

June 2, 2022

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for Amendment #13 to Revenue Agreement #7462 with CareOregon for Shared Accountability Model. Total value is undetermined as this is a no maximum agreement.

No County General Funds are involved.

Purpose/Outcomes	CareOregon provides Clackamas Health Centers Division (CHCD) reimbursement for services provided within the CHCD Clinics.
Dollar Amount and Fiscal Impact	CHCD is eligible to receive payment for services furnished to persons enrolled in OHP. This is a no maximum agreement.
Funding Source	No County funds. This is a revenue agreement with CareOregon.
Duration	April 1, 2022 – June 30, 2023.
Previous Board Action	The Board last reviewed this contract on May 31, 2022 – issues, and on May 13, 2021 Agenda item – A2: 051321-A-2.
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
Counsel Review	1. March 21, 2022 2. KR
Procurement Review	1. Was the item process through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 2. Revenue contract, no procurement needed.
Contact Person	Deborah Cockrell, Health Center Director – 503-742-5495
Contract No.	7642_13

BACKGROUND:

Clackamas Health Centers Division (CHCD) of the Health, Housing & Human Services Department requests the approval of Amendment #13 to agreement #7642 with CareOregon for the purpose of entering into a Shared Accountability Model (SAM). This amendment that would be considered an incentive payment to our existing provider agreement with CareOregon for 2022.

CHCD and CareOregon have complementary objectives designed to promote the physical and mental health of the population and incentivize eligible clinical partners within the community to work together to improve health and reduce total cost in the service area over a multi-year period. The goal of the SAM model is to build shared ownership and accountability between CHCD and CareOregon for member health at the provider and community level. It encourages service redesign and practice transformation to reduce health disparities, promote health equity, support integration, and meet the needs of the whole population.

CHCD will engage in planning and development of utilization, quality, member engagement, and community health improvement activities that seek to improve members overall health and to better address their changing needs.

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This is a revenue contract for CCHCD. The total amount of the agreement is unknown because the number of authorized patients cannot be projected with certainty. No County General Funds are involved. The Amendment #13 is effective April 1, 2022 and will continue until June 30, 2023.

RECOMMENDATION:

Staff recommends approval of this amendment.

Respectfully submitted,

Rodney A. Cook

Rodney A. Cook, Director
Health, Housing & Human Services Department

Amendment #13

Between

CAREOREGON, INC.

And

**Clackamas County acting by and through its Health, Housing and Human Services
Department, Health Centers Division**

This is an Amendment to the CareOregon Provider Agreement (hereinafter referred to as “Agreement”) that was effective June 1, 2016 between CareOregon, Inc. (hereinafter referred to as “CareOregon”) and Clackamas County acting by and through its Health, Housing and Human Services Department, Health Centers Division (hereinafter referred to as “Provider”).

WHEREAS, CareOregon and Provider agree to enter into a Shared Accountability Model.

IN WITNESS WHEREOF, the undersigned, with the intent to be legally bound, have caused this Agreement to be duly executed to be effective on April 1, 2022, through June 30, 2023. All other terms and conditions of the agreement shall remain in full force and effect.

Agreed to on behalf of **Clackamas County acting by and through its Health, Housing and Human Services Department, Health Centers Division (“Provider”)**:

Signature: _____
Name: _____
Title: _____
Date: _____
Tax ID: _____

Agreed to on behalf of **CareOregon, Inc.:**

Signature: _____
Name: Teresa K. Learn
Title: Chief Financial Officer
Date: _____

I. BACKGROUND

Provider is a party to a Provider Services Agreement (“Provider Agreement”) whereby Provider has been providing and continues to provide services to members enrolled in Oregon Health Plan (“OHP”). As stipulated in the Provider Agreement, Provider is subject to all the laws, rules, regulations, and contractual obligations including but not limited to those that apply to OHP.

Provider and CareOregon have complementary objectives designed to promote the physical and mental health of the population and incentivize eligible clinical partners within the community to work together to improve health and reduce total cost in the service area over a multi-year period.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

II. PROVIDER RESPONSIBILITIES.

Provider agrees to:

