Drive, Chambersburg, PA 17202, (Federal Identification Number: 25-1689293), hereinafter referred to as the PROVIDER.

**WITNESSETH,**

**WHEREAS**, COUNTY and PROVIDER entered into an Agreement with a beginning date of July 1, 2016 and under which PROVIDER agreed to routine hospice services to eligible residents of Cedarbrook Senior Care and Rehabilitation; and

**WHEREAS**, the parties desire to amend the contract as set forth herein.

**NOW THEREFORE**, the COUNTY and the PROVIDER, in consideration of the obligations herein undertaken and intending to be legally bound, hereby agree as follows:

1. Pursuant to Section II. (Term of Contract), Subparagraph D, the term of the contract shall be extended for the second time for an additional one (1) year beginning July 1, 2019 and ending June 30, 2020.
2. Section V. (Covenants, Representations & Warranties), subparagraph B.3 is amended as follows:

"o. Disclosures required by Section 801.5 (Open and Public Process) of the Lehigh County Administrative Code, a copy of which PROVIDER acknowledges has been provided to it. The PROVIDER shall agree that Contributions will not be made which would render the PROVIDER ineligible to be considered for the contract. The contract shall require that the PROVIDER disclose any Contribution made by the PROVIDER, sub-contractor or Consultant to any Candidate for Elective County Office or to an Incumbent during the term of the contract and for one (1) year thereafter. Such disclosures shall be made in writing on a form provided by the COUNTY, and shall be delivered to the COUNTY, within (5) business days of the Contribution. This COUNTY disclosure form shall be delivered by the PROVIDER to the COUNTY contact person identified in the contract, who shall forward copies to the Clerk to the Board of Commissioners, the Controller and the County Fiscal Officer."

3. Section XI. (Discrimination Clause), is hereby deleted and replaced with the following:

## **"XI. NON-DISCRIMINATION CLAUSE**

In carrying out the terms of this contract, both parties agree not to discriminate against any employee or client or other person on account of race, color, religion, gender, national origin, age, marital status, political affiliation, sexual orientation, gender identity or expression, or physical or mental disabilities as set forth in the Americans With Disabilities Act of 1990. PROVIDER and COUNTY shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, any pertinent Executive Order of the Governor and with all laws prohibiting discrimination in hiring or employment opportunities.

The provisions of this section must also be included in any sub-contract PROVIDER enters into to perform the scope of this contract."

4. Section XXIII. (Right-To-Know), is hereby deleted and replaced with the following:

## **"XXIII. RIGHT-TO-KNOW**

A. PROVIDER understands that this Agreement and records related to or arising out of this Agreement are subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. Sections 67.101-3104, ("RTKL").

B. If the COUNTY needs PROVIDER's assistance in any matter arising out of the RTKL related to this Agreement, COUNTY shall notify PROVIDER using the legal contact information provided in this Agreement. PROVIDER, at any time, may designate a different contact for such purpose upon reasonable prior written notice to COUNTY.

C. Upon written notification from the COUNTY that it requires PROVIDER's assistance in responding to a request under the RTKL for information related to this Agreement that may be in PROVIDER's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), PROVIDER shall:

1. Provide the COUNTY, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in PROVIDER's possession arising out of this Agreement that the COUNTY reasonably believes is Requested Information and may be a public record under the RTKL; and
2. Provide such other assistance as the COUNTY may reasonably request, in order to comply with the RTKL with respect to this Agreement.

D. If PROVIDER considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that PROVIDER considers exempt from production under the RTKL, PROVIDER must notify the COUNTY and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of PROVIDER explaining why the requested material is exempt from public disclosure under the RTKL.

E. The COUNTY will rely upon the written statement from PROVIDER in denying a RTKL request for the Requested Information unless the COUNTY determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the COUNTY determine that the Requested Information is clearly not exempt from disclosure, PROVIDER shall provide the Requested Information within five (5) business days of receipt of written notification of the COUNTY's determination.

F. If PROVIDER fails to provide the Requested Information within the time period required by these provisions, PROVIDER shall indemnify and hold the COUNTY harmless for any damages, penalties, costs, detriment or harm, including attorney's fees, that the COUNTY may incur as a result of PROVIDER's failure, including any statutory damages assessed against the COUNTY.

G. The COUNTY will reimburse PROVIDER for costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records.

H. PROVIDER may file a legal challenge to any COUNTY decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, PROVIDER shall indemnify the COUNTY for any attorney's fees and costs incurred by the COUNTY as a result of such a challenge and shall hold the COUNTY harmless for any damages, penalties, costs, detriment or harm that the COUNTY may incur as a result of PROVIDER's actions, including any statutory damages assessed against the COUNTY, regardless of the outcome of such legal challenge. As between the parties, PROVIDER agrees to waive all rights or remedies that may be available to it as a result of the COUNTY's disclosure of Requested Information pursuant to the RTKL.

I. PROVIDER's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as PROVIDER has Requested Information in its possession.

J. PROVIDER's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as PROVIDER has Requested Information in its possession."

5. In all other respects the parties ratify and confirm the terms and conditions of the original contract intending to be bound thereby.

IN WITNESS WHEREOF, the parties hereto have executed the within agreement by their officials hereunto duly authorized;

**PROVIDER**  
(affix seal)

**SPIRITRUST LUTHERAN HOME CARE &  
HOSPICE**

\_\_\_\_\_  
Witness

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

Print Name

Date

Title: Spirit Trust

**COUNTY OF LEHIGH**  
(affix seal)

Witness: \_\_\_\_\_

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

PHILLIPS M. ARMSTRONG  
COUNTY EXECUTIVE

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



**COUNTY OF LEHIGH, PENNSYLVANIA  
RESOLUTION NO. 2019 - 42  
SPONSORED BY COMMISSIONER GRAMMES  
REQUESTED DATE: JUNE 5, 2019**

---

**APPROVING A FOURTH 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, 2019 (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 (RFP) issued for the BH-MCO contract, the MBH Agreement had an initial term of thirty-six (36) months, which commenced on July 1, 2015 and ended on June 30, 2018, consisting of three (3) program years. After the initial term, the MBH Agreement may be renewed for two (2)

additional periods of one (1) year each, subject to approval of the County Board of Commissioners for each renewal term. Resolutions 2017-83 and 2018-81 granted approval for the first and second renewal terms commencing July 1, 2018 and July 1, 2019, respectively; and

**WHEREAS**, the County and MBH have negotiated (under DHS guidance) the Fourth 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 attached Fourth Amended and Restated MBH Agreement, is hereby approved.
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 \_\_\_\_\_, 2019, by the following vote:

**Commissioners**

**AYE**

**NAY**

Geoff Brace  
Nathan Brown  
Percy H. Dougherty  
Marc Grammes  
Dan Hartzell  
Amanda Holt  
Marty Nothstein  
Brad Osborne  
Amy Zanelli

ATTEST: \_\_\_\_\_

Clerk to the Board of Commissioners



June 1, 2019

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

RE: Lehigh County and Magellan Behavioral Health of Pennsylvania Fourth Amended and Restated Agreement Effective July 1, 2019 ("Agreement")

Dear Mr. Bauder:

In accordance with Section 5.2 Disclosure of Interests; Conflicts of Interest, of the Agreement, enclosed is a copy of pages 4, 5, 6 and 7 of the Notice of Annual Meeting of Shareholders June 21, 2019 ("Annual Meeting Notice") of Magellan Health, Inc.

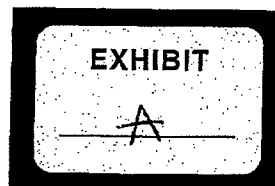
The table contained on page 4 sets forth the beneficial owners of more than 5% of the outstanding shares of Magellan Health, Inc. common stock as of April 25, 2019 (except as otherwise noted) and the table contained on page 6 sets forth that all directors and executive officers as a group own 14.9% of the outstanding shares of Magellan Health, Inc. common stock as of April 25, 2019 (except as otherwise noted), in accordance therewith. MBH and all Affiliates and Related Parties of MBH (as those terms are defined in the Agreement) are all 100% directly or indirectly owned by Magellan Health, Inc.

Please see the Annual Meeting Notice and Magellan Health's other SEC filings (available at [www.magellanhealth.com](http://www.magellanhealth.com)) for further details and information about Magellan Health, Inc.

Very truly yours,

Matthew M. Miller  
Senior Vice President, Public Sector  
Magellan Healthcare

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



Whether you hold your shares through a broker or registered in your own name or in any other manner, a properly executed proxy marked "WITHHOLD AUTHORITY" with respect to the election of one or more directors will not be voted with respect to that nominee, and will have no effect on the determination whether that nominee received a plurality of the votes. It will, however, have the effect of a vote against the director under our majority voting policy for directors.

A proposal on which the shareholder abstains from voting will have the same effect as a vote against that proposal, as the shares are considered to be entitled to vote but will not count toward the majority vote needed to approve the proposal. See "Corporate Governance—Majority Voting Policy" below.

We will file with the SEC a Current Report on Form 8-K reporting the results of the voting after the meeting.

#### SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

##### *Who are the largest owners of your stock?*

The following table sets forth certain information as of April 25, 2019 (except as otherwise noted) with respect to any person known by the company to be the beneficial owner of more than 5% of the outstanding shares of our common stock:

<u>Name and Address of Beneficial Owner</u>	<u>Amount and Nature of Beneficial Ownership(1)</u>	<u>Percent of Class 1(1)</u>
BlackRock, Inc.(2) . . . . . 55 East 52 <sup>nd</sup> Street New York, NY 10055	3,568,720	14.8
The Vanguard Group, Inc.(3) . . . . . 100 Vanguard Boulevard Malvern, PA 19355	2,524,921	10.5
Starboard Value LP(4) . . . . . 777 Third Avenue, 18 <sup>th</sup> Floor New York, NY 10017	2,369,100	9.9
Dimensional Fund Advisors LP(5) . . . . . Building One 6300 Bee Cave Road Austin, TX 78746	2,048,731	8.5

- (1) The information regarding the beneficial ownership of common stock by each named entity is included in reliance on its reports filed with the SEC, except that the percentage of common stock beneficially owned is based upon the company's calculations made in reliance upon the number of shares reported to be beneficially owned by such entity in such report and on 24,043,858 shares of common stock issued and outstanding as of 4/25/19.
- (2) Based on information set forth in Amendment No. 11 to Schedule 13G filed on 01/29/19. BlackRock, Inc. is the parent holding company of the following investment adviser subsidiaries which exercise investment control over accounts that hold company shares: BlackRock Fund Advisors, BlackRock Advisors, LLC, BlackRock Financial Management, Inc., BlackRock Asset Management Schweiz AG, BlackRock Institutional Trust Company, N.A., BlackRock Asset Management Canada Limited, BlackRock Investment Management, LLC, BlackRock Asset Management Ireland Limited, BlackRock Investment Management (UK) Ltd., BlackRock Investment Management

(Australia) Limited, BlackRock Life Limited and BlackRock (Netherlands) B.V. Of such subsidiaries, BlackRock Fund Advisors itself owns greater than 5% of the outstanding common stock. The above figure represents sole dispositive power; BlackRock, Inc. also holds sole voting power over 3,506,586 shares. BlackRock reports having knowledge that its client iShares Core S&P Small-Cap ETF has an interest in more than 5% of the outstanding common stock.

- (3) Based on information set forth in Amendment No. 9 to Schedule 13G filed on 02/11/19. The Vanguard Group, Inc. is the investment manager of collective trust accounts which hold company shares. Includes shares held by Vanguard Fiduciary Trust Company and Vanguard Investments Australia, Ltd., each a wholly-owned subsidiary which is an investment manager. The above figure includes 2,499,716 shares over which Vanguard holds sole disposition power and 24,438 shares over which Vanguard holds sole voting power.
- (4) Based on information set forth in Schedule 13D Amendment No. 2 filed on 03/29/19. Starboard Value LP is an investment manager for Starboard Value and Opportunity Master Fund Ltd. and Starboard Value and Opportunity C LP, and the manager of Starboard Value and Opportunity S LLC. The above figure represents shares over which Starboard Value LP has sole voting and sole dispositive power. For information regarding an agreement among various Starboard affiliates and the company regarding certain governance matters, see "*Proposal Number One—Election of Directors—Starboard Agreement.*"
- (5) Based on information set forth in Amendment No. 4 to Schedule 13G filed on 02/08/19. Dimensional Fund Advisors LP is a registered investment adviser which advises various registered investment companies and certain other commingled funds, group trusts and separate accounts which beneficially own the above shares. The above figure represents sole dispositive power. Dimensional Fund Advisors LP holds sole voting power over 2,008,149 shares.

