

July 27, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of Revenue Agreement with ONCHC ACO, LLC for participation in a Medicare Accountable Care Organization. Agreement value is \$375,000 for 5 years. Funding is through ONCHC ACO, LLC. No County General Funds are involved.

Previous Board Action/Review	Briefed at Issues – July 25, 2023		
Performance Clackamas	1. Individuals and families in need are healthy and safe 2. Ensure Safe, healthy, and secure communities		
Counsel Review	Yes	Procurement Review	No
Contact Person	Sarah Jacobson	Contact Phone	503-742-5303

EXECUTIVE SUMMARY: This agreement with Oregon Network of Community Health Centers (ONCHC) Accountable Care Organization (ACO) will allow Health Centers Division to improve care to our Medicare community by enabling us to best serve the entire Medicare community in Clackamas County. Currently, we can only holistically serve the Medicare patients who are part of CareOregon, Inc. as we receive actionable data for their Medicare patients, improving our level of care.

Participating in this Oregon Primary Care Association (OPCA) / Centers for Medicare & Medicaid Services (CMS) ACO will allow us access to similar data and enable similar levels of care to Medicare patients regardless of insurance type. It will also bring in an additional revenue stream for providing this increased quality of care to Medicare patients.

Participating in this ACO agreement will further ensure the purpose of the Health Centers Division to serve our community, reduce barriers to health, improve lives, and best execute our intention to provide exceptional care for the whole person delivered with dignity and respect for all.

RECOMMENDATION: Staff recommends the Board approve revenue agreement #11234.

Respectfully submitted,

Rodney A. Cook

Rodney A. Cook
Health, Housing & Human Services

For Filing Use Only

ACO PARTICIPANT AGREEMENT

This ACO PARTICIPANT AGREEMENT (“Agreement”) between ONCHC ACO LLC (“ACO”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of the Health, Housing, and Human Services Department, Health Centers Division. (“ACO Participant”) is entered into as of January 1, 2024 (“Effective Date”). Collectively, ACO and ACO Participant are the “Parties” to this Agreement.

WITNESSETH:

WHEREAS, ACO operates as an accountable care organization whose participating providers (“ACO Participants”) will establish and maintain a significant degree of interdependence and cooperation to provide high quality health care services in an efficient manner to improve the health status of their communities;

WHEREAS, ACO Participants intend to be accountable to each other and their communities by defining and enforcing clinical performance standards and coordinating and managing patient care;

WHEREAS, Oregon’s health centers, acting through the Oregon Network of Community Health Centers, LLC (“ONCHC”), have established ACO to participate in the Medicare Shared Savings Program (“MSSP”) administered by the Centers for Medicare & Medicaid Services (“CMS”);

WHEREAS, the ACO provides ACO Participants the opportunity to receive shared savings as a benefit of adhering to the quality assurance and improvement programs and evidence-based medicine guidelines established by the ACO; and

WHEREAS, ACO Participant operates a Federally Qualified Health Center, either supported by grants made pursuant to Section 330 of the Public Health Service Act, 42 U.S.C. § 254b (“Section 330”) or determined by the Health Resources and Services Administration as eligible for receiving such grants (*i.e.*, “a Look-Alike”), which provides comprehensive preventive and primary care, specialty care, care management and coordination as well as enabling services that benefit the medically underserved communities in its service area, regardless of an individual’s or family’s ability to pay for such services;

WHEREAS, ACO Participant desires to be a participating provider in the MSSP and ACO desires ACO Participant to participate in the MSSP on the terms and conditions set forth herein.

NOW, THEREFORE, ACO and ACO Participant agree as follows:

SECTION 1 - DEFINITIONS

The following definitions apply to this Agreement:

- 1.1. ACO Participant. An individual or group of providers/suppliers that is identified by a Medicare-enrolled Taxpayer Identification Number (“TIN”) or CMS Certification Number (“CCN”) that alone, or together with one or more other ACO Participants, comprises a Medicare Shared

Savings Program Accountable Care Organization as defined at 42 C.F.R. § 425.20 and that is included on that ACO's list of participants as required under 42 C.F.R. § 425.204(c)(5).

- 1.2. Board. ACO's duly constituted governing body described in ACO's Operating Agreement.
- 1.3. Medicare Beneficiary. A Medicare enrollee that has been assigned or attributed to the ACO.
- 1.4. Organized Health Care Arrangement ("OHCA"). An arrangement that, pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), allows participating Covered Entities (as defined by HIPAA) to exchange Protected Health Information ("PHI") for payment, treatment and health care operations of the participating covered entities.
- 1.5. ACO Professional. Those physicians and non-physician practitioners who bill Medicare through ACO Participant's TIN.
- 1.6. MSSP Agreement. The agreement ACO will execute, or has executed, on behalf of ACO Participants for the MSSP with the Centers for Medicare and Medicaid Services (CMS).
- 1.7. Policies. Any standard, regulation, policy, procedure, protocol, practice, program, plan, process, and/or guideline approved by the Board and set forth in writing made available to ACO Participant, including ACO's corporate compliance program and anti-fraud initiatives; quality assurance and quality improvement program; evidence-based clinical guidelines; coordination and patient-centeredness processes and policies; ACO's member engagement initiatives and policies; and ACO's conflict of interest policy.
- 1.8. TIN means the Taxpayer Identification Number assigned to ACO Participant by the Internal Revenue Service.

