

Keri Hinton

B.O. 16-515

From: Silas Halloran-Steiner
Sent: Friday, December 16, 2016 12:06 PM
To: Mary Starrett; Laura Tschabold; Ken Huffer
Cc: Keri Hinton; Lucy Flores Mendez; Christina Malae; Terry Malay; Lindsey Manfrin; Marie Mcdaniel-Bellisario
Subject: Board Consideration: George Fox University contract amendment
Attachments: YCHHSGFU #4 signed.pdf

Hi Mary, Ken and Laura,

Attached is an amendment to our agreement with George Fox University to provide psychiatric crisis screening at both local hospitals after hours on weeknights and 24 hour coverage on weekends. The existing agreement has an auto-renew clause and this amendment increases the base monthly payment from \$10,353 to \$14,293, not to exceed \$677,601 (for entire contract period, now 5 years combined) effective July 1, 2016. This amendment also includes psychological testing services and the maximum not to exceed amount remains at \$180,000 for entire contract period for invoiced services. These amounts are included in our Health and Human Services 2016-2017 Adopted Budget.

The base monthly payment now includes the services for all populations presenting for psychiatric crisis screening at the local emergency departments. Additionally, we removed consultation with law enforcement and Dialectical Behavior Therapy services from this agreement as we have coverage for these services in an agreement with another vendor for telephonic crisis support services.

I recommend the Board approve this amendment as written. Please let me know if you have any questions.

Lucy/Keri: please place this item on next week's Board Agenda. Suggested Board Agenda language:

"Approve amendment #4 to the agreement between Yamhill County Health and Human Services and George Fox University for \$171,516 retroactive from July 1, 2016 through June 30, 2017."

Thanks,

Silas Halloran-Steiner
Director, Yamhill County Health and Human Services Department
Phone: (503) 434-7523
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627 NE Evans
McMinnville, OR 97128

Our Vision: People in Yamhill County live, work, learn, and play in safe communities that support wellness and dignity.

Our Mission: To promote the public's physical, emotional and social well-being through services, prevention, education, and partnerships.

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**FOURTH ADDENDUM TO AGREEMENT FOR
PSYCHIATRIC SCREENING SERVICES
(Yamhill County Health and Human Services and George Fox University)**

THIS FOURTH AMENDMENT TO AGREEMENT (“**Amendment**”) is made effective July 1, 2016, between **Yamhill County**, a political subdivision of the State of Oregon, acting by and through its Department of Health and Human Services (“**County**”) and **George Fox University** (“**GFU**”), a qualified 501(c)(3) organization and an Oregon nonprofit corporation located in Newberg, OR, tax identification number 93-0386839 (“**Contractor**”).

RECITALS:

A. County and Contractor are parties to that certain agreement dated as of February 28, 2013 (the “**Underlying Agreement**”), pursuant to which Contractor provides psychiatric screening services for children and adults potentially at risk of harm to self or others.

B. The Underlying Agreement was first amended April 25, 2013 (Amendment #1) to add items to the Statement of Work. The Underlying Agreement was further amended on July 24, 2014 (Amendment #2) to provide a payment mechanism for services provided at Willamette Valley Medical Center to adults and children insured by commercial health plans and further amended on April 30, 2015 (Amendment #3). County and Contractor now desire to further amend the Underlying Agreement upon the terms and conditions as more particularly set forth herein below.

C. Capitalized terms not defined herein shall have the meanings attributed to such terms in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein below and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, County and Contractor, intending legally to be bound, hereby agree as follows:

1. Section 2 “**Services; Administrative Support; Facilities**” of the Underlying Agreement is hereby amended to remove the DBT after-hours coaching and consultation for law enforcement from the “**Services**” included in the Statement of Work. Section 2 is further amended to include the following definitions:

- (a) **Commercial health insurance:** All privately funded health plans.
- (b) **Medicare:** Federal health insurance for people who are 65 or older; under 65 with certain disabilities; or any age and have End Stage Renal Disease (ESRD)
- (c) **Oregon Health Plan (OHP):** Oregon’s Medicaid insurance plan; any type including Coordinated Care Organizations (CCO) and “open card”
- (d) **Public health insurance:** Children’s Health Insurance Plan (CHIP), Oregon Health Plan (OHP), Veteran’s insurance, State General Fund (indigent population)
- (e) **Services:**
 - (i) Mental health screening and assessment (crisis psychiatric treatment)
 - (ii) Triage/case management and consultation services (crisis intervention)

(iii) Psychological testing with interpretation and report by psychologist

2. The balance of Section 2 of the Underlying Agreement remains unchanged.

3. Section 3 "Compensation; Monthly Payments" of the Underlying Agreement is hereby deleted in its entirety and replaced with the following:

"A. GFU agrees to perform the Services described in the Underlying Agreement and comply with the terms and conditions of the Underlying Agreement. Effective July 1, 2016 and for all months thereafter during the entire term of this agreement GFU shall be paid \$14,293.00 per month for the delivery of Services inclusive of the mental health screening and assessment services (crisis psychiatric treatment) and triage/case management and consultation services (crisis intervention) provided at Willamette Valley Medical Center for adults and children who are insured by commercial health plans. In addition, GFU shall be paid \$650.00 per psychological testing with interpretation and report by psychologist.

B. Billing documents must be received by County at a minimum quarterly and within four (4) months of the date of service unless the claim meets one of the cases listed under OAR 410-141-3420 (1)(a) in which case claim must be submitted within twelve (12) months of the date of service. Should YCCO or OHA set more stringent submission timelines during the duration of this Agreement, the new timelines will apply. Routine claims not received as described above will be denied. Contractor must submit denied claims for reprocessing within 90 days of the original denial unless the claim meets one of the cases listed in OAR 410-141-3430, (4) (a) (C). The maximum not to exceed amount under this Agreement for services is \$677,601.00 not inclusive of Psychological testing with interpretation and report by psychologist. The maximum not-to-exceed amount under this Agreement for Psychological testing with interpretation and report by psychologist is \$180,000. These maximum not-to-exceed amounts may only be modified in a writing signed by both parties.

C. **Excluded Services.** Where Contractor is providing services under some other contract or funding source, Contractor shall not be compensated under this Agreement for such services to individuals even though they might otherwise be eligible for Oregon Health Plan (OHP).

D. Contractor shall not bill YCCO members for services that are not covered under the YCCO contract with OHA unless there is a full written disclosure or waiver on file signed by the Member, in advance of the service being provided, in accordance with OAR 410-141-420."

4. Section 4 "Payment and Invoicing" of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: "County agrees to pay Contractor the agreed upon monthly amount for delivery of Services not inclusive of Psychological testing with interpretation and report by psychologist. Payment shall be made in advance. For Psychological testing with interpretation and report by psychologist, County agrees to pay Contractor within thirty days of receipt and approval of invoices from Contractor. Invoices for psychological testing shall be submitted to County within 30 days of service. GFU shall establish such fiscal control and fund accounting procedures as are necessary to ensure proper expenditure of and accounting for the funds paid to GFU under this Agreement."

5. Section 6 of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: "**Reporting.** Contractor agrees to prepare and furnish reports and data required

by County, YCCO or OHA at a minimum quarterly, including but not limited to compliance with data submission specifications by entering data in the MOTS (Measures and Outcome Tracking System) Client Entry Data Collection application as specified in the OHA's MOTS user guide located at: <http://www.oregon.gov/OHA/amh/Pages/reporting-reqs.aspx>. Contractor agrees to and does hereby grant County the rights to reproduce, use and disclose for County purposes, all or any part of the reports, data, and technical information furnished to County under the Agreement."