- A. Participate in the Safety Net Shared Accountability Model (SAM) as outlined in the Shared Accountability Model Program Guide as amended from time to time (“SAM Guide”) as recommended by the SAM Oversight Committee, which is incorporated herein by reference (with the same force and effect as though fully set forth herein) in collaboration with CareOregon.
- B. Appoint staff personnel to act as a primary liaison between Provider and CareOregon who shall:
 - i. Work with CareOregon to coordinate activities with CareOregon for each deliverable/task required in the SAM Guide.
 - ii. Provide input on behalf of Provider on various work groups including any stakeholder committees, provider work groups, and others as may be created as part of the SAM.
 - iii. Attend meetings as scheduled for the various work groups.
- C. Engage in planning and development of utilization, quality, member engagement, and community health improvement activities that seek to improve members overall health and address their changing needs, including Social Determinants of Health (SDOH).
- D. Maintain any and all necessary licensure and perform all services by properly trained and licensed or certified staff.
- E. To share with CareOregon agreed-upon member-level information operational and analytic systems such as Electronic Health Record (EHR), data warehouses, operational stores and other agreed upon sources to support care management, quality improvement, access, member experience, patient reported outcomes, and cost efficiency efforts as

related to this shared risk population in a mutually agreed upon format. Provider shall be responsible for maintaining, extracting and submitting all relevant data in support of CareOregon's efforts to monitor progress and track performance as to Provider's execution of the initiatives outlined in the SAM Guide. All data required by CareOregon shall be disclosed to CareOregon in compliance with Section VII, Data Sharing.

- F. Provider agrees to participate in SAM in a manner consistent with all administrative guidelines provided by CareOregon through policies and procedures outlined in the CareOregon Policy and Procedure Manual, and all applicable CareOregon policies that are applicable to the SAM.

III. CAREOREGON RESPONSIBILITIES. CareOregon agrees to:

- A. CareOregon agrees to allocate funding for Shared Savings (as defined in the SAM Guide) distribution by June 30, 2023, following claims run out for the Measurement Period. The Measurement Period is defined as commencing on January 1, 2022, and ending on December 31, 2022.
- B. Appoint a staff member as the primary liaison between CareOregon and Provider. In addition, CareOregon will appoint liaison personnel as needed to coordinate activities with Provider for each deliverable/task as required in the SAM Guide.
- C. Provide data reports to Provider, as described in the SAM Guide under Currently Available Reports and Risk Share Reporting.,
- D. Support the SAM as described in SAM Guide and comply with the policies and procedures outlined in the CareOregon Policy and Procedure Manual, and all applicable CareOregon policies that are applicable to the SAM Program.

IV. JOINT RESPONSIBILITIES.

- A. The parties agree to participate in the SAM Oversight Council that will meet at least quarterly to evaluate the performance of this agreement. The composition of the committee is defined by the Oversight Council Charter. The SAM Oversight Council will develop, monitor and update the specifics for data sharing, reporting and analytics with clearly defined accountabilities and deliverables, and develop a methodology for the distribution of shared savings under the terms of the agreement amongst participating clinical partners.
- B. The parties understand that primary responsibility for producing population health analytics belongs to the party that maintains that data set. For example, CareOregon, using its population health analytics platform will provide member eligibility, claims and other medical expense data. Provider will continue to provide and support additional data needs related to Electronic Health Record (EHR) content and other provider specific data.

- C. Both parties agree to work cooperatively in developing a multi-year agreement to continue this shared risk arrangement with an intent to move from initial sharing of gains to sharing of both upside and downside risk, subject to the terms of Federal 33 funding if applicable.
- D. Both parties agree transparency and open sharing of information and data are key to meeting the overall purpose and specific objectives of this arrangement.

V. TERM, TERMINATION.

A. TERM. This Agreement shall be effective as of April 1, 2022 (“Effective Date”) and shall continue until June 30, 2023, unless earlier terminated in accordance with Section V Revisions to this Agreement will be made in writing by mutual agreement of both parties.

B. TERMINATION.

i. This Agreement may be terminated immediately by CareOregon in the event:

(a) Provider’s Provider Agreement with CareOregon terminates for any reason.

(b) Provider defaults in the performance of any duties or obligations stated in this Agreement or upon reasonable belief that Provider is unable to perform the responsibilities in a competent manner.

(c) Provider, its employee, agent, provider, or any other representative of Provider engages in fraud, dishonesty, or personal conduct that may harm the business and/or reputation of CareOregon.

ii. In the event of termination under the terms of (b) of (c) above, Provider shall have no right to payment under this Agreement for any services not yet rendered, and any payment obligation by CareOregon as contemplated hereunder shall terminate except as to work performed through the date of termination.

iii. The Provider may terminate this agreement if: (a) CareOregon defaults in any of its material duties or obligations or upon reasonable belief that CareOregon is unable to perform the responsibilities in a competent manner; (b) Provider fails to receive funding appropriations or other expenditure authority as determined by Provider; (C) CareOregon, its employee, agent, provider, or any other representative of CareOregon engages in fraud, dishonesty, or personal conduct that may harm the

business and/or reputation of Provider, or if continuing this agreement would violate state or federal law.