SECTION 2 - ACO PARTICIPANT OBLIGATIONS

- 2.1. ACO Participant Obligations. ACO Participant shall obligate its ACO Professionals to comply with all the terms and conditions of this Agreement, including all applicable Policies, and the rules of the MSSP set forth in 42 C.F.R. Part 425. ACO Participant and each of its ACO Professionals agree to be accountable for the quality, cost, and overall care of Medicare Beneficiaries who are patients of the ACO Participant and agree to adhere to all Policies including, but not limited to, the ACO's quality assurance and improvement program, ACO data and quality reporting standards, technological standards, and evidence-based clinical guidelines. ACO Participant and each of its ACO Professionals acknowledge that: (1) such accountability and adherence is necessary and appropriate to generate shared savings and other financial and operational benefits to the ACO and ACO Participants and (2) ACO Participant shall not be entitled to shared savings earned by the ACO if ACO Participant fails to adhere meaningfully to the quality assurance and improvement programs and evidence-based medicine guidelines established by the ACO.

- 2.2. Medicare Shared Savings Program. If ACO is accepted for participation in the MSSP and has entered an MSSP Agreement with CMS, then ACO Participant and each of its ACO Professionals agree to the following additional requirements:
- 2.2.1. ACO Participant shall be an “ACO Participant” and each of its ACO Professionals shall be “ACO Suppliers/Providers” as those terms are defined by 42 C.F.R. § 425.20.
 - 2.2.2. ACO Participant shall comply with (and shall ensure that each ACO provider/supplier billing through the TIN of the ACO participant) agrees to participate in the MSSP and to comply with the terms of the MSSP Agreement and each and every applicable regulatory requirement relating to the MSSP found at 42 C.F.R. Part 425 (including related guidance published by responsible federal agencies) including, but not limited to, the quality reporting requirements set forth in Subpart F of 42 C.F.R. Part 425, the beneficiary notification requirements set forth in 42 C.F.R. 425.312, ACO’s corporate compliance program and anti-fraud initiatives, ACO’s conflict of interest policy, and all relevant statutory and regulatory provisions regarding the appropriate use of data, including the HIPAA Privacy Rule, HIPAA Security Rule, the terms of ACO’s Data Use Agreement (DUA) with CMS, and all other applicable federal and state laws.
 - 2.2.3. If, and when, CMS enters an MSSP Agreement with ACO, ACO and ACO Participant agree that such MSSP Agreement shall be attached hereto as Exhibit C and incorporated by reference.
- 2.3. Representations. ACO Participant represents and warrants that it has the authority to enter this Agreement on behalf of ACO Professionals and bind ACO Practitioners to the applicable terms and conditions of this Agreement. ACO Participant further represents and warrants that the following statements now are true and will always remain true during the term of this Agreement:
- 2.3.1. ACO Participant operates a Federally Qualified Health Center, either supported by grants made pursuant to Section 330 of the Public Health Service Act, 42 U.S.C. § 254b, or determined by the Health Resources and Services Administration as eligible for receiving such grants (i.e., “a health center Look-Alike”);
 - 2.3.2. ACO Participant is qualified to provide medical services, including employing and contracting with practitioners duly licensed and in good standing to provide the services;
 - 2.3.3. ACO Participant is enrolled in good standing in the Medicare program and all information contained in the internet-based Provider Enrollment, Chain and Ownership System (PECOS) relating to ACO Participant and each ACO Professional has been verified and is current as of the Effective Date. On a going-forward basis, ACO Participant shall update such information in PECOS in a timely manner and in accordance with Medicare program requirements as necessary to reflect any organizational changes and to notify the ACO of any such changes within 30 days after the change;
 - 2.3.4. Neither ACO Participant (including its directors and officers) and any of its ACO Professionals are excluded, debarred, proposed for debarment, declared ineligible, or

suspended from participation under any federal health care program, nor is ACO Participant affiliated or contracted with any employee, contractor or agent that is excluded, debarred, proposed for debarment, declared ineligible, or suspended from participation under any federal health care program;

- 2.3.5. ACO Participant is in compliance with any and all applicable federal and state laws, regulations and rules, CMS instructions and guidance, including, without limitation: (i) federal criminal law; (ii) the False Claims Act (31 U.S.C. § 3729 et seq.); (iii) the anti-kickback statute (42 U.S.C. § 1320a-7b(b)); (iv) the civil monetary penalties law (42 U.S.C. § 1320a-7a); and (v) the Physician self-referral law (42 U.S.C. § 1395nn);
 - 2.3.6. ACO Participant is a member in good standing of the Oregon Primary Care Association, Inc.;
 - 2.3.7. ACO Participant agrees to immediately inform ACO of any modification, suspension, exclusion, reduction, restriction, revocation or relinquishment of any license, membership, or registration referenced in this Section 2.3, and of the occurrence of any other event that may be grounds for terminating this Agreement; and
 - 2.3.8. Neither ACO Participant nor any ACO Professional: (i) has ever been voluntarily or involuntarily terminated from the MSSP, and/or (ii) currently participates in any CMS initiative involving a shared savings arrangement under the same or a different name.
- 2.4. Section 330 Obligations. As a Federally Qualified Health Center (“FQHC”), as defined under Section 2.3.1 above, ACO Participant is subject to legal requirements under Section 330 of the Public Health Service Act (42 U.S.C. § 254b) and implementing regulations (42 C.F.R. Part 51c), (jointly, “Section 330 Legal Requirements”). In compliance with Section 330 Legal Requirements, ACO acknowledges that ACO Participant has in no manner agreed to delegate any governing board authorities or management responsibilities to ACO for defining ACO Participant’s own scope of services, establishing ACO Participant’s own clinical policies and procedures, or conducting oversight of ACO Participant’s own activities. If ACO Participant cannot comply with a term or condition of the MSSP Agreement, this Agreement, or any Policies due to such Section 330 Legal Requirements, ACO Participant agrees to promptly notify ACO of such occurrence and will not be deemed in breach of this Agreement.
- 2.5. Provision of Information. ACO Participant will execute and return in a timely manner all documents, performance data or other information required for ACO to participate in the MSSP. To the extent ACO Participant has any question or concern regarding any term or provision of an MSSP Agreement, ACO Participant will consult in a timely fashion with ACO. ACO Participant warrants the accuracy and completeness of all such information upon submission to ACO. ACO Participant will promptly notify ACO if ACO Participant learns any such information previously submitted to ACO was not accurate or complete at the time of submission or requires updating due to a change in circumstances.
- 2.6. Joint Governance. ACO Participant acknowledges that the MSSP rules require that there be meaningful participation in the composition and control of an ACO’s governing body for ACO Participants and their representatives. ACO Participant agrees to participate in the joint governance