6. Section 7 of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: "**Records; County Monitoring.**

A. Contractor shall maintain all financial records related to this Agreement in accordance with generally accepted accounting principles or National Association of Insurance Commissioners accounting standards. In addition, Contractor shall maintain any other records, books, documents, papers, plans, records of shipment and payments and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Agreement, collectively referred to as "Records" in such a manner to clearly document Contractor's performance.

B. Contractor agrees that the following shall be open for inspection by County, YCCO, OHA and Government Agencies or its agents, at any reasonable time during business hours: a) Services provided under this Agreement by Contractor; b) facilities used in conjunction with such Services; c) client records; d) Contractor's policies, procedures and performance data; e) information privacy and security records; f) financial records and other similar documents and records of Contractor that pertain, or may pertain, to Services under this Agreement. Contractor agrees to retain such records and documents for a period of seven years, or such longer period as may be prescribed for records and documents by the state archivist.

C. Contractor agrees to annually provide County with copies of their Fraud and Abuse policy and documentation of rate setting methodologies. County encourages Contractor to use the Jarvis rate setting tool. County may approve an alternative method if it demonstrates a similar level of thoroughness. Contractor will comply with County's quality and utilization management protocols established in partnership with YCCO and YCCO's Quality Assurance and Performance Improvement Plan. Contractor shall provide documentation regarding training, NPI numbers and background checks for each person providing services under this agreement where applicable upon request.

D. County will provide Contractor with a copy of County's OHA approved written grievance system procedures to ensure compliance."

7. Section 8 of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: "**Termination; No Encumbrance or Expenditure after Notice of Termination.**

A. Either party may terminate the Agreement on thirty days written notice to the other party. Termination shall not excuse liabilities incurred prior to the termination date.

B. In addition, in the event County no longer receives funds adequate to enable it to continue this Agreement; if Contractor engages in any act that would subject either County or Contractor to criminal liability; upon dissolution of County or Contractor; or upon or following: (i) the insolvency of the Contractor, (ii) the filing of a voluntary or involuntary petition by or on behalf

of Contractor under federal bankruptcy law, (iii) upon a party entering into an agreement with creditors for the liquidation of its assets, or (iv) upon the appointment of a receiver or trustee to take charge of all the assets of Contractor, County will provide written notice of termination of this Agreement to Contractor. Upon issuance of notice, this Agreement is terminated. However, any obligations existing at the time of termination will survive termination.

C. Contractor shall not make expenditures, enter into agreements, or encumber funds in its possession, or to be transferred by County, after notice of termination or termination as set out above, without prior written approval from County."

8. Section 9 of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: "**Independent Contractor**. Contractor is engaged under this Agreement as an independent contractor, and will be so deemed for purposes of the following:

A. Contractor is not an officer, employee, or agent of the County or the State of Oregon as those terms are used in ORS 30.265 or otherwise.

B. If Contractor is currently performing work for the County, State of Oregon or the federal government, Contractor by signature to this Agreement, represents and warrants that Contractor's Services to be performed under this Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the County, State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's Services under this Agreement. If compensation under this Agreement is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government.

C. Contractor is responsible for all federal and State taxes applicable to compensation paid to Contractor under this Agreement and, unless Contractor is subject to backup withholding, County will not withhold from such compensation any amounts to cover Contractor's federal or State tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Contractor under this Agreement, except as a self-employed individual.

D. Contractor shall perform all Services as an independent contractor. County reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services; however, County may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services."

9. Section 11 of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: "**Regulations and Duties; Compliance with Laws**. County and Contractor agree to comply with the rules and regulations of County, applicable state and federal regulations, executive orders and ordinances and all provisions of federal and state law relating to Contractor's performance of Services under this Agreement as they may be adopted, amended or repealed from time to time, including but not limited to the following: (i) ORS Chapter 659A.142; (ii) Oregon Health Authority (OHA) rules pertaining to the provision of integrated and coordinated care and services, OAR Chapter 410, Division 141; (iii) all other OHA Rules in OAR Chapter 410; (iv) rules in OAR Chapter 309 pertaining to the provisions of mental health services; (v) rules in OAR Chapter

415 pertaining to the provision of Substance Use Disorders services; (vi) state law establishing requirements for Declaration for Mental Health Treatment in ORS 127.700 through 127.737; (vii) 42 CFR 438.6 and 42 CFR 438 E; (viii) ORS 279B.200 through 279B.270; (ix) Article XI, Section 10, of the Oregon Constitution; and (x) all other applicable requirements of State civil rights and rehabilitation statutes, rules and regulations. These laws, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated. In addition, Contractor agrees to comply with all laws, rules, regulations, reporting requirements, policies and procedures of Medicare/Medicaid and officially made known by the Centers for Medicare & Medicaid Services and OHA as they pertain to the performance of Services under this Agreement. In addition, Provider agrees that Provider has complied with the tax laws of the state of Oregon or a political subdivision of the state of Oregon, including ORS 305.620 and ORS Chapters 316, 317 and 318.”

10. Section 15 of the Underlying Agreement is hereby deleted in its entirety.

11. Section 21 of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: **“Governing Law; Jurisdiction; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding, (collectively “Claim”) between County and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver of the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any claim whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. Contractor, BY EXECUTION OF THIS AGREEMENT CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.”

12. Section 26 of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: **“Business Associate Clause - HIPAA restrictions.** Contractor acknowledges that County is subject to the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996, (HIPAA), Pub. Law No. 104-191 and subject to the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, “Part 2”) . County and Contractor hereby agree to the respective obligations in the attached Exhibit A, “Business Associate/Qualified Service Organization Agreement” which is incorporated herein by this reference.”

13. Section 27 is hereby added to the Underlying Agreement as follows: **“Background Check.**

A. Contractor agrees that all employees and volunteers who perform work related to this Agreement, or who have access to any information about clients serviced under this Agreement, have completed a criminal background check and are approved by a qualified entity in accordance with OAR 943-007-0001 through 943-007-0501.

B. In addition to potentially disqualifying conditions under OAR 407-007-0290, the following is a potentially disqualifying condition: abuse as determined from child protective services

investigation reports held by the State of Oregon's Department of Human Services (DHS) regardless of the date of initial report or outcome which have an outcome of founded, substantiated, or valid and in which the Subject Individual (SI) is determined to have been responsible for the abuse.

C. An employee or volunteer may be hired on a preliminary basis, in accordance with the requirements and limits described in OAR 407-007-0315. An employee or volunteer hired on a preliminary basis may not have unsupervised contact with individuals receiving services under this Agreement and may only participate in the limited activities described in OAR 407-007-0315. An employee or volunteer hired on a preliminary basis must be actively supervised at all times as described in OAR 407-007-0315.

D. Any current employee or volunteer hired for a new position with the Contractor must be approved at the time the employee or volunteer accepts the new position. Notwithstanding the requirements of paragraph B of this section, a current employee or volunteer who accepts a new position with the Contractor may be hired for a new position on a preliminary basis without active supervision in accordance with the limits and requirements described in OAR 407-007-0315.

E. There are only two possible outcomes of a background check: approval or denial. If the employee or volunteer is denied, she or he may not have contact with clients referred for service under this Agreement and may not have access to information about clients. Employees or volunteers who are denied do have the right to contest the denial as described in OAR 943-007-0501."

