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**INTERGOVERNMENTAL AGREEMENT # 171448
TORT LIABILITY COVERAGE AS A PROVIDER FOR
PSYCHIATRIC SECURITY REVIEW BOARD**

This Agreement is between the State of Oregon acting by and through its Oregon Health Authority hereinafter referred to as "OHA," and **Yamhill County** hereinafter referred to as "County."

1. Term. This Agreement shall become effective on July 1, 2021, regardless of the date it was actually signed by every party. Unless otherwise terminated or extended, this Agreement expires on June 30, 2023 or when the 2021 – 2023 Financial Assistance Agreement (FAA) between OHA and County is terminated, whichever occurs earlier.

2. Statutory Authority.

- a.** Pursuant to ORS 278.315, OHA may provide tort liability coverage through the Oregon Department of Administrative Services to any County or private community care provider (CMHP) that has contracted with OHA to provide supervision, care, treatment, or training of persons under the jurisdiction of the Psychiatric Security Review Board, hereinafter referred to as "PSRB," or OHA under ORS 161.315 to 161.351. The coverage provided shall be self-insurance by the State of Oregon to the limits contained in ORS 30.260 to 30.300.
- b.** Pursuant to ORS 278.405, the Oregon Department of Administrative Services has the authority to direct and manage all risk management and insurance programs of state government except for employee benefit insurance programs as otherwise provided in ORS Chapter 243.
- c.** Pursuant to ORS 278.320, ORS 30.260 to 30.300 does not apply to claims against private community care providers (CMHPs) by reason of the provision of tort liability coverage to those providers pursuant to ORS 278.315. Private community care providers that are provided tort liability coverage under ORS 278.315 remain liable for any damages, including the cost of defense, in excess of the coverage provided under ORS 278.315.

County's tort liability coverage under ORS 278.315 is to the limits contained in ORS 30.260 to 30.300 and per Section 3. Indemnity by State. County remains liable for any damages, including the cost of defense, in excess of this limit.

3. **Indemnity by State.**

From funds available in that portion of the Insurance Fund dedicated for state insurance programs, the State of Oregon, acting by and through its Department of Administrative Services (DAS), and subject to ORS 278.120(1) and rules and policies adapted by DAS in administration of the state's insurance and risk management activities, shall defend and indemnify County or private community care provider (CMHP) and its employees, but only up to the limits for tort claims specified in ORS 30.271 and 30.273 (including the costs of defense; defense cost is inside the limit, not in addition to the limit), for damages and costs of claims for torts committed or alleged to have been committed by County, private community care provider (CMHP) or its employees in the course of County's or private community care provider's (CMHP's) delivery of professional services under this Agreement. Subject to ORS 278.120(1), the monetary limits stated above, and rules and policies adopted by DAS in administration of the state's insurance and risk management activities, County or private community care provider (CMHP) and its employees are entitled to the same defense and indemnification that qualifying agents of OHA would receive under 30.260 to 30.300. However, none of the terms of this Agreement are intended to – and none do – make County, private community care provider (CMHP) or its employees the agents or employees of OHA, DAS, or the State of Oregon generally. County or private community care provider remains liable for any damages, including the cost of defense, in excess of this Indemnity.

All private community care providers must maintain the private community care provider's own insurance in the amount required by Exhibit J, Provider Insurance Requirements, from the County's Financial Assistance Agreement (FAA). Provider must maintain the certificate of insurance and provide it to DAS Risk upon request. The County or private community care provider must immediately notify DAS Risk Management if a claim is reported to them. They must provide a copy of the notice or lawsuit immediately upon receiving. The above information should be sent to:

Department of Administrative Services
Attn: Risk Management / EGS
P.O. Box 12009
Salem, OR 97309-0009

Email: Risk.Management@Oregon.gov
FAX: 503-373-7337
If questions: 503-373-7475

4. **Statement of Work and Consideration.**

- a. The County shall continue to provide PSRB Mental Health Services (MHS 30-Service Description "Monitoring, Security and Supervision Services for Individuals Under the Jurisdiction of the Adult and Juvenile Panels of the Psychiatric Security Review Board," hereinafter referred to as "MHS 30"), attached hereto as Attachment A, as specified in the 2021 – 2023 FAA.
- b. The County shall submit a quarterly report of all PSRB clients that are enrolled in an educational program or that are currently independently employed or currently receiving supported employment services.