of ACO through: (i) the Board of Managers (“Board”) as set forth in the Operating Agreement, and/or (ii) governing committees, the membership of which shall be determined by the Board. ACO Participant acknowledges that the failure to participate in governance activities may result in a reduction of ACO Participant’s allocation of shared savings.

- 2.7. Physician-Patient Relationship. As applicable, the ACO Participant and ACO Professionals shall maintain an independent physician-patient relationship with all Medicare Beneficiaries who are the ACO Participant’s patients and each of its ACO Professionals shall exercise independent professional judgment consistent with accepted standards of medical care in rendering treatment to Medicare Beneficiaries.
- 2.8. Billing and Collection. ACO Participant acknowledges that CMS has full and final responsibility and liability for payment of Medicare claims. ACO is not responsible for, does not guarantee, and does not assume liability for payment of any Medicare claim. ACO Participant shall be solely responsible for billing and collecting any amounts owed for services provided to Medicare Beneficiaries in accordance with applicable Medicare policies.

SECTION 3 – ACO’S OBLIGATIONS

- 3.1. Administration. ACO shall perform or arrange for the timely and effective performance of all ACO obligations under this Agreement, the MSSP Agreement, and any applicable Policies. ACO shall develop and maintain within its available resources, and in conjunction with ONCHC, an adequate and appropriate infrastructure to facilitate the ACO’s processes as defined in the Policies and as necessary to function in accordance with MSSP rules and regulations as they may be updated and amended from time to time.
- 3.2. Communication. ACO shall arrange for timely communication of information between and among ACO, ACO Participants, and ACO Professionals as is necessary and appropriate for the effective performance of this Agreement and the MSSP.
- 3.3. Board of Managers. ACO will establish a Board of Managers that meets regularly and oversees the ACO’s operations. As required by the MSSP, at least 75% of the Board of Managers will consist of representatives designated by MSSP Participants, and at least one Manager will be a Medicare beneficiary in the community who is not otherwise associated with the ACO. All members of the Board of Managers will have a fiduciary duty to the ACO and will be required to act consistent with that fiduciary duty. The Board will have a transparent governing process.
- 3.4. Non-Compliance. As appropriate, ACO shall take steps to address non-compliance by ACO Participant with the requirements of this Agreement and Policies, including adherence to MSSP requirements and other program integrity issues (including those identified by CMS), the quality assurance and improvement program and evidence-based clinical guidelines. Such steps may include program implementation assistance, education, and mentoring to the ACO Participant. ACO Participant shall work in good faith with ACO to improve performance and to identify and correct any areas of non-compliance. ACO Participant acknowledges, however, that, if ACO Participant does not adhere to the quality assurance and improvement program, the evidence-based clinical guidelines, or the patient-centeredness processes, or is deficient in meeting specified

quality performance standards, ACO shall use progressive remedial processes and sanctions against ACO Participant to improve compliance and performance. Such measures may include adoption and implementation of corrective action plans, the assessment of sanctions, the loss of the ability to receive shared savings, and expulsion for the ACO. ACO Participant agrees to use similar processes and sanctions against ACO Professionals as necessary to address any such non-compliance.

3.5. ACO Representations. ACO represents and warrants the following statements now are true and shall remain true during the term of this Agreement:

3.5.1. ACO has not been excluded, debarred, proposed for debarment, declared ineligible, or suspended from participation in any government health care program;

3.5.2. ACO does not have in a leadership position, employ, obtain services from, or contract with any person or entity that is excluded, debarred, proposed for debarment, declared ineligible, or suspended from participation in any government program;

3.5.3. ACO remains in compliance with all applicable federal and state laws, regulations, rules, and CMS instructions and guidance including, but not limited to: (i) federal and state antitrust laws and (ii) the federal False Claims Act (31 USC 3729 et seq.); and

3.5.4. ACO will maintain an effective corporate compliance program designed and operated in a manner consistent with 42 C.F.R. § 425.300.

SECTION 4 – PAYMENT

4.1 ACO Participant Dues. The Board may establish an amount and schedule of dues for participation in ACO, in which case ACO shall submit an invoice for payment to ACO Participant. If ACO Participant is delinquent in payment of dues, ACO may charge interest of 1% monthly, reduce or withhold payments otherwise due to ACO Participant, suspend ACO Participant's participation in the MSSP, or terminate this Agreement.

4.2 Shared Savings Payments. If financial and clinical outcomes are successfully managed under the MSSP, ACO may receive payments from CMS in accordance with the terms of the MSSP Agreement. ACO will use or distribute such payments in accordance with the methodology adopted by the Board.