14. Section 28 is hereby added to the Underlying Agreement as follows:
"**Medicare/Medicaid Participation.** Contractor hereby represents and warrants that no Personnel, Directors or Officers, nor anyone who will provide services pursuant to this Agreement, is presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation in any federally funded health care program, including Medicare and Medicaid, or under investigation by any federally or state funded health care program. Contractor agrees to screen its personnel and subcontractors at a minimum monthly against the Office of the Inspector General (OIGs) List of Excluded Individual and Entities (LEIE) and the System for Award Management (SAM) list for exclusions. Contractor hereby agrees to immediately notify County of any threatened, proposed, or actual debarment, suspension, or exclusion from any federally funded health care program, including Medicare and Medicaid, that affects any Personnel or subcontractor providing services under this Agreement."

15. Section 29 is hereby added to the Underlying Agreement as follows: "**Information Privacy/Security/Access.** If the Services performed under this Agreement requires Contractor to have access to or use of any OHA, County or third-party administrators, Performance Health Technology (PH Tech), computer systems or other OHA, County or third-party administrators Information Assets for which OHA, County or third-party administrators impose security requirements, and OHA, County or third-party administrators grant Contractor access to such OHA, County or third-party administrators Information Assets or Network and Information Systems, Contractor shall comply with OAR 943-014-0300 through 943-014-0320, as such rules may be revised from time to time."

16. Section 30 is hereby added to the Underlying Agreement as follows: "**Financial Audit.** If a financial audit of Contractor concerning this Agreement is conducted by a certified

public accountant, Contractor shall furnish County a copy of the audit within ninety (90) days following the termination of the Agreement.”

17. Section 31 is hereby added to the Underlying Agreement as follows:
“**Prevention/Detection of Fraud and Abuse**. Contractor will comply with County’s Fraud, Waste and Abuse policy attached as Exhibit B and which is incorporated herein by this reference.”

18. Section 32 is hereby added to the Underlying Agreement as follows: “**Abuse Reporting and Protective Services**. Contractor shall comply with all protective services, investigation and reporting requirements described in OAR 943-045-0250 through 943-045-0370 and ORS 430.735 through 430.765.”

19. The balance of the Underlying Agreement remains unchanged.

20. **Ratification**. Except as otherwise expressly modified by the terms of this Amendment #4, the Underlying Agreement shall remain unchanged and continue in full force and effect. All terms, covenants and conditions of the Underlying Agreement not expressly modified herein are hereby confirmed and ratified and remain in full force and effect, and constitute valid and binding obligations of County and Contractor enforceable according to the terms thereof.

21. **Authority**. County and Contractor and each of the persons executing this Amendment #4 on behalf of County and Contractor hereby covenants and warrants that: (i) such party has full right and authority to enter into this Amendment #4 and has taken all action required to authorize such party (and each person executing this Amendment #4 on behalf of such party) to enter into this Amendment #4, and (ii) the person signing on behalf of such party is authorized to do so on behalf of such entity.

22. **Binding Effect**. All of the covenants contained in this Amendment #4 shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives and permitted successors and assigns.

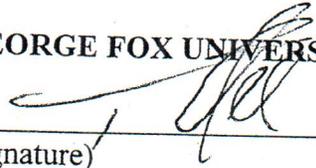
23. **Counterparts**. This Amendment #4 may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Amendment #4.

24. **Recitals**. The foregoing recitals are intended to be a material part of this Amendment #4 and are incorporated herein by this reference.

(signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, this Amendment #4 on the date indicated by their duly authorized officials.

GEORGE FOX UNIVERSITY

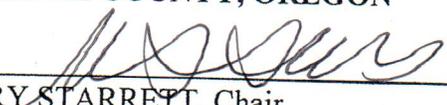

(signature)

Date: 12-16-16

THEODORE E ALLEN
(printed name)

ERP & COO
(title)

YAMHILL COUNTY, OREGON


MARY STARRETT, Chair
Board of Commissioners

Date: 12-21-16


SILAS HALLORAN-STEINER, Director
Department of Health and Human Services

Date: 12/16/16

APPROVED AS TO FORM

By: 
CHRISTIAN BOENISCH
County Counsel

Date: 12/21/16

Accepted by Yamhill County
Board of Commissioners on
12.20.16 by Board Order
16-515

EXHIBIT A
BUSINESS ASSOCIATE/QUALIFIED SERVICE ORGANIZATION AGREEMENT

RECITALS

- A. The CONTRACTOR may use and disclose Protected Health Information and Electronic Protected Health Information ("EPHI") in the performance of its obligations under the Agreement; and
- B. County operates a drug and alcohol treatment program subject to the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, "Part 2"); if CONTRACTOR is a Qualified Service Organization (QSO) under Part 2 it also must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information with respect to the performance of its obligations under the Agreement; and
- C. The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and its implementing Privacy Rule and Security Rule, 45 CFR Parts 160 and 164, require that COUNTY, as a Covered Entity, obtain satisfactory assurances from its Business Associates, as that term is defined in the Privacy Rule and Security Rule, that they will comply with the Business Associate requirements set forth in 45 CFR 164.502(e) and 164.504(e) and as amended by the Health Information Technology for Economic and Clinical Health ("HITECH") Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 ("ARRA"); CONTRACTOR is a Business Associate of COUNTY and desires to provide such assurances with respect to the performance of its obligations under the Agreement; and
- D. Both COUNTY and CONTRACTOR are committed to compliance with the standards set forth in Part 2, the Privacy Rule and Security Rule as amended by the HITECH Act, and as they may be amended further from time to time, in the performance of their obligations under the Agreement.

NOW, THEREFORE, in consideration of mutual and valuable consideration which the parties hereby acknowledge as received, the parties agree as follows:

AGREEMENT. The parties agree that the following terms and conditions shall apply to the performance of their obligations under the Agreement, effective upon execution of this Amendment. Capitalized terms used, but not otherwise defined in this Amendment, shall have the same meaning as those terms in Part 2, the Privacy Rule and Security Rule.

1. SERVICES. Pursuant to the Agreement, CONTRACTOR provides certain services for or on behalf of COUNTY, as described in the Agreement, which may involve the use and disclosure of Protected Health Information and EPHI. CONTRACTOR may make use of Protected Health Information and EPHI to perform those services if authorized in the Agreement and not otherwise limited or prohibited by this Amendment, Part 2, the Privacy Rule, the Security Rule and other applicable federal or state laws or regulations. All other uses of Protected Health Information and EPHI are prohibited.

2. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR.

(a) CONTRACTOR agrees to not use or disclose Protected Health Information or EPHI other than as permitted or required by the Agreement (as amended by this Amendment), and as permitted by Part 2, the Privacy Rule, the Security Rule or as required by Law. Notwithstanding any other language in this Agreement, CONTRACTOR acknowledges and agrees that any patient information it receives from COUNTY that is protected by Part 2 regulations is subject to protections that prohibit CONTRACTOR from disclosing such information to agents or subcontractors without the specific written consent of the subject individual.