***How much stock do your executive officers and directors own?***

The following table sets forth information regarding the beneficial ownership of our common stock as of April 25, 2019 (except as otherwise noted) by: (i) each director and nominee for director;

(ii) each of the executive officers named in the Summary Compensation Table; and (iii) all directors and executive officers (including those listed under "Executive Officers" below) as a group.

Name of Beneficial Owner	Amount and Nature of Beneficiary Ownership(1)(2)	Percent of Class(3)
Swati Abbott .....	1,685	*
John O. Agwunobi, M.D. ....	9,267	*
Eran Broshy .....	9,645	*
Michael S. Diamant .....	36,114	*
Peter A. Feld .....	2,369,100(4)	9.9
Perry G. Fine, M.D. ....	10,456	*
G. Scott MacKenzie .....	5,432	*
William J. McBride .....	36,114	*
Leslie V. Norwalk .....	—	*
Guy P. Sansone .....	2,275	*
Steven J. Shulman .....	10,000	*
Matthew J. Simas .....	1,685	*
Barry M. Smith .....	716,464	2.9
Jonathan N. Rubin .....	169,121	*
Mostafa Kamal .....	41,361	*
Daniel N. Gregoire .....	33,589	*
Caskie Lewis-Clapper .....	72,523	*
Sam K. Srivastava(5) .....	214,234	*
All directors and executive officers as a group (18) persons(6) .....	3,739,065	14.9

\* Less than 1.0% of total outstanding.

- (1) Unless otherwise indicated in the footnotes to this table and subject to community property laws where applicable, the company believes that each of the stockholders named in this table has sole voting and investment power with respect to the shares indicated as beneficially owned. This table is based upon information supplied by the directors and executive officers.

- (2) Includes as beneficially owned stock options held by such individuals which are exercisable or vest within 60 days of 4/25/19, in accordance with SEC Rule 13d-3(d)(1). The above ownership figures include the following stock options:

<u>Name of Option Holder</u>	<u>Options Held</u>
Swati Abbott .....	—
John O. Agwunobi, M.D. ....	—
Eran Broshy .....	—
Michael S. Diamant .....	—
Peter A. Feld .....	—
Perry G. Fine, M.D. ....	—
G. Scott MacKenzie .....	—
William J. McBride .....	—
Leslie V. Norwalk .....	—
Guy P. Sansone .....	—
Steven J. Shulman .....	—
Matthew J. Simas .....	—
Barry M. Smith .....	674,344
Jonathan N. Rubin .....	137,830
Mostafa Kamal .....	38,863
Daniel N. Gregoire .....	15,866
Caskie Lewis-Clapper .....	56,492
Sam K. Srivastava .....	208,880
All directors and executive officers as a group .....	1,132,275

- (3) The percentage of common stock beneficially owned is based upon 24,043,858 shares of common stock issued and outstanding as of the above date, plus those shares considered outstanding under SEC Rule 13d-3(d)(1), as detailed in Note 2 for each holder or group of holders.
- (4) Includes 1,619,353 shares held by Starboard Value and Opportunity Master Fund, Ltd., 228,603 shares held by Starboard Value and Opportunity S LLC, 130,301 shares held by Starboard Value and Opportunity C LP, 85,229 shares held by Starboard Value and Opportunity Master Fund L LP and 305,614 shares held by Managed Account of Starboard Value LP as reported on his Form 3. Mr. Feld disclaims beneficial ownership of such shares except to the extent of his pecuniary interest therein.
- (5) Mr. Srivastava's employment with the company ended on December 28, 2018. The specified ownership figure is based on the last public filings available and has not been reviewed or affirmed by him.
- (6) The group of executive officers currently serving does not include Mr. Srivastava, whose employment ended on December 28, 2018. See "Executive Officers."

#### **Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), requires our executive officers and directors, and persons who own more than 10% of our common stock, to file reports of ownership and changes in ownership of our common stock with the SEC. Those persons are required by the SEC to furnish us with copies of all Section 16(a) reports that they file.

Based on our review of the copies of such reports, or written representations from certain reporting persons that no reports on Form 3, 4 or 5 were required for those persons, we believe that all reports required by Section 16(a) to be filed by our current executive officers, directors and greater than 10% shareholders during 2018 were filed on a timely basis.

Magellan Behavioral Health of Pennsylvania, Inc. has designated that certain portions of this Fourth Amended and Restated Agreement are confidential, proprietary, or trade secret in accordance with the cover letter dated June 1, 2019, from Matthew Miller to Matthew Bauder.

**FOURTH AMENDED AND RESTATED  
AGREEMENT**

**by and between**

**COUNTY OF LEHIGH**

**and**

**MAGELLAN BEHAVIORAL HEALTH OF PENNSYLVANIA, INC.**

**Effective July 1, 2019**

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

**Effective July 1, 2019**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
SECTION 1: RELATIONSHIP AND INTENTIONS OF THE PARTIES .....	2
1.1 Purpose; MBH Assumption of Obligations and Risk .....	2
a. Purpose.....	2
b. Role of MBH and Acceptance of Financial Risk .....	2
c. MBH Conditional Compensation .....	2
1.2 MBH Assumption of County Responsibilities .....	2
1.3 Guarantor .....	2
SECTION 2: INCORPORATION OF DOCUMENTS AND DEFINITIONS .....	3
2.1 Operative Documents .....	3
2.2 Rules of Construction .....	3
2.3 Amendment of Terms .....	3
2.4 Definitions.....	4
SECTION 3: RESPONSIBILITIES OF THE PARTIES .....	6
3.1 Transfer of Certain Responsibilities .....	6
3.2 Independent Contractor Relationship.....	6
3.3 Acceptance by MBH of Certain Responsibilities.....	6
3.4 Management Information System Responsibilities.....	7
a. (untitled).....	7
b. (untitled).....	7
c. (untitled).....	8
d. (untitled).....	8
e. (untitled).....	8
f. Material Impact.....	8
g. (untitled).....	8
h. (untitled).....	8
3.5 Employment Restrictions .....	9
3.6 Provider Contracting and Oversight.....	9
3.7 Program Documents.....	9
3.8 Compliance with DHS Program Evaluation Performance Survey .....	9
3.9 Fraud, Waste, and Abuse .....	9
3.10 Compliance by Providers .....	10
3.11 Right to Know .....	10
3.12 Annual Orientation and Training Plan .....	11
3.13 American Society of Addiction Medicine Criteria.....	11
SECTION 4: APPLICABLE LAWS AND REGULATIONS .....	12
4.1 Certification and Licensing .....	12
4.2 Specific to MA Program .....	12
4.3 General Laws and Regulations.....	13
4.4 Further Limitations on DHS's and County's Obligations to MBH.....	13
4.5 Non-Discrimination Clause.....	14



SECTION 5:	COVENANTS OF MBH .....	14
5.1	Accuracy of MBH Data .....	14
5.2	Disclosure of Interests, Conflicts of Interest .....	14
5.3	Disclosure of Change in Circumstances .....	15
SECTION 6:	COMPLIANCE WITH ON-SITE REVIEW .....	15
SECTION 7:	ACCEPTANCE BY MBH OF CERTAIN OBLIGATIONS OF COUNTY .....	16
7.1		
a.	Physical Health Services System .....	16
b.	Binding Arbitration .....	16
c.	Licensure .....	16
d.	External Quality Review and Member Surveys .....	16
e.	Reinvestment Funds Plan .....	17
f.	Involuntary Commitment .....	17
g.	Small Disadvantaged Business .....	17
h.	Financial Reporting .....	17
i.	Post-Expiration or Termination Audit .....	17
j.	Financial Procedures .....	18
SECTION 8:	FISCAL RELATIONSHIP .....	18
SECTION 9:	TERM OF AGREEMENT AND RENEWAL .....	16\
9.1	Term. ....	18
9.2	Non-Compete .....	18
SECTION 10:	TERMINATION AND DEFAULT .....	19
10.1	Termination by County .....	19
a.	Upon Termination of DHS Agreement .....	19
b.	For Cause .....	19
c.	Without Cause .....	20
d.	Termination Due to Unavailability of Funds or Approvals .....	20
e.	(untitled) .....	21
10.2	Termination by MBH .....	21
10.3	Responsibilities of MBH upon Expiration or Termination of the Agreement .....	21
a.	Continuing Service and Payment Obligations .....	21
b.	Notice to Members and Continuity of Care .....	22
c.	Continuity of Data .....	22
SECTION 11:	RECORDS .....	23
11.1	Financial Records Retention .....	23
11.2	Medical Records Retention .....	23
11.3	Review of Records .....	23
SECTION 12:	SUBCONTRACTUAL RELATIONSHIPS .....	24
12.1	Ability to Subcontract .....	24
12.2	County Approval of Contracts with Providers .....	24
12.3	Compliance with Rule on Physician Incentive Arrangements .....	24
12.4	Disclaimer by County .....	24
SECTION 13:	QUALITY ASSURANCE AND UTILIZATION MANAGEMENT .....	25
SECTION 14:	GRIEVANCE AND APPEALS .....	25
14.1	Member Complaint and Grievance System .....	25
14.2	Provider Appeal Procedures .....	25

SECTION 15:	CONFIDENTIALITY; DATA DISPOSITION .....	25
15.1	(untitled) .....	25
15.2	(untitled) .....	25
15.3	(untitled) .....	25
15.4	(untitled) .....	25
15.5	Information Ownership; Use on Expiration or Termination .....	25
SECTION 16:	INDEMNIFICATION AND INSURANCE .....	27
16.1	Indemnification .....	27
16.2	Insurance .....	27
SECTION 17:	REPORTS .....	28
17.1	General Obligations .....	28
17.2	Financial Reporting Requirements .....	28
17.3	837 Files .....	28
17.4	Operational Data Reports .....	28
17.5	Statutory Reports .....	28
17.6	Other Data Elements .....	29
SECTION 18:	SANCTIONS .....	29
18.1	Sanctions .....	29
18.2	Extension for Compliance .....	29
SECTION 19:	COORDINATION OF COUNTY'S NON-HEALTHCHOICES PROGRAM .....	29
SECTION 20:	FORCE MAJEURE .....	30
SECTION 21:	GENERAL .....	30
21.1	Providers' Professional Liability History .....	30
21.2	Suspension from Other Programs .....	30
21.3	Rights of County and MBH .....	30
21.4	Third Parties .....	30
21.5	Consent to Jurisdiction and Waiver .....	30
21.6	Bankruptcy Covenant .....	31
21.7	Waiver .....	31
21.8	Invalid Provisions and Repealed Laws or Regulations .....	31
21.9	Governing Law .....	32
21.10	Notice .....	32
21.11	Counterparts .....	32
21.12	Headings .....	32
21.13	Assignment .....	33
21.14	No Partnership, Agency or Joint Venture .....	33
21.15	Entire Agreement; Modification .....	33
21.16	Time of the Essence .....	33
21.17	Guaranty Confirmation .....	33

## APPENDICES

Appendix 1	County-DHS Agreement
Appendix 2	HealthChoices Program Standards and Requirements - Primary Contractor
Appendix 3	Financial Procedures
Appendix 4	Fiscal Relationship
Appendix 5	Performance Initiatives
Appendix 6	Data Reports
Appendix 7	Correspondence from DHS -- Approval of Insolvency Protections
Appendix 8	Statutory Reports
Appendix 9	Insurance Reports
Appendix 10	Guaranty
Appendix 11	ACA Health Insurance Providers Fee
Appendix 12	P4P Methodology
Appendix 13	Addendum: County Administrative Code Required Conditions for all Contracts

## **FOURTH AMENDED AND RESTATED AGREEMENT**

This FOURTH AMENDED AND RESTATED AGREEMENT ("Agreement"), effective July 1, 2019 (the "Effective Date"), is between the County of Lehigh, a home rule county of the Third Class of the Commonwealth of Pennsylvania ("County"), and Magellan Behavioral Health of Pennsylvania, Inc., a Pennsylvania corporation with its principal place of business in Pennsylvania ("MBH"). The County and MBH are collectively the "Parties," and individually, a "Party."