- c. OHA obligates itself to provide liability coverage, up to the limits contained in ORS 30.260 to 30.300, to the County while delivering PSRB services to the extent that any tort claim arises out of the County's provision of supervision, care, treatment or training of persons pursuant to the terms of the 2021 – 2023 FAA.
5. **Funds Available.** OHA has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within OHA's biennial appropriation or limitation. The County understands and agrees that OHA's payment of amounts under this Agreement are attributable to work performed after the last day of the current biennium and are contingent on OHA receiving, from the Oregon Legislative Assembly, appropriations, limitation, or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement. In the event the Oregon Legislative Assembly fails to approve sufficient appropriations, limitations, or other expenditure authority, OHA may terminate this Agreement without penalty or liability to OHA, effective upon the delivery of written notice to the County, with no further liability to the County, except that termination shall not prejudice County's right to tort liability coverage under this Agreement for any covered liability incurred prior to the date of termination.
6. **Termination**
- a. This Agreement may be terminated by written mutual consent of both parties or by either party upon 30 calendar days written notice to the other party.
- b. OHA may terminate this Agreement effective upon delivery of written notice to the County or at such later date as may be established by OHA under any of the following conditions:
- (1) The County is deficient in providing PSRB Services as outlined in the MHS 30 Service Description within the time specified herein or any extension thereof.
 - (2) OHA's 2021 – 2023 FAA with County is terminated.
- c. Termination under this Section shall not prejudice County's right to tort liability coverage under this Agreement for any covered liability incurred prior to the date of termination.
7. **Records Maintenance and Access.** County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments, and writings of County, whether in paper, electronic, or other form that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments, and writings of County whether in paper, electronic, or other form that are pertinent to this Agreement are collectively referred to as "Records." County acknowledges and agrees that OHA and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and expiration or termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

8. **Compliance with Applicable Law.** The County shall comply with all federal, state, and local laws and ordinances applicable to the services being provided under this Agreement. The County, its officers, and employees are not agents of OHA for the purposes of ORS 30.260 to 30.300. Without limiting the generality of the foregoing, County expressly agrees to comply with:
- a. Title VI of the Civil Rights Act of 1964;
 - b. Section V of the Rehabilitation Act of 1973;
 - c. The Americans with Disabilities Act of 1990;
 - d. ORS 659A.142, and all regulations and administrative rules established pursuant to those laws; and
 - e. All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.
9. **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 provisions 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.
10. **Merger Clause.** This Agreement and the attachments constitute the entire Agreement between the parties. No waiver, consent modification, or change of terms of this Agreement shall bind either party unless in writing and signed by all signatories to this Agreement. Such waiver, consent modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The County, by the signature below of its authorized representative, hereby acknowledges that he or she has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have executed this amendment as of the dates set forth below their respective signatures.

11. Signatures:

Yamhill County

By:

Lindsay Berschauer

Chair-Board of Commissioners 2-3-2022

Authorized Signature

Title

Date

State of Oregon acting by and through its Oregon Health Authority

By:

[Signature]
9D98E8BF9E364F9...

Director of Business Operations/AOR

Authorized Signature

Title

Date

Approved by Director, OHA Health Systems Division

By:

Margie Stanton
9652DA932315422...

Director

2/4/2022

Authorized Signature

Title

Date

Approved for Legal Sufficiency:

By:

Approved by Steven Marlowe, Senior Assistant Attorney General, Department of Justice, Tax and Finance Section, on June 25, 2021; email in contract file.

Approved by the Department of Administrative Services:

By:

Approved by Shelly Hoffman, Risk Manager, Department of Administrative Services, on March 18, 2019; letter in contract file.