- (b) CONTRACTOR agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information and EPHI other than as provided for by the Agreement as amended by this Amendment, and if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 regulations.
- (c) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of Protected Health Information or EPHI by CONTRACTOR in violation of the requirements of the Agreement, as amended by this Amendment.
- (d) CONTRACTOR agrees to report to COUNTY, as promptly as possible, any use or disclosure of the Protected Health Information or EPHI not provided for by the Agreement, as amended by this Amendment, of which it becomes aware.
- (e) CONTRACTOR agrees to ensure that any agent, including a contract hearing officer or other subcontractor, to whom it provides Protected Health Information or EPHI received from, or created or received by CONTRACTOR on behalf of COUNTY, agrees to the same restrictions and conditions that apply through the Agreement, as amended by this Amendment, to CONTRACTOR with respect to such information.
- (f) CONTRACTOR agrees to provide access, at the request of COUNTY, and in the time and manner designated by COUNTY, to Protected Health Information and EPHI in a Designated Record Set (the hearing file), to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR 164.524.
- (g) CONTRACTOR agrees to make any amendment(s) to Protected Health Information and EPHI in a Designated Record Set that the COUNTY directs or agrees to pursuant to 45 CFR 164.526 at the request of COUNTY or an Individual, and in the time and manner designated by COUNTY.
- (h) CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures and any Protected Health Information or EPHI, relating to the use and disclosure of Protected Health Information and EPHI received from, or created or received by CONTRACTOR on behalf of COUNTY, available to COUNTY or to the Secretary, within the time and in the manner designated by COUNTY or the Secretary, for purposes of the Secretary determining COUNTY's compliance with Part 2, the Privacy Rule or Security Rule.
- (i) CONTRACTOR agrees to refer requests for disclosures of Protected Health Information and EPHI to the COUNTY for response, except for requests related to conducting the contested case hearing. To the extent CONTRACTOR discloses Protected Health Information or EPHI for purposes not related to conducting the contested case hearing, CONTRACTOR agrees to document such disclosures to the extent such documentation is required for COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and EPHI in accordance with 45 CFR 164.528.
- (j) CONTRACTOR agrees to provide to COUNTY or an Individual, in time and manner to be designated by COUNTY, information collected in accordance with Section 2(i) of this Amendment, to permit COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and EPHI in accordance with 45 CFR 164.528.
- (k) CONTRACTOR agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of the COUNTY.
- (l) In the event of Discovery of a Breach of Unsecured Protected Health Information, CONTRACTOR shall:

(i) Notify the COUNTY of such Breach. Notification shall include identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by CONTRACTOR to have been accessed, acquired or disclosed during such Breach and any other information as may be reasonably required by the COUNTY necessary for the COUNTY to meet its notification obligations;

(ii) Confer with the COUNTY as to the preparation and issuance of an appropriate notice to each individual whose Unsecured Protected Health Information has been, or is reasonably believed by CONTRACTOR to have been accessed, acquired or disclosed as a result of such Breach;

(iii) Where the Breach involves more than 500 individuals, confer with the COUNTY as to the preparation and issuance of an appropriate notice to prominent media outlets within the State or as appropriate, local jurisdictions; and,

(iv) Confer with the COUNTY as to the preparation and issuance of an appropriate notice to the Secretary of DHHS of Unsecured Protected Health Information that has been acquired or disclosed in a Breach. CONTRACTOR understands that if the Breach was with respect to 500 or more individuals, such notice to the Secretary must be provided immediately, and therefore, time is of the essence in the obligation to confer with the COUNTY. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log shall be provided to the Secretary annually documenting such Breaches occurring during the year involved.

(v) Except as set forth in (vi) below, notifications required by this section are required to be made without unreasonable delay and in no case later than 60 calendar days after the Discovery of a Breach. Therefore, the notification of a Breach to the COUNTY shall be made as soon as possible and CONTRACTOR shall confer with the COUNTY as soon as practicable thereafter, but in no event, shall notification to the COUNTY be later than 30 calendar days after the Discovery of a Breach. Any notice shall be provided in the manner required by the HITECH Act, sec 13402(e) and (f), Public Law 111-5, 45 CFR 164.404 through 164.410 and as agreed upon by the COUNTY.

(vi) Any notification required by this section may be delayed by a law enforcement official in accordance with the HITECH Act, sec 13402(g), Public Law 111-5.

(vii) For purposes of this section, the terms "Unsecured Protected Health Information" and "Breach" shall have the meaning set forth in 45 CFR § 164.402. A Breach will be considered as "Discovered" in accordance with the HITECH Act, sec 13402(c), Public Law 111-5, 45 CFR 164.404(a)(2).

(m) CONTRACTOR shall comply with 45 C.F.R. 164.308, 164.310, 164.312 and 164.316 and all requirements of the HITECH Act, Public Law 111-5, that relate to security and that are made applicable to Covered Entities, as if CONTRACTOR were a Covered Entity.

(n) CONTRACTOR shall be liable to the COUNTY, and shall indemnify the COUNTY for any and all direct costs incurred by the COUNTY, including, but not limited to, costs of issuing any notices required by HITECH or any other applicable law, as a result of CONTRACTOR's Breach of Unsecured Protected Health Information.

3. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

(a) General Use and Disclosure Provisions.

(1) Except as otherwise limited or prohibited by this Amendment, CONTRACTOR may use or disclose Protected Health Information and EPHI to perform functions, activities, or services for, or on behalf of, COUNTY as specified in the Agreement and this Amendment, provided that such use or disclosure would not

violate Part 2, the Privacy Rule or Security Rule if done by COUNTY or the minimum necessary policies and procedures of COUNTY.

(2) COUNTY has determined that disclosures to CONTRACTOR under the Agreement are necessary and appropriate for COUNTY's Treatment, Services, Payment and/or Health Care Operations under Part 2, the HIPAA Privacy Rule and Security Rule and Required By Law under Or Laws 1999, ch. 849 (HB 2525).

(3) All applicable federal and state confidentiality or privacy statutes or regulations, and related procedures, continue to apply to the uses and disclosures of information under this Amendment, except to the extent preempted by Part 2 or the HIPAA Privacy Rule and Security Rule.

(b) Specific Use and Disclosure Provisions.

(1) Except as otherwise limited in this Amendment, CONTRACTOR may use Protected Health Information and EPHI for the proper management and administration of the CONTRACTOR or to carry out the legal responsibilities of the CONTRACTOR.

(2) Except as otherwise limited in this Amendment, CONTRACTOR may disclose Protected Health Information and EPHI for the proper management and administration of the CONTRACTOR, provided that disclosures are Required By Law, or CONTRACTOR obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) CONTRACTOR may use Protected Health Information and EPHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

(4) CONTRACTOR may not aggregate or compile COUNTY's Protected Health Information or EPHI with the Protected Health Information or EPHI of other Covered Entities unless the Agreement permits CONTRACTOR to perform Data Aggregation services. If the Agreement permits CONTRACTOR to provide Data Aggregation services, CONTRACTOR may use Protected Health Information and EPHI to provide the Data Aggregation services requested by COUNTY as permitted by 45 CFR 164.504(e)(2)(i)(B), subject to any limitations contained in this Amendment. If Data Aggregation services are requested by COUNTY, CONTRACTOR is authorized to aggregate COUNTY's Protected Health Information and EPHI with Protected Health Information or EPHI of other Covered Entities that the CONTRACTOR has in its possession through its capacity as a CONTRACTOR to such other Covered Entities provided that the purpose of such aggregation is to provide COUNTY with data analysis relating to the Health Care Operations of COUNTY. Under no circumstances may CONTRACTOR disclose Protected Health Information or EPHI of COUNTY to another Covered Entity absent the express authorization of COUNTY.

