

FIFTH AMENDMENT TO AGREEMENT
Yamhill Valley Treatment dba Provoking Hope

THIS FIFTH AMENDMENT TO AGREEMENT (this "**Amendment #5**") is entered into by and between **Yamhill County**, a political subdivision of the State of Oregon, acting by and through its Department of Health and Human Services Department ("County") and **Yamhill Valley Treatment**, an Oregon non-profit corporation doing business as Provoking Hope, 213 NE 10th Street, McMinnville, OR 97128 ("Contractor").

RECITALS:

A. County and Contractor are parties to that certain agreement dated as of January 13, 2013 (the "Underlying Agreement"), pursuant to which Contractor provides recovery support services. The Underlying Agreement was first amended on October 8, 2013 ("First Amendment"). The Underlying Agreement was further amended on April 3, 2014 ("Second Amendment"); November 6, 2014 ("Third Amendment"); and July 2, 2015 ("Fourth Amendment").

B. County and Contractor now desire to further amend the Underlying agreement upon the terms and conditions as more particularly set for 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 1 "Contractor's Services" is amended to include the following:

A. Effective July 1, 2015 through September 30, 2015, Recovery Support Services for SAMHSA Drug Court clients targets are to serve twenty (20) clients per month with three visits per week at a rate of \$20.00 per hour.

B. Provide "Responsible Dads Program" services as outlined in Exhibit A, attached hereto and incorporated herein by this reference, effective October 1, 2015 through June 30, 2016. Contractor will provide County with a quarterly summary of total enrollment, completion and outcome measures within 30 days after the end of each quarter in order to reconcile fiscal targets.

C. Contractor must hold all licenses, certificates, authorizations and other approvals required by applicable law to deliver the Services under this Agreement.

2. Section 1 Exhibit A of the First Amendment "Women's Recovery Court (formerly Family Drug Court) Scope of Work" of the Underlying Agreement is amended to include effective dates of July 1, 2015 through June 30, 2016 and update the payment information as specified in Section 4 below. Targets for Women's Recovery Court are to serve eight (8) clients per month with three visits per week at a rate of \$20.00 per hour.

3. Section 1 Exhibit A of the Second Amendment "Recovery Support Services for Transitional Treatment program" of the Underlying Agreement is amended to include effective dates of July 1, 2015 through June 30, 2016, update the payment information as specified in Section 4 below per the budget attached hereto and incorporated herein by this reference as "Exhibit B".

4. Section 4 "Compensation" of the Underlying Agreement is hereby amended as follows:

A. Effective July 1, 2015 through September 30, 2015, Contractor will receive a payment of \$5,196 per month for providing Recovery Support Services for SAMHSA Drug Court clients. Funds will be advanced each month with an actual invoice submitted by the 15th of the month following the end of the month of service. Quarterly reconciliation will be based on monthly invoices and targets. If targets are not met, remaining funds will be returned to County. The maximum amount payable for these services for the period of July 1, 2015 through September 30, 2015 is \$15,588.00.

B. Effective October 1, 2015 through June 30, 2016 Contractor will receive a payment of \$5,120 per month for providing services as outlined in Exhibit A "Responsible Dads Program" of this amendment. The maximum amount payable for these services for the period of October 1, 2015 through June 30, 2016 is \$46,080.

C. Payment for providing Section 1 Exhibit A of the First Amendment "Women's Recovery Court" services for the period of July 1, 2015 through June 30, 2016 will be \$2,078.40 per month. Funds will be advanced each month with an actual invoice submitted by the 15th of the month following the end of the month of service. Quarterly reconciliation will be based on monthly invoices and targets. If targets are not met, remaining funds will be returned to County. The maximum amount payable for these services for the period of July 1, 2015 through June 30, 2016 is \$24,940.80.

D. Payment for providing Section 1 Exhibit A of the Second Amendment "Recovery Support Services for Transitional Treatment program" services will be \$20,121.88 per month for the period of July 1, 2015 through September 30, 2015 and \$22,201.88 per month for the period of October 1, 2015 through June 30, 2016. 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 Yamhill Community Care Organization (YCCO) or the Oregon Health Authority (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. The maximum amount payable for performance of "Recovery Support Services for Transitional Treatment program" services for the period of July 1, 2015 through June 30, 2016 is \$260,182.50.

E. The maximum amount payable for performance of Services under this Amendment for the period of July 1, 2015 through June 30, 2016 is \$346,791.30.