Accepted by Yamhill County
Board of Commissioners on
2-3-2022 by Board Order
22-33

ATTACHMENT A

Service Name: **MONITORING, SECURITY, AND SUPERVISION SERVICES FOR INDIVIDUALS UNDER THE JURISDICTION OF THE ADULT AND JUVENILE PANELS OF THE PSYCHIATRIC SECURITY REVIEW BOARD**

Service ID Code: **MHS 30**

1. Service Description

Monitoring, Security, and Supervision Services for Individuals under the Jurisdiction of the Adult and Juvenile Panels of the Psychiatric Security Review Board (PSRB & JPSRB) (MHS 30 Services). MHS 30 Services are delivered to Individuals who are placed in their identified service area by Order of Evaluation or Conditional Release Order as designated by OHA.

a. Monitoring Services include:

- (1) Assessment and evaluation for the court, and the PSRB or JPSRB of an Individual under consideration for placement on a waiting list or for Conditional Release from the Oregon State Hospital (OSH), a hospital, jail, or facility designated by OHA, to determine if the Individual can be treated in the community, including identification of the specific requirements for the community placement of an Individual;
- (2) Supervision and urinalysis drug screen consistent with the requirements of the PSRB or JPSRB Conditional Release Order;
- (3) Coordination with OSH, a hospital, or facility designated by OHA on transition activities related to Conditional Release of an Individual;
- (4) Provide supported housing and intensive case management for identified programs at approved budgeted rates; and
- (5) Administrative activities related to the Monitoring Services described above, including but not limited to:
 - (a) Reporting of the Individual's compliance with the conditional release requirements, as identified in the order for Conditional Release, as identified in the Order for Conditional Release, through monthly progress notes to the PSRB or JPSRB;
 - (b) Providing interim reports for the purpose of communicating current status of an Individual to the PSRB or JPSRB;
 - (c) Submitting requests for modifications of Conditional Release Orders to the PSRB or JPSRB;
 - (d) Implementing board-approved modifications of Conditional Release Orders;
 - (e) Implementing revocations of Conditional Release due to violation(s) of Conditional Release Orders and facilitating readmission to OSH;
 - (f) Responding to Law Enforcement Data System (LEDS) notifications as a result of contact by the Individual receiving MHS 30 Services with law enforcement agencies; and

- (g) An annual comprehensive review of supervision and treatment Services to determine if significant modifications to the Conditional Release Order should be requested from the PSRB or JPSRB.

b. Security and Supervision Services includes:

- (1) Security Services include: Services identified in the PSRB or JPSRB Conditional Release Order, which are not medically approved Services but are required for safety of the Individual and the public, and are covered at a rate based on a determination of the risk and care needs, as identified in the Security Services Matrix below:

Security Matrix	Low Risk	Med Risk	High Risk
High Care	Rate 1	Rate 2	Rate 3
Med Care	Rate 2	Rate 3	Rate 4
Low Care	Rate 3	Rate 4	Rate 5

- (2) Supervision Services include approved Services that are not covered by another resource and will be funded at the current Medicaid Fee Schedule rate as a basis for reimbursement purposes. Disbursement will be made by invoice in accordance with the “Financial Assistance Calculation, Disbursement, and Agreement Settlement Procedures” section below. Approved Supervision Services may include one or more of the following:
 - (a) Additional staffing;
 - (b) Transportation;
 - (c) Interpreter services;
 - (d) Medical services and medications;
 - (e) Rental assistance, room and board, and person and incidental funds;
 - (f) Payee
 - (g) Guardianship initial and ongoing costs;
 - (h) Identification of Individuals receiving supported housing and intensive case management services as identified in Monitoring above; and
 - (i) Non-Medically approved services including, but not limited to: assessment, evaluation, outpatient treatment, and polygraph.

2. Performance Requirements

- a. Providers of MHS 30 Services funded through this Agreement shall comply with OAR 309-019-0160, as such rule may be revised from time to time.
- b. Providers of MHS 30 Services funded through this Agreement shall maintain a Certificate of Approval in accordance with OAR 309-008-0200 through OAR 309-008-1600, as such rules may be revised from time to time.