4. OBLIGATIONS OF COUNTY.

(a) COUNTY shall notify CONTRACTOR of any limitation(s) in its notice of privacy practices of COUNTY in accordance with 45 CFR 164.520, to the extent that such limitation may affect CONTRACTOR's use or disclosure of Protected Health Information and EPHI. COUNTY may satisfy this obligation by providing CONTRACTOR with COUNTY's most current Notice of Privacy Practices.

(b) COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information or EPHI, to the extent that such changes may affect CONTRACTOR's use or disclosure of Protected Health Information and EPHI.

(c) COUNTY shall notify CONTRACTOR of any restriction to the use or disclosure of Protected Health Information or EPHI that COUNTY has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect CONTRACTOR's use or disclosure of Protected Health Information or EPHI.

5. PERMISSIBLE REQUESTS BY COUNTY.

(a) COUNTY shall not request CONTRACTOR to use or disclose Protected Health Information or EPHI in any manner that would not be permissible under Part 2, the Privacy Rule or Security Rule if done by COUNTY, except as permitted by Section 3(b) above.

(b) COUNTY may conduct a survey of CONTRACTOR with respect to CONTRACTOR's compliance with the terms of this Agreement and applicable law for the establishment of policies and procedures for the safeguarding of any Protected Health Information and EPHI provided to CONTRACTOR by COUNTY. CONTRACTOR shall implement any recommendations of COUNTY resulting from such surveys as may be reasonably necessary to ensure compliance with the terms of this Agreement and applicable law for the safeguarding of any Protected Health Information and EPHI provided to CONTRACTOR by COUNTY.

6. TERM AND TERMINATION.

(a) Effective Date; Term. This Amendment shall be effective on the date on which all parties have executed it and all necessary approvals, if any, have been granted. This Amendment shall terminate on the earlier of (i) the date of termination of the Agreement, or (ii) the date on which termination of the Amendment is effective under Section 6(b).

(b) Termination for Cause. In addition to any other rights or remedies provided in this Agreement, upon either the COUNTY's or CONTRACTOR's knowledge of a material breach by the other party of that party's obligations under this Amendment, the party not in breach shall either:

(1) Notify the other party of the breach and specify a reasonable opportunity in the Notice of Breach to the party in breach to cure the breach or end the violation, and terminate the Agreement and this Amendment if the party in breach does not cure the breach of the terms of this Amendment or end the violation within the time specified;

(2) Immediately terminate the Agreement and this Amendment if the party in breach has breached a material term of this Amendment and cure is not possible in the reasonable judgment of the party not in breach; or

(3) If neither termination nor cure is feasible, the party not in breach shall report the violation to the Secretary.

(4) The rights and remedies provided in this Amendment are in addition to any rights and remedies provided in the Agreement.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this Section 6(c), upon termination of the Agreement and this Amendment, for any reason, the party in breach shall, at the other party's option, return or destroy all Protected Health Information and EPHI received from the other party, or created or received by CONTRACTOR on behalf of COUNTY. This provision shall apply to Protected Health Information and EPHI that is in the possession of CONTRACTOR or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the Protected Health Information or EPHI.

(2) In the event that CONTRACTOR determines that returning or destroying the Protected Health Information or EPHI is infeasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or destruction infeasible. Upon COUNTY's written acknowledgement that return or

destruction of Protected Health Information or EPHI is infeasible, CONTRACTOR shall extend the protections of this Amendment to such Protected Health Information and EPHI and limit further uses and disclosures of such Protected Health Information and EPHI to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains such Protected Health Information or EPHI.

7. MISCELLANEOUS.

- (a) Regulatory References. A reference in this Amendment to a section in Part 2, the Privacy Rule, or Security Rule, or the HITECH Act means the section in effect as of the effective date of this Amendment or as the Rules may be subsequently amended from time to time.
- (b) Amendment; Waiver. The Parties agree to take such action as is necessary to amend the Agreement and this Amendment from time to time as is necessary for COUNTY to comply with the requirements of Part 2, the Privacy Rule, Security Rule, HIPAA and the HITECH Act. No provision hereof shall be deemed waived unless in writing, duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this Amendment.
- (c) Survival. The respective rights and obligations of CONTRACTOR under Section 6(c), this Section 7(c), and Section 7(e) of this Amendment shall survive the termination of the Agreement and this Amendment.
- (d) Interpretation; Order of Precedence. Any ambiguity in this Amendment or the Agreement shall be resolved to permit COUNTY to comply with Part 2, the Privacy Rule, Security Rule and the HITECH Act. The terms of this Amendment amend and supplement the terms of the Agreement, and whenever possible, all terms and conditions in this Amendment and the Agreement are to be harmonized. In the event of a conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall control; provided, however, that this Amendment shall not supersede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. In the event of any conflict between the provisions of the Agreement (as amended by this Amendment) and Part 2, the Privacy Rule or the Security Rule, the more stringent rule shall apply.
- (e) No Third-Party Beneficiaries. COUNTY and CONTRACTOR are the only parties to this Amendment and are the only parties entitled to enforce its terms. Nothing in this Amendment gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Amendment.
- (f) Successors and Assigns. The provisions of this Amendment and the Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.
- (g) Except As Amended. Except as amended by this Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

(signature page follows)

8. SIGNATURES.

By signing this Amendment, the parties certify that they have read and understood this Amendment, that they agree to be bound by the terms of this Amendment and the Agreement, as amended, and that they have the authority to sign this Amendment.

CONTRACTOR:

By: [Signature]

Title: EVP & COO

Date: 12-16-16

COUNTY:

By: [Signature]

Title: HHS DIRECTOR

Date: 12 / 16 / 16

Accepted by Yamhill County
Board of Commissioners on
12-20-16 by Board Order
16-515

Yamhill County Health and Human Services
Policies and Procedures Manual

Program Admin [] AMH [] Abacus [] CD [] DD [] F&Y [] PH [] All [x]
Written By: Paul Kushner Original Date: 8/1/2013
Revised By: Craig Hinrichs Last Revised Date: 6/17/2016
Approved By: Silas Halloran-Steiner Approved Date: 6/27/2016
OAR/ORS: OAR 410-120-0000(2) and 42 CFR 455.2, 410-120-0000(55);410-120-0000(68) and 42
CFR 455.2; 410-120-0000(96); 410-120-1395 to 410-120-1510
ORS 411.670 to 411.690; 646.505 to 646.656; Chapter 162, 164, 165, to 165.080;
165.690, 165.698; 166.715 to 166.735; 659A.200 to 659A.224; 659A.230 to 659A.233

SUBJECT: Fraud, Waste and Abuse Policy

NUMBER: 016-79-10-01

TABLE OF CONTENTS

Mission Statement..... 1
Purpose and Applicability 1-2
Definitions..... 2

POLICY AND PROCEDURE

I. Fraud and Abuse Laws: Liabilities and Penalties 2-3
II. Fraud and Abuse Laws: "Whistleblower" Protections..... 3-4
III. Preventing and Detecting Fraud and Abuse..... 4-6
IV. Training and Education..... 6
V. Compliance Officers; Compliance Committee 6-7
VI. Enforcement; Corrective Action 7-9
VII. Access to Records; Cooperation with Activities..... 9

POLICY REVIEW: This policy will be reviewed at minimum every two years and as needed.

