

STATE PROVIDERS' AMENDMENT TO HEALTHCHOICE PROVIDER
SERVICE AGREEMENTS

THIS AMENDMENT is between _____, a Managed Care Organization, related managed care entity, provider network, or subcontractor thereof ("MCO"), which is licensed and doing business as a _____ under the laws of the State of _____, with its principal and local offices at _____; and _____ County Health Department ("Local Health Department" or "LHD").

WHEREAS, pursuant to Md. Code Ann. Health-Gen. Art. ("HG") §§15-101 et seq., and the Code of Maryland Regulations ("COMAR") §§10.09.62-75, and §10.09.86 (Maryland Medicaid Managed Care Program), MCO and LHD ("the parties") executed a provider agreement entitled _____, on _____ ("Provider Agreement"); which generally provides for reimbursement by MCO for health care services provided by LHD; and

WHEREAS, for the purpose of the Provider Agreement and this Amendment, the LHD is a health care provider ("Provider") and an agency or unit of the State of Maryland ("the State") and the Maryland Department of Health and Mental Hygiene ("Department" or "DHMH"), with LHD operations funded in whole or in part by the Department, under the direction of a Health Officer, as provided at HG §§3-301, et seq.

NOW THEREFORE, in consideration of the recitals and the mutual promises herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **PURPOSE AND EFFECT OF AMENDMENT.** This Amendment amends the Provider Agreement and any amendments, appendices, addenda, supplements, and the attachments thereto and any documents and/or manuals referenced therein (collectively "the Principal Agreement"). If this Amendment and the Principal Agreement conflict, this Amendment shall control the construction the Principal Agreement. The Principal Agreement, so amended, shall be referred to as "this Agreement".

2. STATE OBLIGATIONS AND GENERAL TERMS.

2.1 MCO Enrollees and Covered Services. LHD shall charge MCO, and MCO shall reimburse LHD, pursuant to applicable law and this Agreement for all services provided by LHD to MCO's Medicaid-eligible HealthChoice Enrollee(s) ("Enrollee") for which the Enrollee(s) qualify under the Plan ("Covered Services"). Covered services include, without limitation, those services described in the Provider Agreement. This Agreement does not limit MCO's requirement to reimburse LHD for services provide pursuant to any provision of state or federal law or regulation or pursuant to any other agreement between the parties or between the Department and MCO.

2.2 Compliance with Laws and Regulations: Notice of State's Legal Obligations. Pursuant to COMAR §10.09.65.02S, LHD and MCO shall comply with all applicable State and federal laws and regulations throughout the term(s) of the Principal Agreement, and thereafter as required by law. The parties acknowledge that LHD is, for purposes of this Agreement, an agency and body politic and corporate of the State and as such is subject to, and shall comply with, all applicable laws, including but not limited to: (a) Maryland Annotated Code Health-General Article, Title 15 and the regulations of the HealthChoice Program at COMAR 10.09.62 – 10.09.75, and 10.09.86; (b) the Maryland Public Information Act, or "PIA", which provides public access to certain public records and information; (c) the Maryland Confidentiality of Medical Records Act, which, together with other State and federal law, governs the confidentiality and disclosure of the medical, mental health, dental, substance abuse/addictions treatment, family planning, social work, professional peer review, communicable disease, and other health care records and information ("Health Care Records"), if any, that are maintained on or that identify and individual; (d) HG §16-201 et seq. and COMAR §10.02.01, which charges, fees, and reimbursement for services provided through the Department of Health and Mental Hygiene; and (e) MD. Code Ann. State Fin. & Proc. Art. ("SFP") §3-301 et seq. (Central Collection Unit) and COMAR §17.01.01.01 et seq., which mandate certain debt service, referral and collection procedures.

2.3 Disclosure of Policies. All policies, procedures, protocols, plans, programs, agreements, reporting and notice requirements, listings of Covered Services (specified by service codes published in the applicable edition of the American Medical Association's Physicians' current Procedural Terminology), reimbursement rates and any other documents

("Policies") which describe the parties' obligations pursuant to the Principal Agreement have been identified and disclosed to LHD. MCO shall provide reasonable notice to LHD of new or amended Policies.