### **BACKGROUND**

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

DHS offered County the right to administer the HealthChoices Program within County to better coordinate MA Behavioral Health Services with other publicly-funded behavioral health and human services. DHS and the County entered into an agreement, effective July 1, 2019, relating to County's participation in the HealthChoices Program as a Primary Contractor (such agreement, with all appendices and as amended, the "DHS Agreement"). The DHS Agreement is incorporated herewith and made a part hereof by reference in Appendix 1 hereto.

DHS has issued revised HealthChoices Behavioral Health Program Standards and Requirements – Primary Contractor, effective January 1, 2019 containing the Primary Contractor's participation requirements and the terms and conditions of the HealthChoices Program (together with all of its appendices and exhibits, collectively, the "PSR"). The PSR is incorporated herewith and made a part hereof by reference in Appendix 2 hereto.

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"). In response to the RFP, MBH submitted a proposal on October 23, 2014, which proposal included final pricing, which County selected as responsive to the RFP.

County and MBH then entered into an Amended and Restated Agreement, dated as of July 1, 2016 (the "Original Agreement"), which was intended to supersede the prior HealthChoices Program Agreement between the Parties, dated as of July 1, 2015, as amended and extended thereto, and pursuant to which MBH would provide and deliver services to County and the HealthChoices Program, as required in the DHS Agreement and the PSR; and

County and MBH entered into a Second Amended and Restated Agreement, dated as of July 1, 2017, and Third Amended and Restated Agreement, dated as of July 1, 2018, now the

Parties desire to restate the Third Amended and Restated Agreement and amend it to make additional conforming and other changes thereto.

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

## **SECTION 1: RELATIONSHIP AND INTENTIONS OF THE PARTIES**

### **1.1 Purpose; MBH Assumption of Obligations and Risk.**

(a) **Purpose.** 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 County's licensed Behavioral Health Managed Care Organization or "BH-MCO," pursuant to the DHS Agreement and the PSR.

(b) **Role of MBH and Acceptance of Financial Risk.** 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) indemnify County as further set forth herein; and (iii) provide and deliver the MA Behavioral Health Services (defined in Section 2.4) 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 hereby transfers 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 (as set forth in Appendix 3 and Appendix 4).

(c) **MBH Conditional Compensation.** MBH shall accept as its sole compensation for accepting all of its responsibilities under this Agreement the compensation set forth in Appendix 4. 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 shall have no right to receive payment from County apart from its rights under this Agreement.

**1.2 MBH Assumption of County Responsibilities.** 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 (defined in Section 3.1) as to risk, liability, and responsibility under the HealthChoices Program and pursuant to the DHS Agreement and the PSR as County's BH-MCO, for the provision of Behavioral Health Services, 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 Guarantor.** MBH's parent company, Magellan Health, Inc. ("Guarantor"), unconditionally guarantees the obligations, undertakings, agreements, performance, and financial obligations in all respects of MBH, any Subcontractor or Provider (both as defined in Section 2.4) 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 in Appendix 10.

## **SECTION 2: INCORPORATION OF DOCUMENTS AND DEFINITIONS**

2.1 **Operative Documents.** Appendices 1 through 13 to this Agreement, which are further referenced herein, are incorporated herein and made a part hereof (collectively, the "Appendices").

### **2.2 Rules of Construction.**

(a) 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 the DHS Agreement. Notwithstanding the foregoing, 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.

(b) 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 and the PSR. Without limiting the effect of the foregoing, this Agreement, and any amendment thereto, shall comply with any and all applicable regulations issued by DHS and all other departments, agencies, or instrumentalities of the Commonwealth ("State Government Entities") or by any department, agency, or instrumentality of the federal government applicable to the Program ("Federal Government Entities"), and shall further comply with any contracts or agreements between County and DHS or any State Government Entities that are applicable.

(c) Any provision of this Agreement, which is governed by any federal or Commonwealth law or regulation that is amended or modified during the Term, shall be deemed amended to conform with the law or regulation as amended or modified, except that, if such change would materially and substantially alter the obligations of the Parties under this Agreement, any such provision shall be renegotiated, in good faith, 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.

(d) 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.

2.3 **Amendment of Terms.** County reserves the right to amend this Agreement to conform to 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. Any such amendment that 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.

2.4 **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 such terms in the singular and plural.

The following additional definitions shall apply:

"Administrative Services" shall mean all the services provided by MBH under this Agreement that are in addition to the State Plan and In Lieu Of and In Addition To Services.

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

"Commonwealth" shall mean the Commonwealth of Pennsylvania.

"CMS" shall mean the federal Department of Health and Human Services, Center for Medicare and Medicaid Services ("CMS").

"CMS Waiver" shall mean the waiver obtained by DHS from 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 Appendix 4.

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

"FWA" shall mean fraud, waste, and abuse.

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

"Initiative Payment" shall mean the initiative payment MBH is eligible to receive under this Agreement, as described in Appendix 4 and Appendix 5.

"Material," "Material Impact" or "Material Adverse Effect" shall mean any change, event, circumstance, fact, or effect 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; except that the following shall not be considered Material, Material Impact or 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 of Pennsylvania's HealthChoices Program.

"Medical Costs" shall be defined as all costs for all State Plan and In Lieu Of and In Addition To Services and continuity of care services described in the PSR and this Agreement, inclusive of reinsurance costs, as further defined in Appendix 3 and Appendix 4.

"Medical Costs Threshold" is defined as \$77.87 PMPM and as further described in Appendix 3. For future Program Years, the Medical Costs Threshold shall be calculated by subtracting from the Net Department Payments, the MBH Non-Benefit Load Fee, the County Non-Benefit Load Fee, and the Stop-Loss Reinsurance, all calculated on a PMPM basis, and as demonstrated in Appendix 3.

"Medical Costs Threshold for Initiative" is defined as \$78.47 PMPM, and as further described in Appendix 3 and Appendix 4.

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

"Net Department Payments" shall mean the gross capitation less the MCO Assessments, as further described in Appendix 4.

"Non-Benefit Load Fee" shall mean the portion of the Net Department Payments payable to the County and MBH for their administration of services under this Agreement.

"PMPM" shall mean Per Member Per Month.

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

"Program Year" shall mean the twelve (12) month period under the Term (defined in Section 9), which commences July 1, 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 one (1) year term as provided in Section 9. "Provider Agreements" shall mean contracts between Providers and MBH or between Providers and Subcontractors of MBH to provide Behavioral Health Services to Members under the Program.

"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 Provider Agreement.

"Provider Network" shall mean the Providers enrolled in the HealthChoices Program who have entered into a Provider agreement with MBH.

"Risk Attachment Point" shall be, for each Program Year under this Agreement, as set forth in Appendix 3 and Appendix 4.

"State Plan and In Lieu Of and In Addition To Services" shall be as defined in the PSR. For each Program Year, such services shall be further described in Appendix 4.

"Subcontractors" shall refer to all subcontractors, agents, Affiliates, and Related Parties of MBH, and the employees and agents of each of them, except that "Subcontractors" shall not include "Providers."

### **SECTION 3: RESPONSIBILITIES OF THE PARTIES**

3.1 **Transfer of Certain Responsibilities.** 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 shall assume all of the Primary Contractor Services Responsibilities as set forth in this Agreement.



### 3.2 Independent Contractor Relationship.

(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 County, and they shall not make any claim or demand for any right or privilege applicable to an officer or employee of County, DHS, or the Commonwealth.

(b) In furtherance of the foregoing, 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 Program 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.

(c) Inasmuch as MBH is entering into this Agreement as an independent contractor, MBH 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 shall 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 the DHS Agreement.

### 3.3 Acceptance by MBH of Certain Responsibilities.

(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 the provision of Behavioral Health Services to MA recipients through qualified behavioral health Providers in accordance and in full compliance with the terms and conditions of the DHS Agreement, the PSR, and this Agreement.

(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. This Agreement and any amendments hereto must be approved by DHS prior to implementation, and MBH shall discharge County's responsibilities and obligations under the DHS Agreement, consistent with the DHS Agreement. MBH's 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.

(c) 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.

(d) MBH shall cause all its Subcontractors and Providers 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 MBH or any Subcontractor or Provider fails to so comply, as further provided in Section 16.1 below.

#### 3.4 Management Information System Responsibilities.

(a) MBH shall utilize and provide and have in operation as of the Effective Date and thereafter throughout the Term (as defined in Section 9) and after expiration or termination of the Agreement, an established, state-of-the-art management information system, fully compliant with all the applicable requirements of HIPAA, and as further described herein, in performing its obligations hereunder ("MIS"). 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 Program's information systems;

(ii) immediately available on-line access to all relevant data by County personnel, including 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.

(b) MBH covenants that the computer network supporting the MIS will 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 99% of its Scheduled Uptime during the Term (defined in Section 9) and for any period after expiration or 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, with such maintenance to be performed other than during working hours insofar as possible.

(c) The MIS will permit prompt retrieval of relevant records, including records relating to individual Members. The 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 Section 17.

(d) 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.

(e) MBH, upon receipt of eligibility data files from DHS, will perform feeds, processes, and 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 the client membership records in MBH's production system called "CAPS."

(f) Material Impact.

(i) MBH shall 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 that may have Material Adverse Effect on any aspect of performance under this Agreement. In such event that the expected change will have a Material Adverse Effect on the performance of MIS, MBH will deliver, within the Notice Period, a written corrective action plan acceptable in form and substance to County.

(ii) Events with Material Adverse Effect 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).

(iii) In the case of any Material Adverse Effect 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.

(g) No MIS system conversion or change of similar magnitude to the MIS system, which may have Material Adverse Effect on any aspect of performance under this Agreement, will be made without prior written approval of County, which approval shall not be unreasonably withheld.

(h) MBH shall 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. In addition, MBH shall provide all data required and requested by County in means, format, and content reasonably acceptable to County.

3.5 Employment Restrictions. MBH agrees not to recruit, offer employment to, or employ any County employee during the Term and for a twenty-four (24) month period after the expiration or 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 or positions.

### 3.6 Provider Contracting and Oversight.

(a) MBH shall develop Provider Agreements for the Program, including, but not limited to, fee-for-services arrangements, capitation and other alternative payment arrangements ("APAs"), and performance-based contracts. All proposed APAs shall be reviewed and approved by County and DHS prior to implementation and shall conform to all applicable laws and regulations and to the Provider selection, credentialing, delegation, and other requirements of the DHS Agreement.

(b) MBH shall 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.

(c) MBH shall ensure 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.

(d) MBH shall also credential all individual Providers, including those working for or with a Provider entity, either as an employee, independent contractor, or otherwise.

3.7 Program Documents. MBH, working with County, shall develop and maintain the following Program documents: (a) Quality Management Program Plan; (b) Member Handbook; (c) Provider Manual; (d) General Information to Members document; (e) Compliance Plan addressing fraud and abuse; and (f) Behavioral Health Managed Care Organization policies. In addition, MBH shall develop Compliance Plan guidance, directives, and oversight policies for all Providers and Subcontractors.

3.8 Compliance with DHS Program Evaluation Performance Survey. MBH 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, are a condition of participation in the HealthChoices Program, and MBH shall 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.

3.9 Fraud, Waste, and Abuse. MBH shall maintain procedures for immediate response and appropriate reporting of any suspected or substantiated fraud, waste, or abuse by its Providers or Subcontractors in accordance with the provisions of the PSR. Such reporting responsibilities shall include prompt, written notice to County.