SECTION 5 –CONFIDENTIALITY OF HEALTH INFORMATION

5.1. HIPAA and Part 2 Compliance. ACO Participant and ACO shall treat health records and personal health information of Medicare Beneficiaries as confidential in compliance with all applicable federal and state laws, including the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, the regulations promulgated thereunder, including, without limitation, the Privacy, Security and Breach Notification Rules, in each case, as amended from time to time (collectively referred to hereinafter

as “HIPAA”), and the Confidentiality of Substance Use Disorder Patient Records law, 42 USC §290dd-2 and implementing regulations set forth at 42 C.F.R. Part 2 (referred to hereinafter as “Part 2”), as applicable to ACO Participant and to Medicare Beneficiary health records. Terms used, but not otherwise defined, in this Agreement shall have the same meanings as those terms in HIPAA, except that for the purposes of this Section 5.1, the term electronic PHI (“ePHI”) shall have the same meaning as set forth in 45 C.F.R. § 160.103, limited to such information created or received by ACO from or on behalf of ACO Participant in connection with this Agreement. If ACO Participant is a Covered Entity under HIPAA, then ACO is a Business Associate of ACO Participant under this Agreement, and the Parties agree to be bound by the Business Associate Addendum (“BA Addendum”) attached hereto and incorporated herein as Exhibit A. If the health records disclosed by ACO Participant to ACO under this Agreement are protected by Part 2, the Parties agree to be bound by the 42 C.F.R. Part 2 Addendum (“Part 2 Addendum”) attached hereto and incorporated herein as Exhibit B and ACO Participant shall obtain consent from Medicare Beneficiaries for release of health records protected by Part 2, as applicable. In the event that this Agreement between ACO Participant and ACO is terminated for any reason, the terms of the BA Addendum and the Part 2 Addendum shall continue in full force and effect, and survive the termination of this Agreement, to the extent necessary to comply with applicable state and federal confidentiality, privacy and security laws.

- 5.2. Proprietary Information. ACO Participant and ACO shall comply with all applicable state and federal laws, and the MSSP Agreement respecting the confidentiality of financial, operating, proprietary or business information relating to this Agreement which is not otherwise public information; as well as hold in strict confidence any information specified in writing by any Party hereto as confidential information. ACO Participant and ACO shall each exercise best efforts to prevent any of their respective agents, employees or independent contractors or any other person involved in doing business with or controlled by the recipient Party from disclosing or transmitting to any third party any such confidential or proprietary information obtained from the disclosing Party; provided, however, that nothing herein shall prohibit a recipient Party from disclosing or transmitting information to the extent necessary or appropriate under this Agreement or as required by law or government agency, including the Health Resources and Services Administration. For purposes of this Agreement, “Confidential Information” includes, but is not limited to:
- 5.2.1. clinical data and information collected from ACO Participants or ACO Professionals;
 - 5.2.2. clinical data and information collected by ACO from ACO Participants or ACO Professionals;
 - 5.2.3. performance results regarding ACO Participant or ACO Professionals;
 - 5.2.4. business operations, practices and procedures of ACO Participant, including staffing, strategies, financial plans and budgets, contractual relationships or terms, practice management procedures, health information technology systems and/or systems or processes related to the specific operation of ACO Participant (as opposed to the provision of services to Medicare Beneficiaries).

- 5.3. Access to Records. To the extent consistent with the foregoing, ACO Participant shall permit ACO and appropriate federal and state regulatory agencies, at all reasonable times, to have access to health records of Medicare Beneficiaries, and to any other books and records maintained by ACO Participant pertaining to this Agreement, including, without limitation, clinical information pertaining to the Enrollee that is reasonably necessary for case management, utilization or quality review purposes, and the books and records of ACO Participant relating to Covered Services provided to Medicare Beneficiaries. ACO Participant shall obtain any appropriate authorization or consent from Medicare Beneficiaries for release of health records on forms provided or approved by ACO, as applicable.
- 5.4. Inspection. ACO Participant shall permit any government agency so authorized by law to conduct a site evaluation of the premises of ACO Participant, where applicable, in accordance with applicable law and to prepare and implement any required corrective action plan. ACO Participant also agrees to permit a representative of ACO or an accrediting agency, as applicable, to inspect and review, upon reasonable notice and at times reasonably convenient to ACO Participant during normal business hours, ACO Participant's premises, equipment and, to the extent permitted by applicable law, health records of Medicare Beneficiaries and other aspects of professional and ancillary care provided to Medicare Beneficiaries by a Participating Provider at ACO Participant site. ACO Participant shall obtain any appropriate authorization or consent from Medicare Beneficiaries for release of health records, as applicable.

SECTION 6 – ORGANIZED HEALTH CARE ARRANGEMENT

- 6.1. OHCA Participation. ACO Participant represents and warrants on behalf of itself and ACO Professionals that ACO Participant is at all times during the term of this Agreement a ACO Participant jointly participating in quality assessment and improvement, utilization review or payment with other ACO Participants, which arrangement constitutes an Organized Health Care Arrangement (“OHCA”) pursuant to HIPAA, and ACO Participant agrees to be included in communications that publicly disclose ACO Participant's participation in the OHCA.
- 6.2. OHCA Policies and OHCA Procedures. ACO Participant agrees to abide, and shall ensure that its employees, agents and subcontractors abide, by all HIPAA policies, procedures, standards and rules established, and amended from time to time, by ACO Participants for purposes of the OHCA (“OHCA Policies and OHCA Procedures”).
- 6.3. Notice of Privacy Practices. ACO Participant represents and warrants that the Notice of Privacy Practices distributed to Medicare Beneficiaries will describe ACO Participant's participation in the OHCA and include the then current list of ACO Participants, or classes of ACO Participants, as provided by ACO, which notice shall also comply with all other applicable requirements of HIPAA. ACO Participant agrees to distribute and maintain copies of such notice in accordance with the requirements of HIPAA.
- 6.4. Disclosure of PHI. To the extent permitted under applicable state and federal law, ACO Participant agrees that ACO Participant may, in accordance with the “minimum necessary” and other applicable requirements of HIPAA, disclose an Enrollee's PHI to other ACO Participants for the payment and health care operations purposes of the ACO Participants or the OHCA, including

quality assessment and improvement and peer review, without first obtaining authorization from the affected Enrollee. ACO Participant shall obtain consent from Medicare Beneficiaries for release of health records protected by Part 2, as applicable.