MISSION STATEMENT

It is the policy of Yamhill County HHS Department (YCHHS) to review and investigate all
allegations of fraud and/or abuse, whether internal or external, to take corrective action for any
supported allegations, and to report misconduct to the appropriate parties. YCHHS is committed to
the development and implementation of an aggressive prevention, detection, monitoring and
investigation program to reduce fraud and abuse.

B.O. 116-515

Yamhill County Health and Human Services Policies and Procedures Manual

PURPOSE & APPLICABILITY:

This policy and procedure document identifies the responsibilities of YCHHS and its sub-contractors with respect to the prevention and detection of Fraud and Abuse related to the Medicare and Medicaid funds. YCHHS must fully comply with federal and state laws and rules that relate to the prevention and detection of fraud and abuse. YCHHS sub-contractors, receiving Medicare and/or Medicaid funds, must also fully comply with these federal and state laws and shall follow the applicable sections of this policy. YCHHS shall follow this policy as it applies to any services funded with Medicare or Medicaid funds. These policies and procedures will be reviewed annually and revised as necessary.

DEFINITIONS:

Certain key terms used in this policy are defined below.

1. **ABUSE:** Provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to YCHHS, YCC, or the Division of Medical Assistance Programs (DMAP), or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. *OAR 410-120-0000 (2) and 42 CFR 455.2.*
2. **ADDICTIONS AND MENTAL HEALTH DIVISION (AMH):** The Oregon Department of Human Services (DHS) office responsible for the administration of the state's policy and program for mental health, chemical dependency prevention, intervention and treatment services.
3. **DIVISION OF MEDICAL ASSISTANCE PROGRAMS (DMAP):** A Division within the DHS; DMAP is responsible for coordinating the medical assistance programs within the State of Oregon including the OHP Medicaid demonstration, the State Children's Health Insurance Program (SCHIP-Title XXI), and several other programs. *OAR 410-120-0000 (55).*
4. **FRAUD:** An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself, an organization or some other person. It includes any act that constitutes Fraud under applicable federal or state law. *OAR 410-120-0000 (68) and 42 CFR 455.2.*
5. **MEDICAID:** A federal and state funded portion of the medical assistance programs established by Title XIX of the Social Security Act, as amended, administered in Oregon by DHS. *OAR 410-120-0000 (96).* In this policy, Medicaid is also referred to as the Oregon Health Plan.
6. **MEDICARE:** A federal health insurance program under the U.S. Social Security Administration that reimburses hospitals and physicians for medical care provided to qualifying people over 65 years old or people of all ages with end-stage renal disease (permanent kidney failure) or certain other disabilities. Because Medicare is health insurance, you share the costs of your care.
7. **OHP MEMBER:** An individual found eligible by a program of DHS to receive health care services under the OHP Medicaid Demonstration Project or State Children's Health Insurance Program and who, for the purposes of this policy, is enrolled with YCC.
8. **OHP MEMBER REPRESENTATIVE:** A person who can make OHP related decisions for an OHP Member who is not able to make such decisions him/herself. OHP Member Representative may be, in the following order of priority, a person who is designated as OPH

Yamhill County Health and Human Services Policies and Procedures Manual

- Member's health care representative, a court-appointed guardian, a spouse, or other family member as designated by OHP Member, the Individual Service Plan Team (for OHP Members with developmental disabilities), a DHS case manager, or other DHS designee. For OHP Members in the care or custody of DHS's Children, Adult and Families Division or the Oregon Youth Authority (OYA), OHP Member Representative is DHS or OYA. For OHP Members released by DHS through a Voluntary Placement Agreement (CF Form 499), OHP Member shall be represented by his or her parent or legal guardian.
9. **PERSON:** Any natural person, partnership, corporation, association, or other legal entity, including any state or political subdivision of a state. 31 USC 3729-3733
 10. **PROVIDER:** An organization, agency or individual licensed, certified and/or authorized by law to render professional health services to Yamhill County clients **SUB-CONTRACTOR:** Any contracted YCHHS employee licensed and/or credentialed to provide health care services to Yamhill County clients or a health care organization receiving federal or state funds that have been passed-thru Yamhill County HHS Department to the provider.
 11. **RECIPIENT:** A person who is currently eligible for medical assistance. OAR 410-120-0000 (154). In this policy, a Recipient who is assigned to YCC for behavioral health services is an OHP Member.

POLICY & PROCEDURES:

I. **Fraud and Abuse Laws: Liabilities and Penalties**

A. *YCHHS and each sub-contractor are subject to the following laws and rules that relate to fraud and abuse involving Medicaid funds:*

1. Federal False Claims Act (31 USC 3729-3733): This law provides for penalties and triple damages for anyone who knowingly submits or causes the submission of false or fraudulent claims for government funds, such as Medicaid funds. Under this law's *quid tam* provisions, an individual with evidence of fraud, also known as a "whistleblower", is authorized to file a case in federal court and sue, on behalf of the federal government, the Persons or entities engaged in the fraud and to share in any money that the government may recover.
2. Federal administrative remedies for false claims and statements (31 USC 3801-3812): Known as the Program Fraud Civil Remedies Act, under this law, anyone who makes, presents or submits (or causes to be made, presented or submitted) a claim to the federal government, such as for Medicaid funds, that the person knows or has reason to know is false, fictitious or fraudulent, or that omits a material fact, is subject to a penalty of up to \$5,000 per claim, plus an assessment of up to twice the amount of each false or fraudulent claim. The United States Inspector General investigates violations of this law. Enforcement can begin with a hearing before an administrative law judge. The government can recover penalties by a lawsuit or through an administrative offset against "clean" claims.
3. Federal Regulation 42 CFR Subpart A 455.12 – 455.106 Medicaid Agency Fraud Detection and Investigation Program, which defines the responsibilities of the state agency
4. Oregon laws pertaining to civil or criminal penalties for false claims and statements:

Yamhill County Health and Human Services Policies and Procedures Manual

- a) ORS 411.670 to 411.690 (submitting wrongful claim or payment prohibited; liability of person wrongfully receiving payment; amount of recovery);
 - b) ORS 646.505 to 646.656 (unlawful trade practices);
 - c) ORS chapter 162 (crimes related to perjury, false swearing and unsworn falsification);
 - d) ORS chapter 164 (crimes related to theft);
 - e) ORS chapter 165 (crimes involving fraud or deception), including but not limited to ORS 165.080 (falsification of business records) and ORS 165.690 to 165.698 (false claims for health care payments);
 - f) ORS 166.715 to 166.735 (racketeering – civil or criminal);
 - g) ORS 659A.200 to 659A.224 (whistleblowing);
 - h) ORS 659A.230 to 659A.233 (whistleblowing);
 - i) OAR 410-120-1395 to 410-120-1510 (DMAP program integrity, sanctions, fraud and abuse); and
 - j) Common law claims founded in fraud, including Fraud, Money Paid by Mistake and Money Paid by False Pretenses.
5. YCHHS and each sub-contractor may be subject to other fraud and abuse laws not identified above.