3. RISK ALLOCATION.

3.1. Immunities and Defenses of the State and LHD Officers and Personnel. The parties acknowledge that the State, its units, DHMH, LHD, LHD's County Board of Health (in its capacity as an agency of the State), and their officers, principals, agents, servants, employees, personnel, successors and assigns (jointly and severally, "THE STATE") retain and do not waive any privileges, immunities or defenses, including without limitation public official, sovereign and/or governmental immunity retained at common law and/or subject to the limited waiver thereof pursuant to SG §12-01, et seq., (the Maryland Tort Claims Act or "MTCA"), COMAR §25.02.02 and SG §12-201 et seq. (Actions in Contract). Pursuant to the MTCA, the County (State) Health Officer, any other State employees of the LHD, and any State personnel who act without malice or gross negligence, and within the scope of their public duties or State employment, are personally immune from suit and liability for torts committed in the course of providing LHD services pursuant to this Agreement. The parties acknowledge that a local government and its units and employees enjoy the limitations on and/or immunities from liability for tortious acts or omissions set forth at Md. Code Ann. Cts & Jud. Proc. Art. ("CJP") §5-301, et seq., (Local Government Tort Claims Act or "LGTCA").

3.2. Limited Indemnification and State Liability. THE STATE agrees to indemnify MCO only to the extent that funds have been lawfully appropriated by the Maryland General Assembly expressly to pay such an indemnity, and then only up to the limits of the available appropriated funds, if any, for a judgment against MCO that results solely from misfeasance or nonfeasance of the THE STATE. THE STATE has no obligation for the payment of any judgments or the settlement of any claims made against MCO or its subcontractors as a result of or relating to MCO's obligations under this Agreement. THE STATE has no obligation to provide legal counsel or legal defense to the MCO or its subcontractors in the event that a suit, claim or action of any character is brought by any person(s) not party to this Agreement against MCO or its subcontractors as a result of or relating to MCO's obligations under this Agreement. MCO hereby forever releases THE STATE from

any other obligation or duty to indemnify or defend MCO for any third party claims, including without limitation tort or malpractice claims, for any direct, indirect, compensatory, special or punitive damages, or attorney's fees, if any, arising out of, or in connection with any acts or omissions pursuant to this Agreement. MCO shall immediately give written notice to LHD of any claim or suit made or filed against MCO or its subcontractors regarding any matter resulting from or relating to MCO's obligations under this Agreement, and shall cooperate, assist and consult with THE STATE in the defense or investigation of any claim, suit, or action made or filed against THE STATE as a result of or relating to MCO's obligations under this Agreement. MCO shall indemnify and hold harmless THE STATE against liability for any suits, actions, or claims of any character arising from or relating to the performance under this Agreement of MCO or its subcontractors. Any attempt by MCO to limit its liability, if any, to THE STATE for the negligence or willful misconduct of MCO or of its officers, agents, servants, employees, successors or assigns is and shall be null, void and of no force or effect. THE STATE does not waive any right or defense, or forebear any action, in connection herewith.

3.2. State Insurance Program and Payment of Settlements and Judgments. Pursuant to SFP §9-101 et seq. (State Insurance Program or "SIP"), funds are appropriated by the Maryland General Assembly and administered by the State Treasurer to pay limited claims against the State, pursuant to the MTCA's limited waiver of sovereign immunity. Pursuant to SG §§12-401 (Payment of Settlements and Judgments – Definition of State Personnel), et seq., the parties acknowledge that, subject to certain exceptions and limitations, the Board of Public Works ("BPW") is authorized to pay wholly or partly a settlement or judgment against any State Personnel, including county employees of the LHD, if any, who act without malice or gross negligence, and within the scope of their public duties and responsibilities, to discharge part of the purpose and sovereignty of the State in connection with this Agreement. In addition to the self-insurance coverage of the State provided pursuant to SFP §§9-101 et seq., and SG §§12-401, et seq. THE STATE may have or obtain such professional or other liability insurance coverage as THE STATE deems necessary and desirable, and for which funds have been appropriated by the General Assembly expressly for the payments of premiums thereon, but THE STATE shall have no further obligation, except as may be required by law, to purchase any policies of insurance. Notwithstanding any right to access public information reserved under the PIA, the parties hereby stipulate and agree that the