3. Reporting Requirements

All Individuals receiving MHS30 Services with funds provided through this Agreement must be enrolled and that Individual's record maintained in the Measures and Outcomes Tracking System (MOTS) as specified in OHA's MOTS Reference Manual, located at: <http://www.oregon.gov/oha/amh/mots/Pages/resource.aspx>, and the Who Reports in MOTS Policy, as follows:

Which Behavioral Health Providers are Required to Report in MOTS?

The data collection system for the Health Systems Division (HSD) is the Measures and Outcomes Tracking System or MOTS. In general, behavioral health providers who are either licensed or have a letter of approval from the HSD (or the former Addictions & Mental Health Division [AMH]) and receive public funds to provide treatment services are required to report to MOTS. In addition to the general rule above, there are four basic ways to classify who is required to submit data to MOTS:

- a. Providers with HSD contracts that deliver treatment services (this includes Community Mental Health Programs [CMHP], Local Mental Health Authorities [LMHA] and other types of community behavioral health providers); these programs should all have a license or letter of approval from the HSD or AMH;
- b. Providers that are subcontractors (can be a subcontractor of a CMHP or other entity that holds a contract with HSD or OHA, such as a Mental Health Organization [MHO], or a Coordinated Care Organization [CCO]);
- c. Providers that HSD does not contract with but are required to submit data to MOTS by State/Federal statute or rule; these include DUII services providers and methadone maintenance providers; and
- d. Providers that contract with other governmental agencies (e.g., Oregon Youth Authority [OYA] or the Department of Corrections [DOC] to deliver mental health and/or substance abuse services).

Note: Primary care physicians that provide a single service on behalf of the County are not required to report the MOTS status or service level data.

If there are any questions, contact MOTS Support at MOTS.Support@state.or.us.

4. Special Reporting Requirements

Upon request County shall submit one or more of the following to the OHA Contract Administrator for MHS 30 Services:

- a. Conditional Release Plan or Conditional Release Order;
- b. Monthly progress notes;
- c. Incident reports;
- d. Evaluations and assessments;
- e. Notifications of Revocation and Order of Revocation;
- f. Treatment Plans;
- g. Notification of Change of Residence; or

- h. Any other documentation deemed necessary for monitoring and implementing MHS 30 Services.

5. Financial Assistance Calculation, Disbursement, and Agreement Settlement Procedures

OHA provides financial assistance for MHS 30 Services in two different ways, through Part A and Part C awards. The award type is identified in Exhibit C, "Financial Assistance Award," in MHS 30 lines in which column "Part ABC" will contain an "A" for Part A or "C" for Part C award.

- a. Financial assistance provided to County or Service Providers are subject to the following:

- (1) OHA shall not authorize in aggregate, under this "Financial Assistance Calculation, Disbursement, and Agreement Settlement Procedures" section, financial assistance requested for MHS 30 Services in excess of the contractual Not-to-Exceed amount. Total aggregate funding means the total of all funding authorized in Exhibit C, "Financial Assistance Award" before reducing financial assistance to account for client resources received by the County or Service Provider from an Individual, or from another on behalf of the Individual, in support of Individual's care and Services provided. The monthly rate will be prorated for any month in which the Individual does not receive Service for a portion of the month. Funding will be reduced (offset) by the amount of funding received by the Service Provider from the Individual, the Individual's health insurance provider, another person's health insurance provider under which Individual is also covered, or any other Third Party Resource (TPR) in support of Individual's care and Services provided;
- (2) OHA is not obligated to provide payment for any MHS 30 Services that are not properly reported in accordance with the "Reporting Requirements" and "Special Reporting Requirements" sections above or as required in an applicable Specialized Service Requirement by the date 60 calendar days after the earlier of expiration or termination of this Agreement, termination of OHA's obligation to provide financial assistance for MHS 30 Services, or termination of County's obligation to include the Program Area in which MHS 30 Services fall within its Services.