VI. CONFIDENTIALITY AND MARKETING.

- A. Under HIPAA, CareOregon and Provider are considered Covered Entities (“CE”) and each will comply with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH Act”), and regulations promulgated there under by the U.S. Department of Health and Human Services (the HIPAA Regulations), and other applicable federal and state privacy and security laws and regulations such as 42 CFR Part 2. The Parties agree to cooperate in accordance with the terms and intent of this Agreement for implementation of relevant law(s) and/or regulation(s) promulgated under HIPAA Regulations. The Parties further agree that each party be in compliance with the requirements of HIPAA Regulations and 42 CFR Part 2 and the laws and regulations promulgated subsequent hereto and as amended.
- B. The Parties agree that this Agreement that no press, news releases, other publicity release, or any other external communication concerning the obligations contemplated herein will be issued without providing a copy of the communication to the other Party and receiving the other Party’s prior written approval, unless applicable law requires such disclosure. If the Party is subject to the Oregon Public Records Law, CareOregon acknowledges that all negotiations and related documentation may be considered to be public information, with the exception of pricing data which will remain confidential. In addition, the Parties agree that they must obtain written permission prior to using another Party’s name, trade name, image, symbol, design, or trademark in any marketing, advertising, or promotional campaign in any medium or manner. Email approval will suffice as written approval for purposes of this provision only.

VII. DATA SHARING. In furtherance of the objectives of this Agreement, Provider and CareOregon agree to share all necessary data for the treatment, processing of claims and proper care coordination of Members in compliance with applicable HIPAA Regulations, 42 CFR Part 2, and State law and regulation (collectively referred to herein as, the “Privacy Laws”). The Member data outlined in the SAM Guide is information that may be disclosed between the parties as authorized under the applicable Privacy Laws, but to the extent the parties deem that Member consent is required under such Privacy Laws, Provider and CareOregon shall cooperate to procure properly executed consent forms. CareOregon certifies that any such data received by Provider will be kept secure and in compliance with applicable Privacy Laws. Provider acknowledges and agrees that any financial data received from CareOregon remains the sole property of CareOregon and Provider is not entitled to use, access, or disclose such data except as expressly permitted in the SAM Guide.

VIII. GENERAL PROVISIONS.

- A. CONTINUING COOPERATION. Throughout the term of this Agreement, the parties shall cooperate in good faith and agree to perform any and all tasks which are reasonably necessary for the performance of this Agreement.
- B. ADMINISTRATION/INTERPRETATION OF AGREEMENT. The Parties agree and understand that this Agreement is supplemental to the Provider Agreement. Nothing in this Agreement may be construed to waive any of the obligations or other commitments Provider or CareOregon have made pursuant to either Provider Agreement, the CCO Contract, or any instruments executed pursuant to, or in connection with, the CCO Contract. Thus, the Parties acknowledge and agree that this Agreement is subject to the terms and conditions of the Provider Agreement and all applicable Policies. Notwithstanding the foregoing and to the extent that the Provider Agreement and this Agreement includes provisions that are applicable, all Policies shall be consistent with the Provider Agreement.
- C. COMPLIANCE WITH LAW. The parties shall observe and comply with all applicable local, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which is hereby made a part hereof and incorporated herein by reference.
- D. AMENDMENT. No alteration and/or amendment of any terms or conditions of this Agreement shall be binding, unless reduced to writing and signed by the parties hereto. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the parties to comply with law, regulation, and directives from regulatory agencies.
- E. REPRESENTATIONS AND WARRANTIES. By signing this Agreement, Provider expressly represents and warrants it is eligible to participate in, and receive payment pursuant to, this Agreement. In so doing, Provider certifies neither it nor its employees, agents, or representatives are: (1) placed on the Tier Monitoring System by a Peer Review Committee; (2) have documented contract and/or compliance issues; or (3) are presently declared ineligible or voluntarily excluded from entering into this Agreement by any federal or state department or agency. Should it be determined that Provider was ineligible to receive payments pursuant to this Agreement, Provider expressly agrees to promptly repay all such payments disbursed to it under this Agreement and all funding associated with this Agreement will be discontinued until Provider is removed from the Tier Monitoring System or has resolved compliance issue(s) to CareOregon's satisfaction. Any discontinued funding that has been withheld will not be disbursed.
- F. COUNTERPARTS/SIGNATURE. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which shall be

deemed one and the same instrument. The parties' faxed signatures, and/or signatures scanned into PDF format, shall be effective to bind the parties to this Agreement.