SECTION 7 - TERM AND TERMINATION

- 7.1. Term/Non-Renewal. This Agreement shall be effective as of the Effective Date for a five (5)-year term and shall thereafter be renewed automatically for successive five-year terms unless either Party provides the other written notice of such Party's intent not to renew this Agreement, at least ninety (90) days prior to the end of the then current term. Said termination shall be effective as of the last day of the then current term; provided, however, that ACO Participant shall cooperate with ACO during the period that follows the termination date to complete data collection related to the period when this Agreement was in effect.
- 7.2. Immediate Termination. ACO may immediately terminate this Agreement upon the occurrence of any one or more of the following events: (i) the dissolution or liquidation of ACO (or any successor entity); (ii) the insolvency, dissolution or liquidation of ACO Participant; (iii) ACO Participant or any ACO Professional is excluded, terminated or suspended from Medicare, Medicaid or any other federal or state health care program; (iv) ACO Participant or any ACO Professional is convicted of any crime related directly or indirectly to the provision of services or any crime involving moral turpitude; (v) ACO Participant or any ACO Professional is charged with fraud or abuse or submitting false claims; (vi) ACO Participant's or any ACO Professionals' accreditation, licensure, certification or other approval has been terminated, curtailed, suspended or not renewed or ACO Participant or a ACO Professional has voluntarily relinquished or failed to renew such approval under threat of investigation or disciplinary action; (vii) ACO Participant or any ACO Professional fails to comply with any law, or applicable Policies; (viii) ACO or a CMS determines in its sole discretion that the actions or conduct of ACO Participant or a ACO Professional places the health of Medicare Beneficiaries at risk; (ix) if, during the initial or any subsequent term of the Agreement, ACO no longer participates in the MSSP or the MSSP is discontinued or materially changed.
- 7.3. Termination for Material Breach. Either Party may terminate this Agreement with thirty (30) days prior written notice if the other Party materially breaches its obligations under this Agreement and such breach is not cured to the satisfaction of the non-breaching Party within the same thirty (30) day notice period. In addition, ACO may require that a ACO Participant be terminated from this Agreement upon thirty (30) days prior written notice by ACO if the ACO Participant materially breaches its obligations and such breach is not one of those set forth in Section 7.2 above, provided such breach is not cured to the satisfaction of ACO within the same thirty (30) day period. The notice of breach shall describe the claimed breach with reasonable specificity.
- 7.4. Suspension. If ACO Participant does not comply with ACO's Policies or if any act or omission attributable to the ACO Participant materially impairs the life, health or safety of a Medicare Beneficiary, ACO may immediately suspend ACO Participant or a ACO Professional from participating in this Agreement.

- 7.5. Termination Without Cause. ACO Participant may terminate this Agreement upon written notice to ACO at least one hundred and twenty (120) days prior to the Effective Date of this Agreement and one hundred and twenty (120) days prior to January 1 of each calendar year thereafter. Said termination shall be effective as of the last day of that calendar year.
- 7.6. Rights and Obligations Upon Termination. In the event of termination of this Agreement, ACO Participant shall also be terminated from participation in the MSSP Agreement entered by ACO on behalf of ACO Participants. Upon termination, ACO Participant shall cooperate with ACO in making any transition arrangements.
- 7.7. Close-Out Process. Upon expiration or termination of this Agreement for any reason, ACO Participant shall furnish to ACO data necessary to complete the annual assessment of ACO's quality of care and as otherwise necessary for ACO to meet any other regulatory or contractual responsibility. If ACO terminates this Agreement, it shall arrange for the continuation of services as necessary for the MSSP ACO to comply with the laws, rules, regulations, and related reporting obligations for the duration of the term of the then-current MSSP. Further, ACO Participant agrees to continue to provide services as necessary for the ACO to comply with the laws, rules, regulations, and related reporting obligations for the duration of the term of the then-current MSSP and as specified in Section 2.5 of the Agreement.
- 7.8. Termination Prior to Conclusion of Performance Year. If this Agreement terminates prior to the conclusion of a performance year, ACO Participant will forfeit any distribution of any shared savings earned by ACO during the performance year in which this Agreement is terminated.

SECTION 8 - NOTICES

Whenever notice is required to be given under the terms of this Agreement, it shall be given in writing, either delivered by email, fax, hand delivery or by certified mail, at the addresses indicated on the signature page of this Agreement. If notice is given by email, fax or hand delivery, notice shall be deemed given upon confirmation of receipt. If notice is given by certified mail, notice shall be deemed given three days after the date of mailing. Each Party shall notify the other promptly of any change in address in accordance with the notice provisions of this Section 8.