- b. The Part A awards will be calculated, disbursed, and settled as follows:

- (1) Calculation of Financial Assistance: OHA will provide financial assistance for MHS 30 Services identified in a particular line of Exhibit C, "Financial Assistance Award," containing an "A" in column "Part ABC," from funds identified in that line in an amount equal to the rate set forth in the special condition identified in that line of the Financial Assistance Award, multiplied by the number of units of MHS 30 Services delivered under that line of the Financial Assistance Award during the period specified in that line. The total of OHA financial assistance for all MHS 30 Services delivered under a particular line of Exhibit C, "Financial Assistance Award" containing an "A" in column "Part ABC" shall not exceed the total funds awarded for MHS 30 Services as specified in that line in the Financial Assistance Award and are subject to the limitations described herein.
- (2) Disbursement of Financial Assistance: Unless a different disbursement method is specified in that line of Exhibit C, "Financial Assistance Award," OHA will disburse the Part A awards for MHS 30 Services provided under a particular line of the Financial Assistance Award containing an "A" in column "Part ABC" to County in substantially equal monthly allotments during the period specified in that line of the Financial Assistance Award, subject to the following:

- (a) OHA may, upon written request of County, adjust monthly allotments;
 - (b) Upon amendment to the Financial Assistance Award, OHA shall adjust monthly allotments, as necessary, to reflect changes in the funds shown for MHS 30 Services provided under that line of the Financial Assistance Award;
 - (c) OHA may, after 30 calendar days (unless parties mutually agreed otherwise) written notice to County, reduce the monthly allotments based on under-used allotments identified through MOTS and other reporting requirements in accordance with the "Reporting Requirements" and "Special Reporting Requirements" sections above;
 - (d) OHA is not obligated to provide financial assistance for any MHS 30 Services that are not properly reported in accordance with the "Reporting Requirements" and "Special Reporting Requirements" sections above by the date 60 calendar days after the earlier of expiration or termination of this Agreement, termination of OHA's obligation to provide financial assistance for MHS 30 Services, or termination of County's obligation to include the Program Area in which MHS 30 Services fall in its County; and
 - (e) OHA will reduce the financial assistance made for MHS 30 Services delivered under a particular line of Exhibit C, "Financial Assistance Award", containing an "A" in column "Part ABC," by the amount received by County as payment for the cost of the Services delivered to an Individual from the Individual, the Individual's health insurance provider, another person's health insurance provider under which Individual is also covered, or any other Third Party Resource (TPR) in support of Individual's care and Services provided. County is obligate to report to OHA, by email at amhcontract.administrator@state.or.us, any TPR payments not later than 30 calendar days following receipt of payments by County or Service Provider.
- (3) Agreement Settlement: Agreement Settlement will be used to reconcile any discrepancies that may have occurred during the term of this Agreement between actual OHA disbursements of funds for MHS 30 Services under a particular line of Exhibit C, "Financial Assistance Award," containing an "A" in column "Part ABC" and amounts due for such Services based on the rate set forth in the special condition identified in that line of the Financial Assistance Award. For purposes of this section, amounts due to County are determined by the actual amount of Services delivered under that line of the Financial Assistance Award during the period specified in that line of the Financial Assistance Award, as properly reported in accordance with the "Reporting Requirements" and "Special Reporting Requirements" sections above or as required in an applicable Specialized Services Requirement, and subject to the terms and limitations in this MHS 30 Service Description.

c. The Part C awards will be disbursed as follows:

- (1) Unless a different disbursement method is specified in that line of Exhibit C, "Financial Assistance Award," OHA will disburse the Part C awards for MHS 30 Services provided under a particular line of the Financial Assistance Award containing a "C" in column "Part ABC" to County per OHA's receipt and approval of a written invoice with required attachments, as specified below, in the monthly allotments during the period specified in that line of the Financial Assistance Award. Invoice and required attachments are due no later than 45 calendar days following the end of the subject month and must be submitted to amhcontract.administrator@state.or.us with the subject line "Invoice, contract #(your contract number), contractor name." Financial assistance provided by OHA is subject to the limitations described in this MHS 30 Service Description.
- (2) OHA will follow the current Medicaid Fee Schedule in making disbursements. At no time will OHA provide financial assistance above the Medicaid Fee Schedule for Services.
- (3) For Services to non-Medicaid-eligible Individuals, County shall attach a copy of the bill or receipt, for the item or Service, to a combined monthly invoice itemized by Individual. Part C awards for PSRB or JPSRB non-medically approved Services are only for the time period shown and do not carry forward into following years' funding.