

Protocol for Obtaining Secretary's Approval of LHD Execution of a Provider Agreement

Pursuant to Md. Code Ann. Health-Gen. Art. (HG) § 3-306(d), Local Health Departments **must** get approval from the Secretary of Health and Mental Hygiene in order to enter into provider contract with a health insurance company or other health care contracting entity ("HCCE").

Health Officers can use this protocol and attached forms when requesting the Secretary's approval to sign a HCCE's provider agreement. If the agreement is with a Medicaid MCO, the LHD should confirm that all required MCO contracting procedures have been completed.

Protocol: The process for obtaining the Secretary's approval involves the following **five steps**:

Step 1: The Health Officer (or designee) reads the proposed provider agreement, confers with OAG counsel, as necessary, and either:

- i. Confirms that an **OAG pre-approved amendment** is included with the Provider Agreement (a generic amendment example is included in **Attachment A** but specific amendments have been developed for CareFirst and the MCOs – for those payers, please request an amendment directly from the payer or from the Attorney General's Office); **or**
- ii. Completes the attached one-page **checklist (Attachment B)**.

If an amendment is signed or all the Checklist questions are answered "No," the Health Officer attaches the proposed Agreement, signed only by the HCCE's authorized representative.

Step 2: The Health Officer confirms the approval of their local governing body to contract and completes and initials the attached form **Memorandum (Attachment C)**, requesting approval of the Agreement by the Secretary.

If the contract is with an MCO, the Health Officer adheres to the required MCO contracting procedures, including submitting an affidavit regarding MCO contracting (for more information see the separate memorandum on contracting with MCOs).

The following items should be completed and attached to the Memorandum:

- i. The **pre-approved amendment** or signed **checklist**;
- ii. The completed **Secretary's Approval of Agreement** form;
- iii. Two originals of the proposed Agreement (signed **ONLY** by the HCCE), with the pre-approved amendment, if applicable.

The Health Officer then sends the entire package directly to the Chief Administrative Officer (CAO) for the Office of the Secretary, with a copy to Deputy Secretary Laura Herrera.

Step 3: The CAO presents the entire package to the Secretary for review and signature.

- Step 4:** If the Secretary is satisfied, the Secretary signs and dates the attached **Secretary's Approval of Agreement** form (**Attachment D**). The signed Approval form (together with the attached two originals of the Agreement) should be returned to the Health Officer, with copies to others, as appropriate.
- Step 5:** Upon receiving back the signed **Secretary's Approval of Agreement** and the originals of the proposed Agreement, the Health Officer may sign and date the proposed Agreement and the pre-approved amendment, if applicable. The Health Officer should then return one of the signed Agreements to the Health Care Contracting Entity, together with the one of the signed amendments, if applicable, and a copy of the signed **Secretary's Approval of Agreement**.

Attachment A

**AMENDMENT TO
PUBLIC OR PRIVATE HEALTH CARE CONTRACTING ENTITY'S PROVIDER
SERVICE AGREEMENT WITH A LOCAL HEALTH DEPARTMENT**

THIS AMENDMENT to the attached _____
_____ (“Provider Service Agreement”), dated
_____ is by and between:

(1) _____ (“**the Health Care Contracting Entity**” or “**HCCE**”), which is organized to do business as a _____ under the laws of _____, with its principal and local offices at _____; and

(2) _____ (“**Local Health Department**” or “**the LHD**”), which is a Local Health Department that is funded in whole or in part by the Maryland Department of Health and Mental Hygiene (“**DHMH**”), a principal department of the State of Maryland, and operates under the general direction of a Health Officer who is duly appointed by and/or reports to the Secretary of Health and Mental Hygiene (“**Secretary**”).

The HCCE and the LHD are herein jointly known as “**the Parties**”.

RECITALS

WHEREAS, the Plan is a health benefit plan or insurance carrier, a health maintenance organization (HMO), or a managed care organization (MCO) that is authorized to finance the provision of health care services in the State of Maryland; and

WHEREAS, pursuant to Md. Code Ann. Health-Gen. (“HG”) §3-306(d), and subject to the consent of the governing body and the written approval of the Secretary, a health officer for a county may enter into a contract or any other written agreement to assist or participate in the delivery of health care services with a person that is authorized to finance, coordinate, facilitate, or otherwise deliver health care services in the State.