3.10 Compliance by Providers. MBH shall 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 County and MBH.

3.11 Right-to-Know.

(a) MBH understands that this Agreement and records related to or arising out of this Agreement are subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. Sections 67.101-3104, ("RTKL").

(b) If the County needs MBH's assistance in any matter arising out of the RTKL related to this Agreement, County shall notify MBH using the legal contact information provided in this Agreement. MBH, at any time, may designate a different contact for such purpose upon reasonable prior written notice to County.

(c) Upon written notification from the County that it requires MBH's assistance in responding to a request under the RTKL for information related to this Agreement that may be in MBH's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), MBH shall:

1. Provide the County, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in Provider's possession arising out of this Agreement that the County reasonably believes is Requested Information and may be a public record under the RTKL; and
2. Provide such other assistance as the County may reasonably request, in order to comply with the RTKL with respect to this Agreement.

(d) If MBH considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that MBH considers exempt from production under the RTKL, MBH must notify the County and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of MBH explaining why the requested material is exempt from public disclosure under the RTKL.

(e) The County will rely upon the written statement from MBH in denying a RTKL request for the Requested Information unless the County determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the County determine that the Requested Information is clearly not exempt from disclosure, MBH shall provide the Requested Information within five (5) business days of receipt of written notification of the MBH's determination.

(f) If MBH fails to provide the Requested Information within the time period required by these provisions, MBH shall indemnify and hold the County harmless for any damages, penalties, costs, detriment or harm, including attorney's fees, that the County may incur as a result of MBH's failure, including any statutory damages assessed against the County.

(g) The County will reimburse MBH for costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records.

(h) MBH may file a legal challenge to any County decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, MBH shall indemnify the County for any attorney's fees and costs incurred by the County as a result of such a challenge and shall hold the County harmless for any damages, penalties, costs, detriment or harm that the County may incur as a result of MBH's actions, including any statutory damages assessed against the County, regardless of the outcome of such legal challenge. As between the parties, MBH agrees to waive all rights or remedies that may be available to it as a result of the County's disclosure of Requested Information pursuant to the RTKL.

(i) MBH agrees to comply with any final decision of either the Office of Open Records or the Pennsylvania Unified Judicial System concerning RTKL related matters.

(j) MBH's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as MBH has Requested Information in its possession.

### **3.12 Annual Orientation and Training Plan.**

(a) 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 will be presented to the County for its approval no later than September 1, 2019.

(b) 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 (defined in Section 7.1(a)) and PCPs; coordination requirements with County behavioral health and human services systems; current clinical best practice; and community service resources and advocacy organizations.

**3.13 American Society of Addiction Medicine 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 American Society of Addiction Medicine Criteria (the "ASAM 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 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 ASAM Criteria.

## **SECTION 4: APPLICABLE LAWS AND REGULATIONS**

### **4.1 Certification and Licensing.**

(a) During the Term, MBH shall include in all its Provider Agreements, provisions that require the Providers to:

(i) 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;

(ii) comply with all federal and Commonwealth fraud and abuse laws, regulations, and requirements;

(iii) perform services in accordance with the standard of care to which each entity or individual is held at law;

(iv) adhere to all applicable HealthChoices Program regulations and policy directives, unless a waiver is granted by DHS; and

(v) adhere to all of the compliance terms and conditions in the PSR.

(b) MBH represents and warrants that it has enrolled in the MA Program and MBH shall require all Providers for the Program to enroll in the MA Program. MBH shall not employ or engage, or permit any of its Subcontractors or Providers to employ or engage the services of any Provider who is ineligible to participate in the MA Program. MBH shall 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.

(c) 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 shall provide County with any Provider's compliance plan and supporting documents and materials at any time as requested by County.

#### 4.2 Specific to MA Program.

(a) MBH shall participate in the MA Program, arrange for the provision of those Behavioral Health Services included in the DHS Agreement and the PSR, and 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 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., §§ 1396 *et seq.*; the Act of June 13, 1967, P.L. 31, No. 21, as amended (62 P.S., §§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 ("CFR"), and all applicable regulations of the Commonwealth Departments of Health ("DOH") and Insurance

("Insurance Department") and DHS. MBH shall cause each of its Subcontractors and Providers to comply fully with this Section.

(b) MBH shall comply fully with the requirements of the CMS Waiver and shall require corresponding compliance by its Subcontractors and Providers.

#### 4.3 General Laws and Regulations.

(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, CFR, Part 74 (Appendix A), and Parts 160, 162, and 164.

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

(c) MBH shall comply fully with the Pennsylvania Prevailing Wage Act, 43 P.S. §§ 165-1 *et seq.*, as applicable.

(d) MBH also shall comply fully with all applicable laws, regulations, and policies of the DOH, Insurance Department, and DHS, as currently in effect and as may be amended.

(e) MBH further shall cause each of its Subcontractors and Providers 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.

(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 County's fiscal obligations, as set forth in Appendix 4, 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 Provider, 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.

(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 shall make all such missed payments when the funds become available and are actually received by County from DHS.

#### 4.5 Non-Discrimination Clause.



(a) In carrying out the terms of this contract, both Parties agree not to discriminate against any employee or client or other person on account of race, color, religion, gender, national origin, age, marital status, political affiliation, sexual orientation, gender identity or expression, or physical or mental disabilities as set forth in the Americans With Disabilities Act of 1990. MBH and County shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, any pertinent Executive Order of the Governor, and with all laws prohibiting discrimination in hiring or employment opportunities.

(b) The provisions of this section must also be included in any sub-contract MBH enters into to perform the scope of this contract.

## **SECTION 5: COVENANTS OF MBH**

5.1 Accuracy of MBH Data. MBH represents and warrants that all of the information submitted to County by MBH, and submitted through and with County to DHS, in any form or manner or for any purpose, is true, accurate, and complete in all material respects as of the date submitted. MBH covenants that such representations shall be continuing ones, and that it is MBH's obligation to notify County no later than five (5) days after arises or is discovered, in writing, any material fact, event, or condition, which affects the truth, accuracy, or completeness of such representations.

### **5.2 Disclosure of Interests; Conflicts of Interest.**

(a) MBH and each of its Affiliates and Related Parties shall 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 no later than fifty (50) days after the change or addition.

(b) Any failure to comply with this Section 5.2, or the making of any misrepresentation or failure to disclose, which would cause MBH 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.

(c) MBH further represents and warrants that it and its Affiliates and Related Parties have no interest, and covenants 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 MBH shall disclose promptly to County any such conflict hereafter threatened or arising.

(d) MBH further represents and warrants 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 Program, has such an adverse interest, and MBH covenants that no such persons will have such an adverse interest during the Term.

5.3 Disclosure of Change in Circumstances. MBH shall report, in writing, to County, DHS, DOH, and the Insurance Department, no later than seven (7) days after its actual

knowledge, except for those disclosures required under (a) and (b) below, which shall be made immediately, of any change in circumstances that may have a material adverse effect upon its or Guarantor's financial or operational conditions. Such notice 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:

(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;

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

(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 Adverse Effect upon any of the aforesaid entities' financial condition or ability to perform under this Agreement; and

(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, or which could affect the ability of the aforesaid entities to perform their respective obligations under this Agreement.

(e) 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 any such Material Events in a manner consistent with the Rule.

#### **SECTION 6: COMPLIANCE WITH ON-SITE REVIEW**

Compliance with the On-Site Review, as set forth in Section 5 of the DHS Agreement, is a condition of MBH participation in the HealthChoices Program, and MBH shall at all times 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 shall comply with and/or discharge requirements, conditions or sanctions, if any, imposed by DHS from time to time pursuant to the DHS Agreement, including submission and implementation of any corrective action plan.

#### **SECTION 7: ACCEPTANCE BY MBH OF CERTAIN OBLIGATIONS OF COUNTY**

7.1 MBH shall comply fully, and shall cause its Subcontractors and Providers to comply fully, with the terms and conditions set forth in the PSR and this Section 7.1. MBH shall

cooperate with County in fulfilling County's obligations to DHS as set forth in the DHS Agreement, including, but not limited to:

(a) Physical Health Services System ("PHSS"). MBH shall maintain and shall 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.

(b) Binding Arbitration. MBH shall 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.

(c) Licensure. MBH shall 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 DOH and Insurance Department throughout the Term.

(d) External Quality Review and Member Surveys.

(i) MBH, with County, shall cooperate with DHS's independent external quality review organization.

(ii) 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.

(iii) 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 contact," 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.

(e) Reinvestment Funds Plan. Promptly after the start of this Agreement, MBH shall cooperate with County in developing Reinvestment Funds plans consistent with the PSR. The amount of Reinvestment Funds available at the end of the Term, as defined in Section 9, shall be determined according to the provisions in Appendix 4 and pursuant to the DHS Agreement.

(f) Involuntary Commitment.

(i) 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.

(ii) 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.

(g) Small Disadvantaged Businesses. 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.

(h) Financial Reporting. MBH shall follow established procedures for accurately recording, tracking, and monitoring administrative expenses, Medical Costs, reinsurance costs, and any other costs of the State Plan and In Lieu Of and In Addition To Services for the Program, separate from such expenses for any other HealthChoices Program. MBH shall provide to 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.

(i) Post-Expiration or Termination Audit. The provisions of (h) above relating to County's audit rights and reviews shall survive expiration or 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.

(j) Financial Procedures.

(i) The County and MBH shall use the following procedures for the funding and processing of claims for State Plan and In Lieu Of and In Addition To 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.

(ii) Prior to each Provider check run or electronic fund transfer ("EFT"), which normally occurs on Fridays, MBH shall send to 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 County objects by 12:00 noon EST, or EDT, as applicable, 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, 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 3.

#### **SECTION 8: FISCAL RELATIONSHIP**

The provisions relating to payments to MBH, including initiative payments and required adjustments, payments to Providers, risk protection, and restitution, *inter alia*, are set forth in Appendix 4, attached hereto and incorporated herein.

#### **SECTION 9: TERM OF AGREEMENT AND RENEWAL**

9.1. Term. This Agreement shall have a term of one (1) year, which shall commence July 1, 2019, and end June 30, 2020 (the "Term"), unless sooner terminated in accordance with this Section 9 or Section 10 hereof; unless a 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 Current Term may be delayed.

9.2. Non-Compete. During the term of this Agreement, including any renewal period, MBH and its parent company, the Guarantor (the "Non-Compete Companies"), by Guarantor's execution of the consent to be bound by this Section 9.2, shall not engage in any lobbying activity in the Commonwealth that would adversely impact the terms of this Agreement or the role, rights, and status of the County under the DHS Agreement and the HealthChoices Program. Furthermore, the Non-Compete Companies, shall not lobby for or seek to change or eliminate the carve-outs or HealthChoices Waiver, approved by CMS, or take any other actions that will adversely impact the County's right of first opportunity (the exclusive right granted by DHS to the COUNTY) to serve as the Primary Contractor granted to the County, as referenced in the DHS Agreement.

#### **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:

(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' prior written notice to MBH.

(b) For Cause. County may terminate this Agreement for Cause, as defined below, to MBH upon written notice, which will set forth the grounds for termination and, with the exception of termination under (v), (vi), or (viii) below, in which case the termination may be immediate, in County's sole discretion, will provide MBH with forty-five (45) days in which to submit to County a written corrective action plan (the "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 County by the end of 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 by the end of the Cure Period, County may agree not to terminate this Agreement if 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, in writing, 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:

(i) 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 Provider;

(ii) MBH fails to provide coverage to a Member for reasons which are eventually determined to constitute intentional misconduct or gross negligence of MBH;

(iii) 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;

(iv) MBH fails to administer the Program in accordance with this Agreement and such failure results in an audit exception, sanction, or claim that is not paid by the end of ten (10) days after MBH receives notice that payment is due; except for when MBH or County, at MBH's request and expense, is 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;

(v) MBH commits an act of theft or fraud against County or DHS;

(vi) DHS requests replacement or termination of MBH for any reason in DHS's sole discretion;

(vii) An adverse material change in circumstances respecting MBH, or the Guarantor, occurs, as set forth in Section 5.3;

(viii) 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 federal 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; except 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 by the end of ninety (90) days of commencement;

(ix) MBH fails to provide services in accordance with this Agreement;  
or

(x) Suspension or debarment of MBH, Guarantor, or any Affiliate of them, by one or more Federal Government Entities or State Government Entities.