SECTION 9 - MISCELLANEOUS

- 9.1 Relationship to MSSP Agreement. The provisions of this Agreement are subject to the terms of the MSSP Agreement. In the event of any conflict, or claimed conflict, between this Agreement and the MSSP Agreement, the MSSP Agreement shall be controlling.
- 9.2 Independent Contractors. ACO and ACO Participant are and shall be independent contractors and ACO shall not be construed to be the agent of or a joint venturer of ACO Participant. These undertakings shall survive any termination of or the expiration of the term of this Agreement.
- 9.3 Insurance. ACO Participant agrees to maintain, at all times during the term of this Agreement, comprehensive general liability, cybersecurity, and professional liability insurance coverage in

such amounts and on such terms as are customary for providers like ACO Participant (and no less than the prevailing standard in the provider community) to insure ACO Participant for any damages resulting from rendering of or failure to render Covered Services by ACO Participant or by any person for whose acts or omissions ACO Participant is responsible, the use of any property or facilities provided to any such Party, and the activities performed by ACO Participant in connection with this Agreement. ACO Participant shall furnish ACO with appropriate evidence of such coverage upon request. ACO Participant shall provide ACO with written notice at least ten (10) days prior to the effective date of any material adverse changes in the status of required coverage. In lieu of professional liability insurance or self-insurance, ACO Participant may substitute Federal Tort Claims Act (“FTCA”) coverage for all professional liability actions, claims, or proceedings arising out of all negligent acts or omissions committed in the course of providing services to Medicare Beneficiaries under the terms of this Agreement.

- 9.4 Dispute Resolution. In the event a dispute between or among any Parties arises out of or is related to the Agreement, the Parties to such dispute shall meet and negotiate in good faith to attempt to resolve the dispute.
- 9.5 Entire Agreement. This Agreement, inclusive of exhibits, Schedules, and attachments, constitutes and expresses the entire agreement and understanding between the Parties hereto in reference to all matters herein referred to, and supersedes all previous discussions, promises, representations, and understandings, whether either oral or written, among the Parties.
- 9.6 Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties’ heirs, successors, assigns and representatives. This Agreement may not be assigned, nor the duties hereunder delegated, by either Party without the other Party’s written consent, provided that ACO may assign this Agreement, without the consent of ACO Participant, to any entity that is (a) owned or controlled by ACO or under common ownership or control with ACO, and (b) a successor to the business of ACO by virtue of merger, consolidation or sale of all or substantially all of ACO’s assets with prior written notice to ACO Participant.
- 9.7 Amendment. This Agreement may be amended only in writing when signed by a duly authorized representative of each party unless an amendment of this Agreement is necessary to comply with regulatory requirements, which amendment shall take effect as of the date stated in ACO’s notice of amendment. Notwithstanding the foregoing, if the Board approves an amendment to the Agreement, then ACO may amend the Agreement with thirty (30) days’ prior written notice to ACO Participant and ACO Participant shall be bound by the amendment without separate consent. If ACO Participant objects to the amendment, ACO Participant may terminate this Agreement by providing written notice to ACO prior to the expiration of the thirty (30) day notice period. In the absence of ACO’s receipt of such written notice of termination, ACO Participant will be deemed to have accepted each such amendment as of the stated effective date.
- 9.8 Severability. Should any provisions of this Agreement or application thereof be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law unless its continued validity and enforcement would defeat the purpose of this Agreement. Notwithstanding the foregoing, the Parties agree to modify this Agreement if either Party reasonably determines that such modification is required to comply with any change in applicable laws or regulations or the official interpretation thereof. If

the Parties are unable to agree upon a modification, either Party may terminate the Agreement by thirty (30) days advance written notice to the other.

- 9.9 Waiver. The failure by a Party at any time to require performance of any provision of this Agreement shall not constitute a waiver of such provision and shall not affect the right of such Party to require performance later. Any waiver of the breach of any term or condition of this Agreement by either Party shall not be a continuing waiver and shall not operate to bar the waiving Party from claiming a breach of this Agreement for any subsequent breach hereunder.
- 9.10 Governing Law. This Agreement shall be governed and construed in accordance with the substantive laws of Oregon, without regard to conflict of law principles.
- 9.11 Counterparts. This Agreement shall be executed in duplicate original, and all notices and amendments made as provided herein shall be made in duplicate and attached to the respective duplicate originals. Both duplicate originals shall together constitute one and the same instrument.

[Separate Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

ACO:

Legal Entity Name:

DBA Name (if applicable)

Authorized Signatory

Name

Title

Date

Address

City, State ZIP Code

Business Phone

ACO PARTICIPANT:

Clackamas County

DBA Name (if applicable)

Authorized Signatory

Name

Title

Date

2051 Kaen Rd

Address

Oregon City, OR, 97045

City, State ZIP Code

503-650-5697

Business Phone

EXHIBIT A

Business Associate Addendum

This Business Associate Addendum (“BA Addendum”) is made and entered into as of the effective date of the ACO Participant Agreement (“Agreement”), by and between ONCHC ACO LLC, (“Business Associate”) and ACO Participant (“Covered Entity”).

Recitals

Covered Entity and Business Associate are parties to a ACO Participant Agreement pursuant to which Business Associate provides certain services to Covered Entity. In connection with Business Associate’s services, Business Associate creates, receives, maintains or transmits Protected Health Information (“PHI”) from or on behalf of Covered Entity, which information is subject to protection under the Federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104 191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”), and related regulations promulgated by the Secretary (“HIPAA Regulations”), as they may be amended from time to time.

WHEREAS, in light of the foregoing and the requirements of HIPAA, the HITECH Act, and HIPAA Regulations, Business Associate and Covered Entity agree to be bound by the following terms and conditions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. DEFINITIONS

Capitalized terms used but not otherwise defined in this BA Addendum have the meanings ascribed to those terms in sections 160.103, 164.304, 164.402, and 164.501 of the HIPAA Regulations.