F. **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).

G. 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.

5. The balance of Section 4 of the Underlying Agreement remains unchanged.

6. Section 7 “Term and Termination” of the Underlying Agreement is hereby amended to extend the Agreement through June 30, 2016 and to include the following: 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.

7. Section 9 “Regulations and Duties” of the Underlying Agreement is hereby amended to include the following. **“Regulations and Duties; Compliance by Law.** 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) 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.”

8. The balance of Section 9 of the Underlying Agreement remains unchanged.

9. Section 10 “Subcontracts; Assignment” of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: “Contractor shall not enter into any subcontracts for any of the Services required under this Agreement without County’s prior written consent. This Agreement shall not be assigned by Contractor without the prior written consent of County. No approval by County of any assignment or transfer of interest shall be

deemed to create any obligation of County in addition to those set forth in this Agreement. Consent to subcontract shall not relieve obligations/duties under this Agreement.”

10. Section 11 “Governing Law; Jurisdiction; Venue” 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.”

11. Section 18 is hereby added to the Underlying Agreement as follows: “**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) 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.”

12. Section 19 is hereby added to the Underlying Agreement as follows:

Background Check.

A. Contractor agrees that all employees and volunteers who perform worked 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.

13. Section 20 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 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.”

14. Section 21 "Information Privacy/Security Access" 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, currently 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."

15. Section 22 "Prevention/Detection of Fraud and Abuse" 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 C and which is incorporated herein by this reference."

16. Section 23 "Abuse Reporting and Protective Services" 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."

17. Section 24 "Severability" is hereby added to the Underlying Agreement as follows: "**Severability**. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid."

18. **Ratification**. Except as otherwise expressly modified by the terms of this Amendment #5, 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.

19. **Authority**. County and Contractor and each of the persons executing this Amendment #5 on behalf of County and Contractor hereby covenants and warrants that: (i) such party has full right and authority to enter into this Amendment #5 and has taken all action required to authorize such party (and each person executing this Amendment #5 on behalf of such party) to enter into this Amendment #5, and (ii) the person signing on behalf of such party is authorized to do so on behalf of such entity.

20. **Binding Effect**. All of the covenants contained in this Amendment #5 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.

constitute valid and binding obligations of County and Contractor enforceable according to the terms thereof.

19. Authority. County and Contractor and each of the persons executing this Amendment #5 on behalf of County and Contractor hereby covenants and warrants that: (i) such party has full right and authority to enter into this Amendment #5 and has taken all action required to authorize such party (and each person executing this Amendment #5 on behalf of such party) to enter into this Amendment #5, and (ii) the person signing on behalf of such party is authorized to do so on behalf of such entity.

20. Binding Effect. All of the covenants contained in this Amendment #5 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.

21. Counterparts. This Amendment #5 may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Amendment #5.

22. Recitals. The foregoing recitals are intended to be a material part of this Amendment #5 and are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, this Amendment #5 on the date indicated by their duly authorized officials.

**YAMHILL VALLEY TREATMENT
dba PROVOKING HOPE**

Diane Reynolds

Diane Reynolds, Executive Director

Date: 8/6/15

Fed. Tax ID#: 45-3155924

**YAMHILL COUNTY
BOARD OF COMMISSIONERS**

Allen Springer

ALLEN SPRINGER, Chair

Date: 8-6-15

Silas Halloran-Steiner

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

Date: 8/6/15

APPROVED AS TO FORM

By: *Christian Boenisch*

CHRISTIAN BOENISCH County
Counsel

Date: 8/6/15

Accepted by Yamhill County
Board of Commissioners on

8-6-15 by Board Order

15-302

Exhibit A

RESPONSIBLE DADS PROGRAM NARRATIVE

This project is definitely focused on benefitting dads and their unborn child and young child who are often underserved or disenfranchised by a system that sees only a child with their mother. We believe a child has a need and deserves to be parented by both parents.

We serve almost equally men and women, these persons are referred to us through our partners and or collaborators. However ½ of our 750 monthly are not referred but rather walk in voluntarily to seek help in staying clean, sober and sign up to do 1 on 1 Peer Support, Support Group attendance, family groups focusing on "life after addiction" .

Why is this needed: To help fathers gain confidence and courage to be responsible to and for their children. To help ensure that less dads fall between the cracks, breaking the stigma of "I'll never have a chance to be a dad". To show, teach, make folks aware that children need both parents that fathers are just as important as mothers, and to help fathers step up and play that role in the children's lives.