(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.

(d) Termination Due to Unavailability of Funds or 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:

(i) 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 or contracts;

(ii) 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 In Lieu Of and In Addition To Services to the Members, as described in this Agreement, the DHS Agreement, and the PSR;

(iii) Notification that the federal approvals necessary to operate the HealthChoices Program will not be retained, obtained, or renewed; or

(iv) Notification by DOH, the Insurance Department, 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.

(e) Notwithstanding anything to the contrary herein, if an action constituting cause for termination is the result of actions or inactions of MBH or a Subcontractor, County may request approval from DHS to replace MBH or to require MBH to replace that Subcontractor, and DHS'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; except that in the event that any capitation payments due to MBH hereunder are not made due to the failure of 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 Expiration or Termination of Agreement.

(a) Continuing Service and Payment Obligations. MBH, consistent with its acceptance of all service and fiscal responsibilities hereunder, accepts all its continuing service and payment obligations, as described herein, upon expiration or termination of this Agreement as further set forth in the PSR and the DHS Agreement. Expiration or termination of this Agreement for any reason shall not discharge the obligations of MBH with respect to services or items furnished prior to expiration or 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 expiration or termination, MBH must:

- (i) Provide County and DHS with all information deemed necessary by County or DHS no later than five (5) business days after 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;
- (ii) Be financially responsible for Member claims with dates of service through the day of expiration or termination, except as provided in (iii) below, including those submitted within established time limits after the day of expiration or termination;
- (iii) 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 expiration or termination of the Agreement, including, without limitation, for State Plan and In Lieu Of and In Addition To Services, Non-Benefit Load Fee, and Initiative Payment;
- (iv) Be financially responsible for Member claims for services rendered through the end of the day of expiration or termination, except as provided in subparagraph (iii) above, for which payment is denied by MBH and subsequently approved upon appeal by the Provider;
- (v) For thirty-one (31) days after expiration or 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 expiration or termination of this Agreement including, without limitation, for State Plan and In Lieu Of and In Addition To Services, Non-Benefit Load Fee, and Initiative Payment;
- (vi) MBH must also include in all of its Provider Agreements 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;

(vii) Other than as set forth above, County shall be financially responsible for the cost of all State Plan and In Lieu Of and In Addition To Services with dates of service after the date of expiration or termination of this Agreement.

(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 or if will expire without renewal, MBH shall notify all Members of such termination or expiration, at least forty-five (45) days in advance of the effective date of termination or expiration, 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)(vi) above, for all Members who, on the effective date of the termination or expiration of this Agreement, are actively receiving State Plan and In Lieu Of and In Addition To Services pursuant to the Program.

(c) Continuity of Data.

(i) Upon expiration of this Agreement or termination by County or MBH for any reason, MBH hereby shall ensure continuity of the 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 In Lieu Of and In Addition To Services to the Members provided to the expiration or termination date, and beyond as set forth below.

(ii) The continuity of the Program includes, but is not limited to, data entry, data maintenance, regular submission of data to County as required under Section 3.4(h), and report production related to client authorization, payment of claims, utilization, and financial status.

(iii) The requirements under this Section 10.3(c) will be performed by MBH in an accurate and timely manner through the expiration or termination date and beyond to ensure that all County and DHS required utilization and financial reports related to the State Plan and In Lieu Of and In Addition To Services provided up to date of expiration or termination are produced. County reserves the right to withhold the Non-Benefit Load Fee payable to MBH if MBH does not comply with this requirement.

(iv) As part of MBH's obligations in this Section 10.3(c), MBH shall 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 expiration or 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, Suite 3810, Philadelphia, PA 19103, and accessible at [www.jamsadr.com](http://www.jamsadr.com).

## **SECTION 11: RECORDS**

### **11.1 Financial Records Retention.**

(a) MBH shall maintain and shall cause its Subcontractors and Providers 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.

(b) In accordance with 42 C.F.R. § 420.302, MBH shall submit to County, to DHS or to the Secretary of Health and Human Services or their designees, no later than twenty-five (25) days after 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:

(i) MBH's ownership of any Subcontractor or Provider with whom MBH has had business transactions totaling more than twenty-five thousand dollars (\$25,000) during the twelve (12) month period ending on the date of the request; and

(ii) Any business transactions totaling more than twenty-five thousand dollars (\$25,000) 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.

(c) MBH shall include the requirements in (a) and (b) above in all contracts and agreements with its Subcontractors or Providers, and MBH shall ensure that all persons and/or entities with whom it contracts agree to comply with such provisions.

**11.2 Medical Records Retention.** MBH shall maintain and shall cause its Subcontractors and Providers 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.**

(a) During the Term, MBH shall make and shall cause its Subcontractors and Providers to make all records relating to County and the 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.

(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 no later than fifteen (15) days after 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; however, such consent is not required where MBH subcontracts with Affiliates or Related Parties. MBH shall provide to County copies of all such subcontracts and material modifications of such subcontracts not less than fifteen (15) days prior to the effective date thereof and at the same time or earlier, MBH shall disclose to County any direct or indirect ownership interest of MBH, the Guarantor, or Affiliates or Related Parties, in such Subcontractor or Provider or such Subcontractor's or Provider's parent, Affiliates, partners or Related Parties. The execution of subcontracts shall not diminish or alter MBH's responsibilities under this Agreement.

### **12.2 County Approval of Contracts with Providers.**

(a) County reserves the right to review and approve all Provider Agreements as to services and rates. However, notwithstanding the foregoing, in no circumstances shall this create any privity of contract by and between County and any Provider, as MBH is responsible for developing and managing the Provider Network and entering into a Provider Agreement with all Providers. MBH may recommend rates for State Plan and In Lieu Of and In Addition To Services, and rates and Providers recommended by MBH will be approved unless inconsistent with Program objectives or requirements.

(b) MBH also shall submit the forms of its proposed Provider Agreements to County, and MBH shall cooperate with County and DHS in its review of Provider Agreements as further provided in the DHS Agreement. MBH will submit to County and DHS for prior approval any material modifications in the Provider Agreements. 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 of its Provider Agreements shall be in compliance with the Final Rule regarding Physician Incentive Arrangements, issued by CMS on March 27, 1996 (61 Fed. Reg. 13430), as may be amended from time to time.

12.4 **Disclaimer by County.** MBH shall have sole responsibility and liability for the payment of, performance of, and compliance with MBH's obligations to all Subcontractors and Providers, and 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 shall 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 and 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 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 shall require its Subcontractors and Providers to comply with the Member Complaint and Grievance System.

14.2 **Provider Appeal Procedures.** MBH and 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. MBH shall require all Providers to comply with 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 DHS shall be given 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 and Providers must establish written procedures restricting the use or disclosure of PHI and all other information concerning Members, applicants, recipients, and claims 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. MBH shall also cause each of its Subcontractors and Providers 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 the same. MBH acknowledges and agrees that the foregoing authorization for such access by County and MBH shall be contained in all Provider Agreements.

15.4 MBH shall be liable for any state or federal fines, financial penalties, or damages levied upon County (including County's reasonable attorneys' fees and expenses incurred as a

result) 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 Information Ownership: Use on Expiration or Termination.

(a) (i) Upon expiration or termination of this Agreement for any reason, MBH shall 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, all material and data obtained, and all Monitor Data developed, produced and/or generated in connection with this Agreement and its implementation ("Information").

(ii) Copies of the Information needed for Members' continuity of care upon expiration or termination of this Agreement may be retained by MBH until those concerns have been addressed, at which time the copies of such Information shall be returned immediately to County.

(iii) Except as expressly permitted by (ii) above, no other Information may be used by MBH for any purpose after expiration or termination of this Agreement. MBH shall transfer all Information at the direction of County to any subsequent BH-MCO subcontractor engaged by County. All Information shall be and remain the property of County.

(b) Notwithstanding the above, (i) MBH shall not be required to deliver its personnel records to County, and (ii) MBH may retain copies of 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 County.

(c) (i) County may 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. However, if the subsequent BH-MCO or vendor or other competitive entity is an entity or instrumentality created by County, such restrictions on disclosure shall not apply.

(ii) MBH shall 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 expiration or 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.

(iii) MBH shall not 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.

(d) All Information shall belong to and is owned by 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.**

(a) MBH shall indemnify and hold County, the 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 expiration or termination of this Agreement.

(b) MBH shall indemnify and hold harmless County, the 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. This indemnification 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 expiration or termination of this Agreement.

(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.**

(a) 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.

(b) MBH shall provide to County on or prior to the Effective Date, 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, amendment, modification, or other change to any policy and the failure to make any premium payment when due.

(c) MBH shall 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 no later than one (1) business day after MBH learns of such claim.

(d) MBH shall require that each of its Subcontractors and Providers maintains professional liability and all other types and amounts of insurance, including, but not limited to, 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 and Providers arising after the Effective Date. Appendix 9, 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 County at least seven (7) 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, in writing, not to exceed thirty (30) calendar days. The volume of reports requested in any given month will be at a level that does not interfere with meeting MBH's 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 shall 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 and Providers to maintain all of their records, in whatever format, used for data reports in accordance with the procedures specified in the PSR (the "Source Records"). Upon expiration or termination of this Agreement, MBH shall turn over to County all Source Records, in a format as designated by County.

17.5 **Statutory Reports.** Program and financial statutory reports that are required by DHS shall be delivered by MBH to County or its agent by the due dates listed in Appendix 8.

17.6 **Other Data Elements.** The MIS will permit development of data elements or reports as County or DHS reasonably may request, demonstrating Program outcomes. Further, the MIS will permit prompt retrieval of relevant records including records relating to individual Members.

## **SECTION 18: SANCTIONS**

### 18.1 Sanctions.

(a) 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.

(b) 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.

(c) Sanctions will be imposed in progressive fashion and, with the exception of gross violations, will begin with (i) below; except 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 County's reasonable costs for responding to the DHS penalty, and instead, County shall require MBH to pay the penalty 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:

(i) Fines of up to \$1,000.00 per day; except that if DHS modifies the counterpart section of the DHS Agreement, this provision will be identically modified by the Parties hereto;

(ii) Suspension of payments, in whole or in part; or

(iii) Termination of this Agreement in accordance with Section 10.1 upon notice to MBH.

18.2 Extension for Compliance. 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 in Section 17 before imposing a fine on MBH under 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 that is applicable to County, MBH shall cause its employees, Providers, and Subcontractors 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 hereunder when such failure or delay is the direct or proximate result of the depletion of staff or facilities by a major disaster or epidemic; except that, in the event that the provision of such services is substantially interrupted, County shall have the right to terminate this Agreement upon at least ten (10) days' written notice to MBH.

## **SECTION 21: GENERAL**

21.1 **Providers' Professional Liability History.** MBH shall 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, contracted by, or associated with the Provider. MBH shall include in the Provider Agreements a requirement that all Providers maintain professional liability coverage of at least \$1,000,000 per occurrence and \$3,000,000 in aggregate per annum for any individual licensed professional employed, contracted by, or associated with the Provider.

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 but excluding non-participating Providers is suspended or terminated from participation in, or does not have the required licenses or credentials for, 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 the Commonwealth, 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.**

(a) Each of MBH and 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.

(b) 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.

(c) Each of MBH and Guarantor 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 21.10.

(d) 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.

(e) 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 "MBH" for purposes of this Section) and Guarantor 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.

(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.

(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, 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 the recipient Party. 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. 7<sup>th</sup> 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 19102-2101

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 will 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, its Providers, and its successors and permitted assigns, on the other part. MBH and its agents shall at all times during the performance of services pursuant to this Agreement act 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. 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. 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 Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the 1<sup>st</sup> day of June, 2019.