II. Fraud and Abuse Laws: “Whistleblower” Protections

A. *Individuals employed by YCHHS, including sub-contractors, who come forward with evidence of fraud and abuse involving Medicare or Medicaid funds have the following legal protections:*

1. Federal False Claims Act (31 USC 3729-3733): Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under the False Claims Act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under the Act, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.
2. Oregon Whistleblower Law (ORS 659A.200-224): In brief, it is an unlawful employment practice for any public employer to:
 - a) Prohibit any employee from disclosing, or take or threaten to take disciplinary action against an employee for the disclosure of, any information that the employee reasonably believes is evidence of:
 - i. A violation of any federal or state law, rule or regulation by the state, agency or political subdivision; or
 - ii. Mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of the state, agency or political subdivision; or
 - iii. The fact that a person receiving services, benefits or assistance from the state or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest.
 - b) Require any employee to give notice prior to making any disclosure or engaging in

Yamhill County Health and Human Services Policies and Procedures Manual

- discussion described in Section II (A)(2)(a)(i-iii).
- c) Discourage, restrain, dissuade, coerce, prevent or otherwise interfere with disclosure or discussions described in Section II (A)(2)(a)(i-iii).
 3. Oregon law pertaining to an employee initiating or aiding in a legal proceeding (ORS 659A.230-233): In brief, it is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported criminal activity by any person, has in good faith caused a complainant's information or complaint to be filed against any person, has in good faith cooperated with any law enforcement agency conducting a criminal investigation, has in good faith brought a civil proceeding against an employer or has testified in good faith at a civil proceeding or criminal trial.
 4. Individuals may have other legal protections not identified above.

III. Preventing and Detecting Fraud and Abuse

- A. *Sub-contractors shall develop and implement a program to prevent and detect fraud and abuse that includes, at a minimum, the following elements:*
 1. Credentialing of employed and sub-contractors in accordance with YCHHS's credentialing policy. Elements of YCHHS credentialing policy relating to fraud and abuse include:
 - a) Provider self-disclosure of adverse actions relating to Medicare and Medicaid provider status, and suspected or verified fraud and/or abuse involving Medicare and Medicaid funds;
 - b) Criminal background checks; and
 - c) Exclusion of persons described in Subsection C below.
 2. Requiring employees and contractors to disclose any conflict of interest relating to the provision of and payment for services.
 3. Disciplinary guidelines for employees and sub-contractors whose actions constitute fraud or abuse.
 4. Formal Complaint and Appeal procedures for clients and client representatives.
 5. Periodic auditing of a random sample of Provider clinical records and the corresponding billing and claims payment data.
 6. Procedures to promptly repay Medicare and Medicaid funds paid in error and to correct the corresponding billing data.
 7. Appropriate controls on employee and contractor access to clinical records, billing and accounting records, service authorization records, appointment schedules, eligibility data, and related resources that may be used to facilitate fraud or abuse.
- B. *It is the responsibility of YCHHS to develop and implement a program to prevent and detect fraud and abuse that includes, at a minimum, the following elements:*
 1. Credentialing of out-of-panel Providers in accordance with YCHHS's credentialing policy.
 2. Requiring employees and contractors to disclose any conflict of interest relating to the provision of and payment for services.

Yamhill County Health and Human Services Policies and Procedures Manual

3. Disciplinary guidelines for employees and contractors whose actions constitute fraud or abuse.
4. Formal Complaint and Appeal procedures for clients and client representatives.
5. Complaint and appeal procedures for Providers.
6. Periodic auditing of a random sample of Provider clinical records and the corresponding billing and claims payment data.
7. Regular monitoring of Provider billing and claims submission activity for patterns and anomalies that may indicate fraud or abuse.
8. Appropriate controls on employee and contractor access to clinical records, billing and accounting records, service authorization records, eligibility data, and related resources that may be used to facilitate fraud or abuse.
9. Procedures to request and process repayment from sub-contractors for Medicare and/or Medicaid funds paid in error.
10. Procedures for employees and sub-contractors to report cases of *suspected* fraud or abuse involving Medicare and Medicaid funds to YCHHS.
11. Procedures for YCHHS to report cases of *probable or confirmed* fraud or abuse involving Medicare or Medicaid funds to YCC for further investigation, corrective action and/or referral to the Medicaid Fraud Control Unit (MFCU).
1515 SW 5TH Avenue, Suite 410
Portland, Oregon 97201
Phone: (971) 673-1880, Fax: (971) 673-1890
12. Procedures for YCHHS to report cases of *suspected or verified* fraud or abuse by an OHP Member to YCC for further investigation, corrective action and/or referral to the DHS Fraud Investigation Unit.
P.O. BOX 14150
Salem, Oregon 97309-5027
Phone: (888) 372-8301, Fax: (503) 373-1525

C. YCHHS, sub-contractors shall assure the exclusion of certain persons as follows:

1. Persons who are currently suspended, debarred or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation, or from participating in non-procurement activities under regulations issued pursuant to Executive Order No. 12549, or under guidelines implementing such order;
 - a) Persons who are currently excluded from participation in Medicare or Medicaid programs under Section 1128 or 1128A of the Social Security Act.
2. YCHHS and Participating Provider shall not:
 - a) Refer OHP Members to such persons described above, nor accept billings for services for OHP Members from such person; or
 - b) Knowingly have a person described above as a director, officer, partner, or owner of more than 5% of the entity's equity; or,
 - c) Have an employment, consulting, or other agreement with a person described above for the provision of items and services that are significant and material to the entity's obligation under any agreement to provide OHP services.

D. Fraud/Suspicious Claim Referral Sources:

1. YCHHS receives fraud, abuse and/or suspicious claim referrals from the following

Yamhill County Health and Human Services Policies and Procedures Manual

sources:

- a) YCHHS Fraud and Abuse Referral Form (See *Reporting Form*, page 11)
 - i. The form is available on the Yamhill County Intranet under HHS/Forms
 - ii. The form can be submitted by Fax 503/434-9846,
 - iii. By E-mail to hinrichc@co.yamhill.or.us

or by mail to:

Yamhill County HHS Department
Attn: Fraud and Abuse Officer
627 N. Evans
McMinnville, OR 97128

IV. Training and Education

A. *YCHHS and each sub-contractor shall train its employees and contractors regarding YCHHS's policy to prevent and detect fraud and abuse involving Medicare and Medicaid funds and provide, in that training and in writing and to be included in the employee handbook materials, at a minimum, the following:*

1. Articulation of the organization's commitment to guard against fraud and abuse.
2. Articulation of the organization's obligation to adhere to YCHHS's policy.
3. Description of federal and state laws relating to personal liability for knowingly engaging in actions that may constitute fraud or abuse.
4. Discussion of an employee's rights as a "whistleblower" to be protected from retaliation by his/her employer for coming forward with information about fraud or abuse.
5. Description of the organization's program to prevent and detect fraud and abuse, including discussion of disciplinary guidelines for actions that constitute fraud or abuse.
6. Procedures to report fraud or abuse to YCHHS or State and Federal governing agencies.
7. DHS and other health oversight entities are not limited in their authority to pursue legal redress for fraud and abuse to the full extent of the law.

V. Compliance Officers; Compliance Committee

A. *Compliance Officers*

1. YCHHS and each sub-contractor shall designate an individual as the Fraud and Abuse Compliance Officer who is accountable to the organization's senior management. Responsibilities of the Compliance Officer include, but are not limited to, the following:
 - a) To receive training on, and maintain current knowledge of, the federal and state laws and regulations regarding fraud and abuse;
 - b) Establishing and implementing a clear and accessible process for any individual to bring concerns or evidence of fraud or abuse to the attention of the Compliance Officer;
 - c) Ensuring compliance with the organization's program to prevent and detect fraud

Yamhill County Health and Human Services Policies and Procedures Manual

- and abuse, including publicizing the disciplinary consequences of participation in fraud or abuse;
- d) Disseminating written information, such as that described in Section IV above; and providing guidance to employees and contractors about the program;
 - e) Participating in training and resource development activities with other Compliance Officers;
 - f) Maintaining records of cases reported to the organization and submitting any required reports to YCHHS; and
 - g) Serving as the point of contact for cases referred to YCHHS and/or the MFCU.
 - h) Represent YCHHS on the Mid-Valley Behavioral Care Network compliance committee.