What are the specific activities to be supported? How long will they take? If your project involves partnerships with other organizations, have the proposed partners agreed to participate?

Through community based agencies; DHS, Public Health, Community Corrections, Chemical Dependency, Mental Health referrals. We will build into our referral base by doing presentations of our programs to schools, counselors, maternity wards, and family and youth organizations, churches in the community.

Diane Reynolds is our director and she will be core in the leadership of this program. But because we know that peers work best with peers we have two dads who will be hired as part time employees to be the point person in this field. Both of these dads are recovery addicts, they both have at times been disassociated from their children and have had to push the barriers to be present and healthy with their children.

They both have also been in the role of single dad with full custody of their children. These men are

Wonderful examples of the very core belief that parents can overcome huge obstacles and push through barriers and become sober, clean and healthy individuals in their community and also are evidence that giving back is one way to keep the changes in place and be held accountable for the changes.

We have a very intensive data gathering technique that we have been using for the last 4 years with all of our programs and contracts. This tool has been used to provide measured results and successes. Which includes but is not limited to;

- 1) How many times client has engaged
- 2) Notes are regarded as encounters with the clients and stored electronically as well as physically in a secured, locked records room.
- 3) Monthly reports are made available of program results
 - a. How many referrals received
 - b. How many referrals made to outside agencies
 - c. Children engaged
 - d. Classes attended
 - e. Groups attended
 - f. Successful DHS closed cases

Budget for program

Expenses Monthly			Annually
Office	.3 FTE	\$ 960.00	11,520
CRM Direct Services	1FTE	\$3200.00	38,400
Director Supervision	.3FTE	\$ 960.00	11,520
Overhead covered in other contract submitted			0
Stipends covered in other contract submitted			0
440			
Total Requested			\$61,440.00

Exhibit B

**Provoking Hope Budget
Recovery Support Services for Transitional Treatment program**

	July- September 2015	October - June 2016	2015-16 TOTAL
Personnel			
CRM (TTRS & Case Finding)	\$ 43,200.00	\$ 135,360.00	\$ 178,560.00
Program Manager (TTRS/Case Finding)	13,440.00	53,280.00	66,720.00
Materials & Supplies			
Professional Services/Contract Services, stipend fund	578.63	1,735.88	2,314.50
Internet, equipment, misc. expenses, rent, staff development, supplies	2,997.00	8,991.00	11,988.00
Mileage (est. @ 95 miles/month x \$0.53/mile)	150.00	450.00	600.00
TOTAL	\$ 60,365.63	\$ 199,816.88	\$ 260,182.50

	July- September 2015	October - June 2016	2015-16 Average
FTE			
CRM (TTRS & Case Finding)	4.50	4.70	4.65
Program Manager (TTRS/Case Finding)	1.40	1.85	1.74

Exhibit C - Fraud, Waste and Abuse Policy
Yamhill County Health and Human Services
Policies and Procedures Manual

Program Admin AMH Abacus CD DD F&Y PH All
Written By: Paul Kushner **Original Date:** 8/1/2013
Revised By: Caren Anderson **Last Revised Date:** 9/23/2103
Approved By: Silas Halloran-Steiner **Approved Date:** 9/23/2013
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

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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.

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, the YCCO/MVBCN, 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 YCCO/MVBCN.
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

Yamhill County Health and Human Services Policies and Procedures Manual

Representative may be, in the following order of priority, a person who is designated as OHP 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 YCCO/MVBCN for MH 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

Yamhill County Health and Human Services Policies and Procedures Manual

- agency
4. Oregon laws pertaining to civil or criminal penalties for false claims and statements:
 - 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

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- 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 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:

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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.
 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 the MVBCN 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 the MVBCN for further investigation, corrective action and/or referral to the DHS Fraud Investigation Unit.
P.O. BOX 14150
Salem, Oregon 97309-5027
Phone: (503) 378-6826, 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

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obligation under any agreement to provide OHP services.

D. Fraud/Suspicious Claim Referral Sources:

1. The YCHHS receives fraud, abuse and/or suspicious claim referrals from the following sources:
 - a) YCHHS Fraud and Abuse Referral Form (See Attachment)
 - 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 kushnep@co.yamhill.or.us & 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:

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- 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 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

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- 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 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 the MVBCN, 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

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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:

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 the MVBCN, 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.