Attest:

COUNTY OF LEHIGH

By:

Phillips Armstrong  
Lehigh County Executive

Attest:

MAGELLAN BEHAVIORAL HEALTH OF  
PENNSYLVANIA, INC.

By:

Printed Name: Matthew M. Miller  
Title: Senior Vice President, Public Sector  
Magellan Healthcare

~~\_\_\_\_\_~~  
Daniel N. Gregoire, General Counsel

Attest:

MAGELLAN HEALTH, INC.  
(as to Guaranty and consent to be bound by  
Section 9.2)

By:

Printed Name: Matthew M. Miller  
Title: Senior Vice President, Public Sector  
Magellan Healthcare

~~\_\_\_\_\_~~  
Daniel N. Gregoire, General Counsel

## **Appendix 1**

### **The DHS Agreement**

Reference is made to the HealthChoices Behavioral Health Agreement, by and between the Commonwealth of Pennsylvania, acting through its Department of Human Services ("DHS") and BHSSBC, effective July 1, 2019 (the "DHS Agreement"). The DHS Agreement is incorporated herein by reference and is fully set forth herein.

## **Appendix 2**

### **HealthChoices Program Program Standards and Requirements Primary Contractor**

The reference is made to the Commonwealth of Pennsylvania, Department of Human Services ("DHS"), HealthChoices Behavioral Health Program, Program Standards and Requirements – Primary Contractor, revised and effective as of January 1, 2019 (the "PSR"). The PSR (including all appendices) is incorporated herein by reference and is fully set forth herein.

### **APPENDIX 3**

#### **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 MIS 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.



County-MBH Fourth Amended and Restated Agreement		FY19-20 (3/27/19)	RMPM
Gross Capitation		\$108.24	
MCQ Assessment		(\$20.13)	
Net DPW Payment		\$88.11	
MBH Non-Benefit Load		(\$6.92)	7.85%
Stop Loss Reinsurance (\$0.38+ 2.38% taxes)		(\$0.39)	0.44%
County Non-Benefit Load		(\$2.33)	2.64%
\$600k initiative		(\$0.60)	0.69%
Medical Cost Threshold		\$77.87	88.37%
State funding for Medical		\$79.21	
Use Medical for Admin		\$1.34	
Medical Threshold for Initiative *		\$78.47	89.06%
Risk Attachment Point of 106%		\$82.54	93.68%

\*No initiative if Medical Expenses exceed this threshold. But in no event shall the Initiative Payment exceed \$600,000

Member Months

993,479

## Appendix 4

### Fiscal Relationship

1. Payments for Services. The obligation of DHS to make payments to County is limited to capitation payments and any other payments provided by the DHS Agreement (the "Department Payments"). The Department Payments, less the MCO Assessments by DHS, are the "Net Department Payments." The Department Payments to the Primary Contractor shall cover the federal tax liability, known as the "health insurance providers fee" ("HIPF"), plus the federal and state income tax liabilities on such capitation rate increases as required under the provisions of the PSR, as set forth in Appendix 11.

(a) Provider Payments; Capitation Payments.

(i) MBH shall make timely and accurate payments to Providers.

(ii) MBH shall 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.

(iii) MBH shall 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 set forth in Appendix 3.

(b) Payments to MBH.

(i) 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), County shall pay MBH the Non-Benefit Load Fee of Six Dollars and ninety-two Cents (\$6.92 PMPM) for the Current Term. The Non-Benefit Load Fee monthly payment to MBH 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 MBH Non-Benefit Load Fee PMPM.

(ii) In exchange for the MBH Non-Benefit Load Fee, MBH shall provide the State Plan and Supplemental Services described in this Agreement, the DHS 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.

(iii) (A) During the Program Year, MBH will be eligible for an initiative payment ("Initiative Payment") only if Medical Costs do not exceed the Medical Costs Threshold for Initiative. 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 Medical Costs are below the Medical Costs Threshold for Initiative, up to a maximum initiative fund of \$600,000 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 Initiatives in Appendix 5 to the Agreement (the "Performance Initiatives").

(B) The right to earn any Initiative Payment from the Initiative Fund is strictly conditioned upon the actual Medical Costs, with one hundred and fifty-three (153) days run out, not exceeding the Medical Costs Threshold for Initiative applicable for the Program Year. If the foregoing condition has been met for the Program Year, MBH shall receive an Initiative Payment of \$400,000 as a result of the Medical Costs being equal to or below the Medical Costs Threshold for Initiative, and up to \$200,000 to the extent MBH meets the Performance Initiative as set forth in Appendix 5. The percentage worth of each of the Performance Initiatives specified in Appendix 5 that MBH meets the requirements of will be aggregated and paid to MBH. If the actual Medical Costs exceed the Medical Costs Threshold for Initiative applicable for the Program Year, then MBH shall receive no Initiative Payment whatsoever.

(C) Under Appendix E of the PSR, DHS has implemented a Pay for Performance ("P4P") Program as part of an Integrated Care Plan Program ("ICP Program"). To be eligible for payments under the ICP Program, MBH must meet the requirements in Appendix E of the PSR. County and MBH have established a shared savings methodology, which includes a methodology for allocating any funds received by County for the payment of by DHS (the "P4P Methodology"). The P4P Methodology is set forth in Appendix 12.

(c) Other Terms Respecting Initiative Payments.

(i) Initiative Payments (if any) shall be paid one hundred eighty (180) or less days after the end of the Current Term, or at such later time as the Parties agree is reasonably necessary to assure that outstanding claims have been submitted.

(ii) Any net amounts of the Initiative Payment remaining at the end of the 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 County's Risk and Contingency as defined in the PSR, or for a County HealthChoices restricted reserve, as approved by DHS.

(iii) 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.

(iv) 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 Insurance Department reporting requirements, in preparation of all financial reporting documents and in the annual audit.

(v) 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 Agreement, including but not limited to, the rate adjustment circumstances set forth therein.

(vi) MBH and County shall establish and thereafter at least annually shall review and as necessary adjust, by May 1 in the event of any subsequent Program Year after the Current 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 subsection shall require MBH to disclose salaries of individual employees. MBH shall be permitted to retain any portion of the Non-Benefit Load 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.

(vii) On or before March 15 prior to the start of the 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.

(ix) 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 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.

(d) Adjustments.

(i) 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, delay certain capitation payments, or recover or retroactively adjust capitation payments.

(ii) (A) The Net Department Payments is a projected amount based on assumptions prior to the Program Year (the "Projected Net DHS Payments"). MBH and County shall use the Projected Net DHS Payment for the Program Year to arrive at their calculations for the Risk Attachment Point and Medical Costs Threshold for the Program Year. If the actual Net Department Payment at the end of the that 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 a percentage of the actual Net Department Payments for the Program Year.

(B) Whatever the Projected Net DHS Payments are, based on the assumptions of the Net Department Payments for the Program Year, the Risk Attachment Point will be based on a percent of the Projected Net DHS Payments amount, and the Risk Attachment Point will be adjusted at the end of the Program Year based on the actual Net Department Payments for the Program Year times the percent used to establish the Risk Attachment Point based on the projected amount.

(C) For the Program Year, if the Risk Attachment Point is adjusted as set forth above, the Medical Costs Threshold and the Medical Costs Threshold for Initiative will

also be adjusted to a percentage of the actual Net Department Payments for the 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.

(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.

(f) Insolvency Protection.

(i) MBH shall comply with the requirements set forth in the PSR pertaining to DHS's insolvency arrangement requirement (the "Insolvency Arrangement") during the Term. MBH shall meet the Insolvency Arrangement by providing protection in the following manner:

(A) The Guaranty of Magellan Health, Inc., attached hereto as Appendix 10, stands behind the performance of MBH as set forth therein.

(B) Attached herewith as Appendix 7 is the 2019 letter from DHS, affirming County's compliance with DHS's solvency requirements.

(C) MBH represents that it is and shall remain in compliance with the Insurance Department Risk Based Capital requirements.

(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, Subcontractor, or Provider.

(E) Except as required under Sections 4.4(a), 4.4(b) of the Agreement 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.

(g) Restitution of Funds. Any provision of this Agreement to the contrary notwithstanding, MBH shall return to County no later than ten (10) days after County's demand, 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 of, or failure to perform,

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.

2. Adjudication of claims by MBH.

(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.

(b) Claims Adjudication Requirements.

(i) Adjudication Timeliness Standards:

(A) 90% of clean claims must be adjudicated no later than thirty (30) days after receipt.

(B) 100% of clean claims must be adjudicated no later than forty-five (45) days after receipt.

(C) 100% of all claims must be adjudicated no later than ninety (90) days after receipt.

(ii) "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, and it includes a claim with errors originating in MBH's claims processing computer system and those originating from human errors. A clean claim 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.

(iii) 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 business day after the date of receipt.

(iv) Each claim entered into MBH's claims processing computer system must be Adjudicated.

(v) 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.

(vi) 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.

3. Recipient Cost-Sharing and Third-Party Liability.

General. MBH shall comply and require its Subcontractors and Providers to comply with the procedures implemented by DHS with regard to Third-Party Liability ("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.

4. Risk Moderation.

(a) Risk Protection for High Cost Cases. County shall 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 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.

(b) Equity Requirements. MBH warrants and represents that it meets and covenants that it will continue to meet during the Term, 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.

(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.

(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 or entity, except as otherwise set forth in the Agreement.



## **Appendix 5**

### **Performance Initiatives for Program Year 2019-2020**

There are two (2) Performance Initiatives [PI] for program year 2019-2020. Each PI is worth 1/2 of the total up to \$200,000 if the requirements are met by Magellan (MBH) as determined by the Lehigh County HealthChoices Program.

#### **1. Social Determinants strategy identification and implementation**

Magellan will identify at least one clear strategy to collect, identify and/or address the Social Determinants of Lehigh HealthChoices members. Possible strategies to explore for implementation include but are not limited to: a Social Determinants Outcomes tool, a Social Determinants collection tool, improved Social Determinants claims coding, a program/service to better address Social Determinants that affects Lehigh County members, etc. Magellan may build upon the strategies that have been discussed through the 1<sup>st</sup> and 2<sup>nd</sup> Quarters of 2019 and will move toward implementation of a least one strategy prior to June 2020. 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 possible outcomes to assess effectiveness also identified). The report will be due to the County in June 2020.

#### **2. Integrated Care strategy identification and implementation**

Magellan will identify at least one clear strategy to address the on-going Integrated Care (Behavioral and Physical Health) needs of Lehigh HealthChoices members. Possible strategies to explore for implementation include but are not limited to: Integrated Care programs/services, co-location of BH/PH services, Comprehensive Care Plus services development, etc. Magellan may build upon the strategies that have been discussed through the 1<sup>st</sup> and 2<sup>nd</sup> Quarters of 2019 and will move toward implementation of at least one strategy prior to June 2020. 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 possible outcomes to assess effectiveness also identified). The report will be due to the County in June 2020.

**Appendix 6**

**Data Reports**

See attached

**Agreement - County of Lehigh and MBH**  
**Dated July 1, 2018**  
**Appendix 6**  
**Data Reports**

Name of report	Type of Report	Date Due to County of Lehigh	Date Due to State
Population Reports	Monthly	3 days before OPS Mtg.	5 <sup>th</sup> of following month.
Dental Log	Monthly	5 <sup>th</sup>	15th
Federalized OA	Monthly	30 <sup>th</sup> of February in odd	15th
PRV446	Monthly	9 <sup>th</sup>	14th
BFRS	Monthly	20 <sup>th</sup>	22nd
BFRS TSS	Monthly	23 <sup>rd</sup>	30th
Special Court Ordered Report	Semi-Annual		
Complaint and Grievance	Monthly	23 <sup>rd</sup>	30th
Prescribing Practitioner POMS	Quarterly	Jan., Apr., Jul. & Oct 2 <sup>nd</sup>	Jan., Apr., Jul. & Oct 15th
	Quarterly	Jan., Apr., Jul. & Oct 23rd	Jan., Apr., Jul. & Oct 30th
PLB	Quarterly	Jan., Apr., Jul. & Oct 23rd	Jan., Apr., Jul. & Oct 30th
Satisfaction Survey	Quarterly	Quarterly	135 days after report period end
Quarterly Monitoring Report	Quarterly	Feb., May, Aug. & Nov. 12 <sup>th</sup>	Feb., May, Aug. & Nov. 15th
Data Files			
Name of File	How Often	Date Due to County of Lehigh	Comments
Pcs Schedule (H2)	Monthly	10 <sup>th</sup>	2006mmdd_L2_FcsKey.txt
Authorization File	Daily		2006mmdd_Pa_CountyAuthKey_L2.txt
Notes File	Daily		2006mmdd_Pa_Note_L1.txt
Claims File	Weekly	Monday's before 11:00 am	2006mmdd_Pa_Claim_L2.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.