- G. COMPLIANCE WITH OREGON LAW. This clause is applicable only to those Providers who are public entities; This Agreement is expressly subject to the debt limitation of Oregon counties in Article XI, Section 10 of the Oregon Constitution, and contingent upon funds being appropriated thereto.

- H. NOTICES. Unless expressly provided otherwise, all notices herein provided to be given, or which may be given, by any party to the other, will be deemed to have been fully given when written and personally delivered or deposited in the United States mail, certified and postage prepaid and addressed as follows:

TO CareOregon:
Attention: Chief Financial Officer
CareOregon, Inc.
315 SW Fifth Avenue
Portland, OR 97204

TO PROVIDER:
Attention: Administrator
Clackamas County acting by and through its Health,
Housing and Human Services Department, Health Centers Division
2051 Kaen Road
Oregon City, OR 97045

EXHIBIT A
CAREOREGON DATA SECURITY REQUIREMENTS

1. CareOregon Data. CareOregon Data is defined as all confidential and proprietary business information including but not limited to contract payment terms, business relationships, potential collaborations, trade secrets, payor lists, Personal Information (as defined in ORS 646A.602(12)), Protected Health Information (as defined in 45 C.F.R § 160.103), information considered confidential and restricted under other Oregon State and Federal laws, databases, strategic and financial information and other business information, the unauthorized disclosure or use of which will be highly injurious to CareOregon and its business and its relationships in amounts not readily ascertainable.

2. Security Program. Provider agrees to at all times maintain a well-documented security program that conforms to generally recognized industry standards, employ the use of at least one recognized security framework for its operations, and abide by all applicable laws or regulations. The security program must at a minimum include

- a. Oversight and management of technologies used to protect CareOregon data,
- b. Proactive identification and addressing of vulnerabilities,
- c. Periodic testing of security controls, and
- d. Detection of and response to security events.

3. Backup and Retrieval. Provider shall be responsible for the commercially reasonable and prudent infrastructure and maintenance of the infrastructure to provide the herein described Work. This includes, but is not limited to database backups, application backups, OS patches and upgrades, database patches and upgrades, power supply, network security, etc.

4. Third-Party Audits. Provider agrees that a SSAE 18 audit certification (SSAE 18, issued by the American Institute of Certified Public Accountants) will be conducted annually, and Provider agrees to provide CareOregon with the current SSAE 18 SOC2 Type II audit certification upon CareOregon's request.

5. CareOregon Audits. At any time during the term of the Contract CareOregon may independently, at its own expense, perform an audit or review of the security of Provider's systems used to store, transmit, or process CareOregon Data. Provider agrees to respond to all reasonable requests for documentation in the execution of that audit, such as security program

documentation, system security plans (SSP), architectural or technical diagrams, security policies and procedures, internal risk assessments, and other third-party security audits and/or assessments. CareOregon may issue findings or corrective actions to the Provider as an outcome of the audit. Provider agrees to review, respond, and remediate the findings in good faith. Any audit requests by CareOregon must be completed in a timely manner not exceeding 30 days from data of request.

6. Data Security. Provider agrees to preserve the confidentiality, integrity, and accessibility of CareOregon Data with administrative, technical, and physical measures that conform to generally recognized industry standards and best practices. Maintenance of a secure processing environment includes but is not limited to the timely application of patches, fixes, and updates to operating systems and applications as provided by software vendor or open-source software support.

7. Data Storage. Provider agrees that any and all CareOregon Data will be stored, processed, and maintained solely on designated target servers in accordance with “Data Location” below. CareOregon Data must be encrypted while at rest, and in accordance with “Data Encryption Standard” below. Unless agreed to in writing, at no time will CareOregon Data be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that device or storage medium is in use as part of the Provider’s designated backup and recovery processes and is encrypted in accordance with “Data Encryption Standard” below.

8. Data Location. Unless otherwise stated in the Scope of Work and approved in advance by CareOregon, the Provider will limit the storage and transmission of CareOregon Data to data centers and network paths physically located in the continental United States. This includes the Provider’s own data center assets and any third party or subcontracted “cloud” services used by the Provider to provide services to CareOregon.

9. Data Encryption Standard. Provider agrees to encrypt all CareOregon Data regardless of location using commercially supported encryption solutions. Provider agrees that all designated backup and recovery processes maintains data in encrypted form, including on recovery media. The Provider shall ensure physical storage encryption modules are consistent with FIPS 140-2 “Security Requirements for Cryptographic Modules”. Encryption algorithms will meet or exceed the standards defined in NIST SP 800-57 Part 3 “Recommended Key Sizes and Algorithms” and at a minimum will be deployed with no less than a 256-bit key length for symmetric encryption and a 2048-bit key length for asymmetric encryption.