representations and acknowledgments made by THE STATE in this section, and the legislative declarations made in the statutory authorities cited herein, satisfy all requirements for MCO subcontracts provided in Maryland statute or regulation or otherwise as well as any additional contract requirements pertaining to the documentation of LHD's insurance claims history and coverage.

4. TERMINATION, CONSTRUCTION AND ENFORCEMENT.

4.1. Termination. LHD shall have the same discretionary termination rights as are reserved to MCO in the Principal Agreement. LHD shall have the right immediately to terminate this Agreement for cause in the event that LHD reasonably believes that the MCO will not be able to meet its payment obligations or MCO commits a material breach of its obligations under this Agreement and does not remedy the breach within ten (10) days of receiving prior written notice, by certified mail, of the material breach from LHD.

4.2. Anticompetitive Construction Barred. This Agreement may not be construed or enforced in violation of applicable Antitrust laws or otherwise to impair market competition with other MCOs, Health Maintenance Organizations ("HMOs"), or other managed care entities or provider groups providing of health care services to Medicaid recipients or other individuals eligible for LHD services. Nor may this Agreement be deemed a restrictive covenant or enforced in any manner that limits LHD's capacity to enter into provider agreements with other managed care entities, including MCOs, HMOs, and their subcontractors.

4.3. Independent Contractors and Third-Party Beneficiaries. This Agreement may not be deemed or construed to create any relationship between or among LHD and MCO other than that of independent entities contracting solely for the purpose of effectuating the terms of this Agreement. Except as otherwise expressly provided herein, neither of the parties to this Agreement, nor any third party, shall be construed to be the agent, servant, employee, partner, co-venturer, or representative of the other party or of any third party. The obligations of each party to this Agreement shall inure solely to the benefit of the other party, and no person or entity shall be a third-party beneficiary of this Agreement.

4.4. Entire Understanding, Amendments , and Strict Enforcement. This Agreement supersedes any prior agreement or understanding of the parties concerning the matters set forth herein and constitutes the entire understanding between the parties as to said

matters. Amendments to this Agreement shall not be effective unless reduced to writing. This Agreement shall be deemed amended, automatically and without prior notice, to incorporate changes in law—including without limitation changes in Medicaid laws and regulations—applicable hereto. The failure of LHD to insist on strict compliance and prompt performance of any terms of this Agreement, followed by the acceptance of such performance thereafter, shall not constitute or be construed as a waiver or relinquishment of any right by LHD to enforce all terms strictly in the event of a continuous or subsequent default. Neither party hereto shall be deemed to be the principal drafter to this Agreement or any part thereof.

4.5. Governing Law. The Principal Agreement and this Amendment shall be construed and enforced in accordance with, and governed by, the laws of the State of Maryland, without regard for choice of laws and provisions. MCO agrees to submit to the jurisdiction of the Circuit Court of Maryland for the county or political subdivision in which the LHD is located, with respect to the enforcement of the Principal Agreement and/or this Amendment or any other proceeding arising thereunder.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their undersigned duly authorized representatives, and to be effective as of the effective date of the Principal Agreement:

FOR (name of MCO): _____

Signed: _____ Date: _____

NAME: _____ TITLE: _____

FOR (name of LHD): _____

Signed: _____ Date: _____

NAME: _____ TITLE: County (State) Health Officer

Approved for form and legal sufficiency:

By: _____ Date: _____
Assistant Attorney General