**APPENDIX 8**  
**STATUTORY REPORTS**

See attached.

Agreement – County of Lehigh and MBH  
Dated July 1, 2018  
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 <sup>th</sup> 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 <sup>th</sup> of the second month after period end	M or Q
Subcontractor Summary of Transactions	3	15 <sup>th</sup> of the second month after period end	M or Q
Related Party Transactions and Obligations	4	15 <sup>th</sup> of the second month after period end	M or Q
Risk Pool Analysis	5	15 <sup>th</sup> of the second month after period end	M or Q
Claims Payable (RIBCs and IBNRs)	6	15 <sup>th</sup> of the second month after period end	M
Log Reports	7	15 <sup>th</sup> of the second month after period end	M
Claims Processing report	8	15 <sup>th</sup> of the second month after period end	M
Analysis of Revenues and Expenses	9	15 <sup>th</sup> of the second month after period end	M or Q
Coordination of Benefits Report	11	15 <sup>th</sup> of the second month after period end	M
Reinvestment Report	12	15 <sup>th</sup> of the second month after period end	M
Balance Sheet	13	15 <sup>th</sup> of the second month after period end	M, Q, or A
Statement of Revenues, Expenses, and Changes in	14	15 <sup>th</sup> of the second month after period	M, Q, or A

Retained Earnings (Deficit)/Fund Balance		end	
Statement of Cash Flows	15	15 <sup>th</sup> of the second month after period end	M, Q, or A
Federlized GA Report	16	15 <sup>th</sup> of the second month after period end	M
Contract Reserves Compliance Report	17	15 <sup>th</sup> of the second month after period end	Q
Insurance Department Quarterly Filing	18	15 <sup>th</sup> of the second month after period end	Q
Adult Outpatient Services in Alternative Settings	19	15 <sup>th</sup> of the second month after period end	Q
Annual Counterpart Report	20	LC/NE/NC - Sept 1 <sup>st</sup>	A
Annual Health Choices Behavioral Health Contract Audit	21	LC/NE/NC - Nov. 15 <sup>th</sup>	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 <sup>st</sup>	A
Insurance Department Annual Audited Financial Statements	25	June 10 <sup>th</sup>	A
Physician Incentive Arrangement		Last date of contract year	A
Equity Requirement		LC/NE/NC - May 15 <sup>th</sup>	A
Insolvency Protection Agreement		LC/NE/NC - May 1 <sup>st</sup>	A
Risk Protection (Stop-Loss Reinsurance)		LC/NE/NC - May 1 <sup>st</sup>	A
Reinsurance Experience - Estimated		LC/NE/NC - October 1 <sup>st</sup>	A
Reinsurance Experience - Actual		LC/NE/NC - July 1 <sup>st</sup>	A

**APPENDIX 9**

**INSURANCE REPORTS**

See attached.





# CERTIFICATE OF LIABILITY INSURANCE

6/17/2019

DATE (MM/DD/YYYY)

9/13/2018

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 have ADDITIONAL INSURED provisions or 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 NY 10036  
646-572-7300

## CONTACT

NAME:

PHONE

(A/C, No. Ext):

E-MAIL

ADDRESS:

FAX

(A/C, No.):

## 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:

INSURED  
1345009 MAGELLAN HEALTH, INC.  
4800 N. SCOTTSDALE ROAD  
SCOTTSDALE AZ 85251

COVERAGES MAGHE01

CERTIFICATE NUMBER: 11461720

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	ADDL INSD	SUBR WVD	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	6/17/2018	6/17/2019	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 - COM/OP AGG \$ 1,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> COMP. \$1,000 X <input checked="" type="checkbox"/> COLL. \$1,000	N	N	AS2-651-004219-118	10/1/2018	10/1/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
A	UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION S	N	N	7055342	6/17/2018	6/17/2019	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	N/A	WC7-651-004219-108	10/1/2018	10/1/2019	<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	MANAGECARE LIAB. CLAIMS MADE	N	N	01-436-33-29 SIR applies per policy terms & conditions	6/17/2018	6/17/2019	\$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)

MAGELLAN BEHAVIORAL HEALTH, INC. 105 TERRY DRIVE, NEWTON, PA 18940. LEHIGH COUNTY IS INCLUDED AS ADDITIONAL INSURED WITH RESPECT TO THE GENERAL LIABILITY AND THE MC E&O LIABILITY POLICIES.

## CERTIFICATE HOLDER

11461720

LEHIGH COUNTY MH/MR  
D&A HEALTH CHOICES ADMINSTRATOR  
LEHIGH COUNTY GOVERNMENT CENTER  
17 SOUTH 7TH STREET  
ALLENTOWN PA 18101-2100

## 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:

© 1988-2015 ACORD CORPORATION. All rights reserved.

## 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 effective July 1, 2019 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 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 that its Guaranty hereunder includes, but is not limited to, its agreement 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:   
Matthew M. Miller  
Senior Vice President, Public Sector  
Magellan Healthcare

## **Appendix 11**

### **ACA Health Insurance Provider Fee**

The Parties seek to implement the provisions of the DHS Agreement specifically as set forth in its Appendix 5, which is attached hereto ("DHS 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" ("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 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 to this Agreement) as to that HIPF as defined in the ACA, in DHS Appendix 5, and further defined herein.

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

The Parties intend that 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 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 County and as calculated under the terms of DHS Appendix 5; and

The Parties further intend that should the full amount of such liability of MBH as to the HIPF for and in the Program Year, as paid by DHS to County and as calculated under the terms of DHS Appendix 5, not be received by County from DHS prior the expiration or termination of the Agreement for any reason, or prior to the expiration of the Current Term on June 30, 2019, or at the expiration of any Renewal Term(s) thereafter, as set forth in Section 9 of this Agreement, such liability of MBH as to the HIPF shall thereafter promptly be paid by County to MBH after such expiration or termination, but only to the extent and after receipt by County of such supplemental capitation payments received from DHS pursuant to Appendix 4 to this Agreement and DHS Appendix 5.

The Parties agree to the provisions of DHS Appendix 5 and the obligation of County to pass through such amounts, added by DHS to the Capitation rates and thus DHS's Payments in the Program Year, as to the HIPF as defined therein, and MBH agrees to the methodology set forth in DHS Appendix 5.

County agrees that in the event that the full amount of such liability of MBH as to the HIPF, as paid by DHS to County and as calculated under the terms of DHS Appendix 5, is not

calculated and received by County from DHS prior to the expiration or termination of the Agreement for any reason or the expiration of the Current Term on June 30, 2019, or at the expiration of any Renewal Term(s) thereafter, as set forth in Section 9 of the Agreement, such amounts due shall promptly be paid by County to MBH after such expiration or termination and after receipt by County of such supplemental capitation payments received from DHS pursuant to Appendix 4 to this Agreement and DHS Appendix 5. The Parties recognize the indemnification obligations set forth in Section 16.1 of the Agreement.

**Appendix 12**  
**P4P Methodology**

To the extent that County receives any funds for the payment of performance incentives by the Department as a result of the ICP Program during the 2019-2020 Program Year, County agrees to pay MBH thirty-five percent (35%) of any such funds as recognition of its administration of the ICP Program. The remaining sixty five percent (65%) of any such funds shall be paid to Providers.

## APPENDIX 13

### **ADDENDUM INCORPORATING REQUIRED CONDITIONS FOR ALL CONTRACTS PURSUANT TO SECTION 801.2 OF THE COUNTY ADMINISTRATIVE CODE**

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, 2019 (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. LEASES**

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 if it is a lessee of the COUNTY, all rent due has been paid in full as provided for in the terms of the relevant lease agreement.

#### **III. 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.

IV. 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.

V. 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: \_\_\_\_\_  
Title: SVP, Public Sector - Magellan Healthcare

Witness: \_\_\_\_\_

Date: June 1, 2019

COUNTY OF LEHIGH  
(SEAL)

By: \_\_\_\_\_  
Phillips Armstrong  
Lehigh County Executive

Witness: \_\_\_\_\_

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



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.

(G) The following clause shall be a part of all professional services contracts which require Board approval by Resolution pursuant to Section 801.1(D):

This agreement may only be extended beyond its initial term by the County Executive, the President Judge of the 31st Judicial District, the Board, or any independently elected official if each additional term is approved by resolution of the Board. Without such approval the contract shall not extend beyond its last term approved by the Board.



**COUNTY OF LEHIGH, PENNSYLVANIA  
COMMISSIONERS BILL 2019 - 18  
SPONSORED BY COMMISSIONERS BRACE & OSBORNE  
REQUESTED DATE: JUNE 5, 2019  
ORDINANCE NO. 2019 -**

---

**APPROVING AN AMENDMENT TO THE ARTICLES OF INCORPORATION  
FOR THE LEHIGH COUNTY AUTHORITY TO EXTEND THE AUTHORITY'S  
TERM OF EXISTENCE FOR A PERIOD OF FORTY-THREE YEARS FROM  
APPROVAL BY THE DEPARTMENT OF STATE**

---

**WHEREAS**, the Lehigh County Authority (the "Authority") was duly formed by the Board of Commissioners of Lehigh County (the "Board of Commissioners") under the Pennsylvania Municipality Authorities Act of 1945, approved May 2, 1945, P.L. 382, as amended and supplemented, with the Articles of Incorporation having been filed and approved by the Department of State of the Commonwealth of Pennsylvania (Department) on September 21, 1966 and amendments approved and filed with the Department on June 3, 1970, April 22, 1975, June 9, 1999 and May 2, 2014; and

**WHEREAS**, the Municipality Authorities Act established an initial term of existence for municipal authorities of fifty (50) years from the approval of the Articles of Incorporation, which in the case of the Authority would have expired on September 21, 2016; and

**WHEREAS**, to accommodate financing of capital improvements for its systems, the date was extended by the Board of Commissioners via Ordinance No. 1999 - 115 which extended the Authority's term of existence until June 9, 2049; and

**WHEREAS**, the Authority continues to have the need to arrange financing for capital improvements to its many water and wastewater systems serving fourteen

municipalities; and

**WHEREAS**, the Authority has proposed, in accordance with the Municipality Authorities Act, 53 Pa. C.S. §5605 ("the Act"), by Resolution No. 6-2019-1, that the Authority's Articles of Incorporation be amended to include a provision extending its term of existence for forty-three years from the date such amendment is approved by the Department so that it may continue to provide capital improvements for the public at the most reasonable financing, a copy of which resolution is attached hereto as Exhibit "A"; and

**WHEREAS**, Section 5605 of the Act and Section 310 of the Lehigh County Home Rule Charter require approval by Ordinance of such extension of the term of existence of the Authority.

**NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH, PENNSYLVANIA, THAT:**

1. The foregoing WHEREAS clauses are incorporated herein as if set forth in their entirety.
2. The Board of Commissioners of Lehigh County hereby approves the amendment of the Lehigh County Authority Articles of Incorporation to include a provision extending its term of existence for forty-three years from the date such amendment is approved by the Department in accordance with the Articles of Amendment, which are included as part of Exhibit "A".
3. The proper officers and other personnel of Lehigh County are hereby

authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Ordinance.

4. The County Executive shall distribute copies of this Ordinance to the proper officers and other personnel of Lehigh County whose further action is required to achieve the purpose of this Ordinance.