- A. “Breach Notification Rule”** shall mean the Notification in the Case of Breach of Unsecured Protected Health Information requirements at 45 C.F.R. § 164.400-414.
- B. “Health Care Operations”** shall have the meaning set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.
- C. “HIPAA Rules”** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- D. “Individual”** shall have the same meaning as the term “individual” in 45 C.F.R. § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- E. “Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CF.R. part 160 and part 164, subparts A and E.

- F. **“Protected Health Information”** (“PHI”) shall have the same meaning as the term “protected health information” in 45 C.F.R. § 164.501 and 45 C.F.R. § 160.103, including Electronic PHI (“ePHI”), limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- G. **“Required by Law”** shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- H. **“Secretary”** shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- I. **“Security Incident”** shall have the same meaning as “security incident” in 45 C.F.R. § 164.306 which is the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- J. **“Security Rule”** shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart C.

Obligations and Activities of Business Associate

II. PRIVACY OF PHI

Business Associate agrees to:

- A. Not use or further disclose PHI other than as permitted or required by the ACO Participant Agreement and this BA Addendum or as Required by Law.
- B. Use appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI other than as permitted or required by this BA Addendum or as Required by Law.
- C. Report to Covered Entity any use or disclosure of PHI not provided for by this BA Addendum or the ACO Participant Agreement of which Business Associate becomes aware, including any successful Security Incident and any Breach of Unsecured PHI as required by 45 C.F.R. § 164.410 and pursuant to Section 5 of this BA Addendum.
- D. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 164.308(b)(2), ensure that subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI.
- E. Make available to Covered Entity any PHI in a designated record set maintained by Business Associate as needed to satisfy Covered Entity’s obligations under 45 C.F.R. § 164.524.
- F. Make available to Covered Entity for amendment any PHI in a designated record set maintained by Business Associate, and incorporate any amendments to such PHI, as needed to satisfy Covered Entity’s obligations under 45 C.F.R. § 164.526.

- G. Make available to Covered Entity the information required to provide an accounting of disclosures as needed to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528.
- H. To the extent that Business Associate is to carry out Covered Entity's obligation under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.
- I. Make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Rules.

III. Permitted Uses and Disclosures of PHI

- A. Business Associate may use and disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as described in the ACO Participant Agreement.
- B. Business Associate may use or disclosure PHI as Required by Law.
- C. Business Associate agrees to make uses and disclosures and requests for PHI consistent with applicable minimum necessary policies and procedures.
- D. Business associate may use PHI to de-identify the information in accordance with 45 C.F.R. § 164.514(a)-(c).
- E. Business Associate may not use or disclose PHI in a manner that would violate the Privacy Rule if done by Covered Entity except for the specific uses and disclosures set forth below.
 - i. Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
 - ii. Business Associate may disclose PHI for those purposes if the disclosure is (a) Required by Law or (b) Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- F. Business Associate may use PHI to provide Data Aggregation services to Covered Entity related to the health care operations of the Covered Entity.
- G. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).

IV. Security Incident and Breach Notification

Business Associate shall report to Covered Entity Security Incidents and Breaches affecting Covered Entity's Unsecured PHI.

- A. Business Associate will notify Covered Entity as promptly as possible under the circumstances, consistent with laws and the legitimate needs of law enforcement, and after Business Associate determines the scope of the Security Incident and takes commercially reasonable measures to restore the integrity of the services and to mitigate further harmful effects of the Security Incident. Successful Security Incidents and actual impermissible disclosures of PHI requiring notification under this Section may be made by telephone or e-mail. The Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined herein) for which further notice or details to Covered Entity shall be required only upon request. The term "Unsuccessful Security Incidents" includes, without limitation: pings and other broadcast attacks on Business Associate's firewalls, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the foregoing, so long as no such incident results in unauthorized access, use or disclosure of Covered Entity's electronic PHI.
- B. In the event of a Breach of Unsecured PHI, Business Associate shall, to the extent possible, provide the following information to Covered Entity:
 - i. the identity of each individual whose PHI was affected;
 - ii. brief description of what happened, including the date of the Breach and date of discovery;
 - iii. description of the types of unsecured PHI that were involved (such as full name, social security number etc.);
 - iv. description of what Business Associate is doing to investigate the Breach, mitigate harm to individuals, and to protect against further Breaches; and
 - v. provide any other available information as reasonably requested by Covered Entity.

Obligations and Activities of Covered Entity

V. Inform Business Associate of Privacy Practices and Restrictions

Covered Entity shall:

- A. Notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices under 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- B. Notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- C. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

VI. Permissible Requests by Covered Entity

Covered Entity shall:

- A.** Not request Business Associate to disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that Business Associate may use or disclose PHI for data aggregation or management and administration and legal responsibilities of Business Associate, as described in this BA Addendum.
- B.** Not transfer via Business Associate's services more than the minimum necessary PHI.

Additional Terms

VII. Term and Termination

- A.** Term and Expiration. This BA Addendum will expire when Business Associate has, after termination of the ACO Participant Agreement, returned to Covered Entity or destroyed all PHI that Business Associate received from, or created or received on behalf of, Covered Entity.
- B.** Early Termination. Covered Entity has the right to terminate this BA Addendum if it determines either that Business Associate has violated a material term of this BA Addendum or Business Associate has engaged in a pattern of activity or a practice that constituted a material breach or violation of this BA Addendum and either:
 - i. Business Associate does not cure the material violation within 60 days after receiving written notice from Covered Entity specifying the material violation, or
 - ii. The material breach or violation is not capable of being cured.
- C.** Effect of Termination. Upon termination of this BA Addendum for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - i. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining PHI that the Business Associate still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with the Security Rule with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - iv. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at paragraphs 4(e)(i)-(ii) which applied prior to termination; and
 - v. Return to Covered Entity or, if agreed to by Covered Entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

VIII. Amendment and Interpretation

The parties shall amend this BA Addendum from time to time as necessary for Covered Entity and Business Associate to comply with the HIPAA Regulations. Any ambiguity in this BA Addendum will be resolved to permit Covered Entity to comply with the HIPAA Regulations.