B. Compliance Committee

1. A Compliance Committee shall be formed that consists of at least one YCHHS Division Director representing Mental Health programs, as well as representatives from all Divisions within the YCHHS organizational structure.
 - a) The Committee shall meet as needed to discuss and review cases reported in order to make recommendations to YCHHS Director about technical assistance, process improvements, and/or corrective actions necessary for YCHHS and its sub-contractors to fully comply with federal and state laws and/or to meet their contractual responsibilities.
 - b) The YCHHS Fraud and Abuse Compliance Committee will develop any policy changes needed, create and distribute training materials to staff, oversee the creation of confidential reporting systems and ensure that all policies and procedures are adhered to.

VI. Enforcement; Corrective Action

- A. *With respect to YCHHS's responsibility to ensure compliance with federal and state laws and rules to prevent and detect fraud and abuse, YCHHS shall develop and implement an enforcement program that includes the following elements:*
 1. Procedures to receive, and promptly investigate and respond to cases of suspected or verified fraud or abuse reported to YCHHS.
 2. Procedures to refer cases of suspected or verified fraud or abuse to the Medicaid Fraud Control Unit and to notify DHS of MFCU referrals.
 - a) Examples of cases that should be referred to MFCU include:
 - i. Providers who consistently demonstrate a pattern of intentionally reporting encounters or services that did not occur. A pattern would be evident in any case where 20% or more of sampled or audited services are not supported by documentation in the clinical records;
 - ii. Providers who consistently demonstrate a pattern of intentionally reporting overstated/understated or up-coded/down-coded levels of service. A pattern would be evident by 20% or more of sampled or audited services that are billed at a higher level procedure code than is documented in the clinical records;
 - iii. Any verified case where the provider purposefully altered, falsified, or

Yamhill County Health and Human Services Policies and Procedures Manual

- destroyed clinical record documentation for the purpose of artificially inflating or obscuring compliance rating or collecting Medicare or Medicaid payments not otherwise due;
- iv. Providers who intentionally or recklessly make false statements about the credentials of persons rendering care to clients;
 - v. Providers who intentionally fail to render medically appropriate covered services to clients;
 - vi. Providers who knowingly charge for services that are covered or intentionally balance bill clients the difference between the service charge and the payment from DMAP or YCC, in violation of DHS rules;
 - vii. Any case of theft, embezzlement or misappropriation of Medicare or Medicaid (Title XIX) program money.
- b) Notification to DHS of referrals to MFCU shall include the following information:
- i. Provider's name, Oregon Medicaid and/or Medicare provider number and address;
 - ii. Type of Provider;
 - iii. Source of complaint;
 - iv. Nature of complaint;
 - v. Approximate range of dollars involved;
 - vi. Disposition of complaint when known; and
 - vii. Number of complaints for the time period.
3. Procedures to ensure that YCHHS does not notify or otherwise advise a sub-contractor of an MFCU or DHS fraud investigation so as not to compromise the investigation.
- B. *YCHHS Director may determine that it is necessary for a sub-contractor to undertake corrective action in order to fully comply with laws and rules to prevent and detect fraud and abuse and/or to meet their contractual responsibilities.*
1. Corrective action procedures shall proceed according to the section in the sub-contractor's contract titled *Termination for Cause*, as follows:
 - a) If a sub-contractor fails to perform any of its obligations under the contract, within the time and in the manner provided, or otherwise violates any of the terms of the contract or applicable federal, state, and local statutes and rules, YCHHS shall either:
 - i. Provide an opportunity for the Provider or Entity to cure the breach within ten (10) business days. If YCHHS determines that the efforts to cure the breach within this timeframe are insufficient or ineffective, YCHHS shall seek to cure the breach in accordance with the contract attachment titled *Holding Ourselves Accountable*. If the Provider or Entity has not cured the breach upon conclusion of the technical assistance and corrective action described in *Holding Ourselves Accountable*, YCHHS shall recommend to its Executive Team termination of the contract. The contract shall then terminate thirty (30) days from the date of the acceptance of the recommendation for contract termination; or

VII. Access to Records; Cooperation with Activities

- A. *Sub-contractors shall provide access to records and cooperate with the following activities:*

Yamhill County Health and Human Services Policies and Procedures Manual

1. Recordkeeping – Government Access to Records: All sub-contractors shall provide the Centers for Medicare and Medicaid Services (CMS), the Comptroller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Control Unit, DHS and all their duly authorized representatives the right of access to facilities and to financial (including all accompanying billing records), clinical, and personnel records and other books, documents, papers, plans and writings of the sub-contractor, or its sub-contractors and other contractors, that are pertinent to the contract to perform examinations and audits and make excerpts and transcripts. The sub-contractor shall retain and keep accessible all financial and personnel records and books, documents, papers, plans, and writings for a minimum of five (5) years, or such longer period as may be required by applicable law, following final payment and termination of the Agreements between Yamhill County HHS Department and YCC, or until the conclusion of any audit, controversy or litigation arising out of or related to the Agreements, whichever date is later. The sub-contractor shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit. The same rules apply to Yamhill County HHS Department Agreement with the State of Oregon.

2. Fraud and Abuse: All sub-contractors shall cooperate with and participate in activities to implement and enforce Yamhill County HHS Department policies and procedures to prevent, detect and investigate fraud and abuse relating to Medicare and Medicaid. The sub-contractor shall cooperate with authorized State of Oregon entities and CMS in activities for the prevention, detection and investigation of fraud and abuse. The sub-contractor shall allow the inspection, evaluation or audit of books, records, documents, files, accounts, and facilities as required to investigate an incident of fraud or abuse.

Yamhill County Health and Human Services Policies and Procedures Manual

WHERE TO SEND THIS FORM:

There are 3 options for you to choose:

1. Yamhill County HHS prefers that when possible, you send this to the Manager for the HHS Program for review. They will coordinate any action with the County Fraud & Abuse Officer, Yamhill Community Care (YCC), or other parties; or
2. If you wish, you can send directly to Yamhill County Health and Human Services Fraud and Abuse Officer for review. This can be dropped off at any County HHS office or mailed to:
Yamhill County HHS Fraud and Abuse Officer
627 N. Evans
McMinnville, OR 97128
3. If this is specifically concerning a YCC member or service, and you prefer working directly with YCC the table below tells where to send this form based on where the services were provided.

Additional Information for Yamhill Community Care (YCC)

If you have reason to believe that the County cannot respond appropriately to this report, or if the suspected Fraud or Abuse involves the County: Send the form to the YCC Fraud Investigator.

If this report is about behavioral health services provided to a YCC member :

Choose one of the following:

• **Telephone:** Call toll-free: 1-855-722-8205 and ask to speak to the Fraud and Abuse Officer.
TTY/DD: 1-800-735-2900 or 7-1-1

• **Postal mail. Send this form to:**

Yamhill Community Care
Fraud Investigator
PO Box 40328
Portland, OR 97240

What is Fraud? An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/herself or some other person.

What is Abuse? Provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to YCC or OHP, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes OHP member practices that result in unnecessary cost to YCC or OHP.

B.O. 16-515

July 5, 2016