5. Any Ordinance or part of any Ordinance conflicting with the provisions of this Ordinance is hereby repealed insofar as the same affects this Ordinance.

6. This Ordinance shall become effective in ten (10) days after enactment.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the  
following vote:

Commissioners

AYE

NAY

Geoff Brace  
Nathan Brown  
Percy H. Dougherty  
Marc Grammes  
Dan Hartzell  
Amanda Holt  
Marty Nothstein  
Brad Osborne  
Amy Zanelli

ATTEST: \_\_\_\_\_  
Clerk to the Board of Commissioners

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Phillips M. Armstrong  
Lehigh County Executive

ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

# RESOLUTION No. 6-2019-1

(Duly adopted 10 June 2019)

## ***A RESOLUTION MODIFYING THE PROPOSING AMENDMENT OF THE AUTHORITY'S ARTICLES OF INCORPORATION TO EXTEND THE AUTHORITY'S TERM OF EXISTENCE***

WHEREAS, the Lehigh County Authority (the "Authority") was duly formed by the Board of Commissioners of Lehigh County (the "Board of Commissioners") under the Pennsylvania Municipality Authorities Act, with the Articles of Incorporation having been filed and approved by the Department of State of the Commonwealth of Pennsylvania (the "Department") on 21 September 1966 and amendments approved and filed with the Department on 3 June 1970, 22 April 1975, 9 June 1999 and 2 May 2014; and

WHEREAS, the Municipality Authorities Act establishes an initial term of existence for municipal authorities of fifty years from the approval of the Articles of Incorporation, which in the case of the Authority would have expired on 21 September 2016, but to accommodate financing of capital improvements for its systems, the date was extended by the 9 June 1999 Amendment until 9 June 2049; and

WHEREAS, the Authority continues to have the need to arrange financing for capital improvements to its many water and wastewater systems serving fourteen municipalities; and

WHEREAS, limiting financing to the remaining Authority life will result in substantially increased costs and higher rates to the public for capital project financing;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Authority proposes that its Articles of Incorporation be amended to include a provision extending its term of existence for forty-three (43) years from the date such amendment is approved by the Department so that it may continue to provide capital improvements for the public with the most reasonable and favorable financing rates. Furthermore, the amendment shall include a statement of the Authority's intent to facilitate ongoing communications with the Board of Commissioners by providing an annual report and offering to provide an annual public presentation to the Board of Commissioners to review organizational performance including financial performance, capital improvements, audit performance, and other information reasonably requested by the then-current Board of Commissioners. The Authority shall also provide a semi-annual report and offer to provide public presentations to the Board of Commissioners to review environmental performance including sewer system overflows and plans to address any deficiencies, and other environmental information reasonably requested by the then-current Board of Commissioners. The form of the Articles of Amendment,

EXHIBIT

A

without appendices that will be attached before submittal to the Department, is attached hereto as Exhibit A and thereby made a part hereof.

2. This Resolution, and its proposal, is to be presented to the Board of Commissioners for their consideration and adoption.

3. Resolution No. 5-2019-1 is hereby rescinded and replaced by this resolution.

4. Upon adoption by the Board of Commissioners, the Articles of Amendment are to be executed and verified by two officers of the Authority, advertised in accordance with the Municipality Authorities Act, and submitted to the Department for approval in accordance with the time frame necessary for any Authority financings.

On motion of \_\_\_\_\_, seconded by \_\_\_\_\_,  
this resolution was adopted the 10<sup>th</sup> day of June 2019.



## ARTICLES OF AMENDMENT

TO: SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA

In compliance with requirements of the Pennsylvania Municipality Authorities Act and pursuant to a resolution duly adopted by the Board of Lehigh County Authority proposing an amendment to the Articles of Incorporation of the Authority, which proposed amendment has been submitted and adopted and approved by the Board of County Commissioners of the County of Lehigh, Pennsylvania (the governing authority of the municipality forming the Authority) by an ordinance duly adopted, the Authority does file these Articles of Amendment to its Articles of Incorporation and does certify:

1. The name of the Authority is LEHIGH COUNTY AUTHORITY and the registered office of the Authority presently is 1053 Spruce Road, Wescosville, Pennsylvania, with a mailing address of P.O. Box 3348, Allentown, Pennsylvania 18106-0348.
2. The Authority has been duly formed under the Pennsylvania Municipality Authorities Act, the Articles of Incorporation having been filed and approved by the Pennsylvania Department of State of on 21 September 1966, with Articles of Amendment filed and approved by the Department on 3 June 1970, 22 April 1975, 9 June 1999 and 2 May 2014.
3. A copy of the ordinance by the Board of Commissioners of the County of Lehigh, Pennsylvania, duly certified by the Chief Clerk of said Board of County Commissioners, adopting the amendment herein set forth, is attached hereto as Appendix I and thereby is made a part of these Articles of Amendment.
4. A copy of the resolution by the Board of the Lehigh County Authority, proposing the amendment herein set forth, is attached hereto as Appendix II and thereby is made a part of these Articles of Amendment.
5. The amendment proposed by the Board of the Authority and adopted and approved by the Lehigh County Board of Commissioners, is to amend the Articles of Incorporation of the Authority as follows:

"The Authority shall have a term of existence continuing through and until the date forty-three (43) years after the date of the Pennsylvania Department of State approval of the Authority's fifth Articles of Amendment."

and

"The Authority shall provide an annual report and offer to provide an annual public presentation to the Board of Commissioners to review organizational performance including financial performance, capital improvements, audit performance, and other information reasonably requested by the then-current Board of Commissioners. The Authority shall also provide a semi-annual report and offer to provide semi-annual public presentations to the Board of Commissioners to review environmental performance including sewer system overflows and plans to address any deficiencies, and other environmental information

reasonably requested by the then-current Board of Commissioners. The form and schedule of such presentations and reports by the Authority is to be determined by the then-current Board of Commissioners."

IN WITNESS WHEREOF, the Lehigh County Authority has caused these Articles of Amendment to be executed and verified by two Authority officers and its official seal to be affixed hereunto and attested by its Secretary or Assistant Secretary, all as of the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

Attest:

LEHIGH COUNTY AUTHORITY

\_\_\_\_\_  
Name  
Office

By: \_\_\_\_\_  
Name:  
Office:

\_\_\_\_\_  
Name  
Office

By: \_\_\_\_\_  
Name:  
Office:

**EXHIBIT A**

80 08

I, Bradford E. Landon, Solicitor of Lehigh County Authority, do hereby certify that the foregoing is a true, correct and complete copy of a resolution which was duly adopted by the Authority at a public meeting of the Authority held on 10 June 2019, after notice thereof had been duly given as required by law, at which meeting a quorum was present and voting and which Resolution No. 6-2019-1 is now in full force and effect on the date of this certification.

---

Bradford E. Landon  
Solicitor



**COUNTY OF LEHIGH, PENNSYLVANIA  
COMMISSIONERS BILL 2019 - 19  
SPONSORED BY COMMISSIONER BRACE  
REQUESTED DATE: JUNE 5, 2019  
ORDINANCE NO. 2019 -**

**APPROVING CDBG SUBRECIPIENT GRANTS AND RE-ALLOCATION  
OF FUNDING**

**WHEREAS**, the County of Lehigh (County) has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1994, as amended, for Community Development Block Grants (CDBG); and

**WHEREAS**, the County wishes to work with various local governments and organizations to utilize the funds; and

**WHEREAS**, the following organizations would receive funding for the purposes set forth below:

Organization	Project Name	Project Details	Suggested Allocation
Borough of Emmaus	Curb Cuts	7 curb cuts on S. 6th Street at the intersection of Wood Street and Fairview Street. This block group is 50.53% LMI <sup>1</sup> .	\$34,700.00
Borough of Fountain Hill	Street Reconstruction	Reconstruction of Stanley Avenue (Bergen to N. Hoffert) and N. Hoffert (Stanley to Jeter).	\$284,050.00
Borough of Macungie	Curb Cuts	13 curb cuts at various intersections in Macungie's 6303-3 block group which is 41.15% LMI.	\$11,600.00

<sup>1</sup> Low-to-Moderate Income

Borough of Slatington	Memorial Park	Address 3 ADA ramps, install 3 light poles to improve lighting, new sidewalks from Second to Chestnut to improve handicap access, and add 2 ADA spaces and 7 angled spaces on Kuntz, improving this sitting park. 5100-2 is 54.14% LMI. Park is adjacent to a housing authority property housing elderly residents.	\$98,085.00
Catholic Charities	Self-Sufficiency & Intervention Program	Up to 3 months of rent and utility assistance to 13 LMI households. Direct assistance averages \$1,700 per household. Case management averages 15 hours per household at \$36 per hour.	\$29,700.00
Communities in Schools of the Lehigh Valley	Career Supports at LCTI	Case management of 20 low income, at-risk students who require truancy interventions and additional case managed support to overcome challenges and complete LCTI programs. Also will provide support groups to develop soft skills, increase career awareness and increase resilience and confidence for achievement.	\$25,000.00
Lehigh Carbon Community College Foundation	ESL for Communication Success	ESL class at Whitehall High School targeted to parents of students to promote strong parental involvement in education by improving their ability to converse with teachers and assist their children with homework. 30 participants	\$6,000.00
Lehigh Carbon Technical Institute	Scholarships for Section 3 Residents	Up to 4 scholarships for LMI individuals to attain a CDL-A and/or HEO certification.	\$19,500.00
LVCIL	PLACE	Housing location assistance to 20 households to avoid being homeless. Fair Housing workshops for landlords.	\$15,062.00
Meals on Wheels	Meal Prep and Delivery	Subsidizing meals for elderly and disabled households. Approximately 42 clients. \$2.25 subsidized per meal (8,889 meals)	\$20,000.00

NPLS	LMI Legal Help	Housing-related legal aide to 32 LMI people. 1 Fair Housing outreach session.	\$10,000.00
Salisbury Township	Sanitary Sewer Rehabilitation	A project to eliminate inflow and infiltration within 006701-3. TV inspection of the main line then repairing the old and leaking parts of the infrastructure by means of excavation replacement, and cured-in-place lining. Manholes and laterals (public) will be repaired where necessary.	\$90,799.00
The Literacy Center	ESL & ABE courses	ESL, ABE, and GED instruction to 30 adults	\$15,000.00
Whitehall Township	Curb Cuts	18 ramps on Orchard Drive from Minnesota Drive to 3rd Street. This block group is 44.48% LMI.	\$113,400.00

; and

**WHEREAS**, in addition to the above, the County has funds available from an organization which no longer wishes to utilize its funding (previously approved via Ordinance 2017-124) and the County wishes to re-allocate the funding as set forth below:

Organization	Project Name	Re-Allocation (from 2017)	Total (including 2019 funds)
Borough of Macungie	Curb Cuts	\$24,390.00	\$35,990.00

; and

**WHEREAS**, ordinance approval is required for grants made outside of the budget process pursuant to the Lehigh County Grants Policy.

**NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED BY  
THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH,  
PENNSYLVANIA, THAT:**

1. The foregoing Whereas clauses are incorporated as if set forth in their entirety.
2. The grants as set forth herein are hereby approved. Disbursal of the funds shall be contingent upon execution of the grant agreements.
3. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Ordinance.
4. The County Executive shall distribute copies of this Ordinance to the proper officers and other personnel of Lehigh County whose further action is required to achieve the purpose of this Ordinance.
5. Any Ordinance or part of any Ordinance conflicting with the provisions of this Ordinance is hereby repealed insofar as the same affects this Ordinance.
6. This Ordinance shall become effective in ten (10) days after enactment.



ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by the following

vote:

Commissioners

AYE

NAY

Geoff Brace  
Nathan Brown  
Percy H. Dougherty  
Marc Grammes  
Dan Hartzell  
Amanda Holt  
Marty Nothstein  
Brad Osborne  
Amy Zanelli

ATTEST: \_\_\_\_\_  
Clerk to the Board of Commissioners

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Phillips M. Armstrong  
Lehigh County Executive

ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