IX. Indemnification

The Parties agree to indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "indemnified party," against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any breach of this BA Addendum or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under the Privacy Regulation, by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, the indemnifying party shall reimburse any indemnified party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any indemnified party by reason of any suit, claim, action, proceeding or demand by any third party which results from the indemnifying party's breach hereunder. The Parties' obligation to indemnify any indemnified party shall survive the expiration or termination of this BA Addendum for any reason.

EXHIBIT B
42 C.F.R. Part 2 Addendum

This Addendum amends the Business Associate Addendum (“BA Addendum”) between ACO and ACO Participant only if ACO Participant will disclose patient Records protected by the Federal Confidentiality of Substance Use Disorder Patient Records law and regulations, 42 USC § 290dd-2 and 42 C.F.R. Part 2 (collectively, “Part 2”) and ACO will receive Records protected by Part 2 in providing services under the ACO Participant Agreement (“ACO Participant Agreement”). ACO and the ACO Participant shall be known collectively as “the Parties” and each individually as a “Party.”

WHEREAS, ACO Participant is either a Part 2 Program that creates and maintains Records protected by Part 2 or a lawful holder that receives and maintains Records protected by Part 2;

WHEREAS, ACO Participant wishes to obtain, and ACO is willing to provide, certain services to ACO Participant, detailed in the ACO Participant Agreement, which require ACO Participant to Records protected by Part 2 to ACO;

WHEREAS, in providing the services to ACO Participant ACO will serve as either a Qualified Service Organization (“QSO”) to ACO Participant’s Part 2 Program or as a lawful holder of Records protected by Part 2 received from ACO Participant; and

WHEREAS, Part 2 permits the disclosure of Records protected by Part 2 to a QSO or to another lawful holder for certain, limited purposes and in certain circumstances;

NOW THEREFORE, in consideration of the mutual promises, covenants, terms and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

I. DEFINITIONS

- A. **“Consent”** means a patient’s written consent to disclose Records protected by Part 2 that conforms with the requirements for valid patient consent set forth at 42 C.F.R. § 2.31.
- B. **“Records”** means “records” (as defined at 42 C.F.R. § 2.11) and to which the Part 2 restrictions on disclosure apply (as described at 42 C.F.R. § 2.12(a)).
- C. **“Program”** means a federally assisted program as the term “federally assisted” is defined at as defined at 42 C.F.R. § 2.12(e)(1) and the term “program” is defined at 42 C.F.R. § 2.11.
- D. **“Qualified Service Organization”** means an individual or entity who provides services to a Part 2 Program and has entered into a written agreement with the Part 2 Program as described at 42 C.F.R. § 2.11.

II. DUTIES OF ACO PARTICIPANT

- A. ACO Participant is responsible for identifying all Records protected by Part 2, for providing

any required notices to ACO when disclosing such Records and for informing ACO as to any change to whether Part 2 applies to Records disclosed to ACO.

- B. If Records protected by Part 2 will be disclosed to ACO for purposes of treatment, care coordination, case management, medication management or any other treatment-related purpose or any other purpose for which patient consent is required, ACO Participant is responsible for ensuring that appropriate patient consent is obtained prior to disclosure to ACO. If patient consent is not obtained, ACO Participant is responsible for ensuring Records protected by Part 2 are not disclosed to ACO. ACO Participant is responsible for maintaining patient consent as required by law.

III. DUTIES OF ACO

- A. ACO acknowledges and agrees that in receiving, storing, processing, or otherwise dealing with Records protected by Part 2 it is fully bound by the Part 2 regulations.
- B. ACO agrees that it shall use and disclose Records protected by Part 2 only as necessary to perform the services and functions described in the ACO Participant Agreement or as otherwise permitted by Part 2.
- C. ACO agrees that it will resist any efforts in judicial proceedings to obtain access to Records protected by Part 2, except as permitted by the Part 2 regulations.
- D. ACO agrees to have formal policies and procedures to reasonably protect against unauthorized uses and disclosures of Records protected by Part 2 and to protect against reasonably anticipated threats or hazards to the security of Records protected by Part 2, as required under 42 C.F.R. § 2.16.
- E. ACO shall require any contract agent assisting in providing services under the ACO Participant Agreement and receiving or accessing Records protected by Part 2 to execute a written agreement which provides the contract agent: is fully bound by the Part 2 regulations, has implemented appropriate safeguards to prevent unauthorized uses and disclosures, and will report any unauthorized uses, disclosures or breaches of Records protected by Part 2 to ACO.

IV. ADDITIONAL TERMS

- A. This Addendum will terminate automatically upon termination of the BA Addendum. In addition, either Party may terminate this Addendum upon 30 days prior written notice to the other Party.
- B. To the extent that ACO retains Records protected by Part 2 disclosed under this Addendum after the termination of this Addendum, the obligations set forth in this Addendum to protect such Records survive the termination of the Addendum.
- C. This Addendum supersedes and replaces any and all QSO agreements or other agreements related to Records protected by Part 2 that ACO Participant and ACO may have entered into prior to the date of this Addendum.

EXHIBIT C
MSSP Agreement

[To be attached]