10. Data Transmission. Provider agrees that any and all electronic transmission of CareOregon data unless initiated by CareOregon, shall be transmitted in an encrypted state using encryption per Data Encryption Standard above, and take place solely in accordance with “Data Re-Use” below.

11. Data Re-Use. Provider agrees that data exchanged shall be used expressly and solely for the purposes enumerated in this Contract. Data shall not be distributed, repurposed, or shared across other applications, environment, or business units of Provider, except as required by Provider to support patient care and the SAM. Provider further agrees that no CareOregon Data of any kind

shall be transmitted, exchanged, or otherwise passed to other providers or interested parties except on a case-by-case basis as specifically agreed to in writing by CareOregon unless the disclosure is related to compliance with the Interoperability and Patient Access final rule.

12. Non-disclosure and Separation of Duties. The Provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of CareOregon Data to that which is absolutely necessary to perform job duties.

13. Data Breach. The Parties agree to shall provide notice, either orally or in writing, of any known, actual, or suspected compromise of the security, confidentiality, or integrity of CareOregon Data (“Data Breach”). Such notice shall be made as promptly as possible under the circumstances and without unreasonable delay of any Data Breach, but in no event more than two (2) business days after the Party reasonably believes there has been a Data Breach. The Parties shall use commercially reasonable efforts to contain such Data Breach and provide the other Party with a detailed report that includes: (i) the nature of the unauthorized use or disclosure, (ii) the CareOregon Data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what the Party has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action the Party has taken or shall take to prevent future similar unauthorized use or disclosure. The Party shall provide the other Party with all reasonably available information regarding such Data Breach and provide supplemental information as it is discovered.

The Party may need to communicate with outside parties regarding a Data Breach, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing Data Breaches with the other Party should be handled on an urgent as needed basis, as part of the Party’s communication and mitigation processes as mutually agreed upon, defined by law, or contained in the Contract.

The Party shall (1) cooperate with the other Party as reasonably requested to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the Work, if necessary.

Unless otherwise stipulated, if a Data Breach is a direct result of the other Party’s breach of its contractual obligation to encrypt personal data or otherwise prevent its release as reasonably determined by the other Party, the Party shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws - all not to exceed the average per record per person cost calculated for data breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) complete all corrective actions as reasonably determined by Provider based on root cause.

14. Damages. Notwithstanding any other provision in this Contract, Provider shall indemnify, hold harmless, and defend CareOregon from and against any and all costs (including without limitation, mailing, labor, administrative costs, vendor charges), fines, liabilities, and corrective action (including without limitation, notification costs, forensics, credit monitoring services, call center services, identity theft protection services, and crisis management/public relations services) arising out of a Data Breach that is caused by the Provider.

15. Rights to Data. Provider and CareOregon agree that as between them, all rights, including all intellectual property rights, in and to CareOregon Data shall remain the exclusive property of CareOregon, and Provider has a limited, non-exclusive license to access and use CareOregon Data as provided to Provider solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or rights.

16. End of Agreement Data Handling. Provider agrees that upon termination of the Contract it shall erase, destroy, and render unrecoverable all CareOregon Data and certify in writing that these actions have been completed within thirty (30) days of the termination of the Contract or within seven (7) days of the request of the CareOregon Contract Administrator, whichever comes first. At a minimum a “Clear” media sanitation is to be performed according to the standards enumerated by the National Institute of Standards, Guidelines for Media Sanitation, SP800-88, Appendix A (csrc.nist.gov). For those Providers who are a public entity, all end of Agreement data handling is subject to record retention requirements.

17. Subcontractors. Provider shall require all subcontractors that have access to CareOregon Data comply with these CareOregon Data Security Requirements. Upon request by CareOregon, Provider shall disclose to CareOregon all subcontractors or service providers that have access to CareOregon Data.

18. Legally Required Disclosures. If Provider is required to disclose CareOregon Data pursuant to the order of a court or administrative body of competent jurisdiction or a government agency, Provider shall: (i) if practicable and permitted by law, notify CareOregon prior to such disclosure, and as soon as possible after such order; (ii) cooperate with CareOregon (at CareOregon’s costs and expense) in the event that CareOregon elects to legally contest, request confidential treatment, or otherwise attempt to avoid or limit such disclosure; and (iii) limit such disclosure to the extent legally permissible.

19. Provider shall provide to CareOregon relevant contact information for a Provider’s employee who CareOregon may contact any time should any security related questions, or concerns arise.