WHEREAS, the HCCE and the LHD have entered into the Provider Service Agreement, which generally provides for reimbursement to the LHD by the Corporation for services provided by the LHD to members of the Corporation; and

WHEREAS, the Parties wish to amend certain clauses in the Provider Service Agreement;

TERMS & CONDITIONS

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:

I. SCOPE, PURPOSE, AND EFFECT OF AMENDMENT.

This Amendment amends the Agreement and any recitals, appendices, addenda, supplements, attachments, and other amendments thereto, as well as any incorporation by reference of other materials specified therein (collectively “the Principal Agreement”), for the purpose of assuring consistency and compliance with Maryland laws governing the LHD. If this Amendment and the Principal Agreement conflict, this Amendment shall control the construction the Principal Agreement. The Principal Agreement, so amended, is hereinafter referred to as “**this Agreement**”. The above recitals are incorporated herein as substantive terms and conditions of this Agreement.

II. GENERAL OBLIGATIONS AND DUTIES OF A LHD AND ITS CONTRACTORS UNDER APPLICABLE LAW.

2.1 Health Care Recipients and Covered Services. HCCE shall pay LHD, consistent with applicable statutory and regulatory requirements and pursuant to the terms of this Agreement, for all health care services provided, under the terms of this Agreement, by LHD to HCCE’s patients, clients, beneficiaries, insureds, members, enrollees, or other Health Care Recipients (“**HCRs**”) of the HCCE and for which the HCRs qualify and are entitled under terms of this Agreement (“**Covered Services**”). Covered Services may include: services that the HCR is entitled to by law or by the terms of HCR’s agreement, if any, with the HCCE, and any other or additional services that HCCE authorizes LHD to provide to the HCRs.

2.2. Compliance with Federal and State Laws and Regulations Applicable to LHDs. The Parties shall comply with all applicable State and federal laws and regulations throughout the term(s) of this 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. Accordingly the Parties may be subject to, and, if so, shall comply with, various laws, including without limitation:

- **HG §§ 4-301, *et seq.* (Confidentiality of Medical Records Act); 42 U.S.C. § 1320d, *et seq.* (Health Insurance Portability and Accountability Act of 1996 or HIPAA) and 42 Code of Federal Regulations (“CFR”) Parts 160 & 164 (HIPAA Privacy and Security regulations); 42 CFR Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records); Md. Code Ann. Health Occ. (“HO”) § 1-401, *et seq.* (Medical Review Committees); Md. Code Ann. Family Law (“FL”) §§ 5-701, *et seq.* and 14-101, *et seq.* (Reporting Abuse or Neglect of Children and Vulnerable Adults), and other State and federal laws that govern the confidentiality and disclosure of the medical, mental health, dental, substance abuse/addictions treatment, family planning, social work, communicable disease, professional peer review, and other health care records and information (“**Health Care Records**”), if any, that pertain to an individual HCR;**
- **HG §§ 5-601, *et seq.* (Health Care Decisions Act); and §§ 20-101, *et seq.* (Health Care Consent Provisions).**
- **HG §§ 15-101, *et seq.* (Medical Assistance and Medicaid Managed Care Organizations); Code of Maryland Regulations (“COMAR”) § 10.09.65.17, *et seq.*, which govern (i) contractual relationships between a State Medicaid Managed Care Organization (“MCO”) and its health care provider subcontractors, and (ii) the provision of Covered Services to an MCO’s Enrollees; COMAR § 10.09.65.20, which governs**

reimbursement rates to be paid to out-of-plan providers for emergency services or for certain services provided to self-referred enrollees of an MCO; and **HG §§ 19-701, et seq. (Health Maintenance Organizations)**;

- **HG §§ 16-101 through 16-407 (Reimbursements and Collections); COMAR § 10.02.01, et seq.**, which govern the actual cost-based determination of required charges (as published in the LHD=s applicable *Schedule of Charges*), billing, and reimbursement for health care services provided through DHMH (and which permit certain charges for a Covered Service to be reduced by the elimination of disallowed costs by a third-party payer, to determine a net charge, which may be accepted as reimbursement or payment in full for the charged Covered Service);
- **Md. Code Ann. State Fin. & Proc. Art. (“SFP”) §§ 3-301, et seq. (Central Collection Unit)** and **COMAR § 17.01.01, et seq.**, which mandate certain standards regarding the administrative collection of claims, including debt service, referral and collection procedures, for State agencies.
- **Md. Code Ann. State Gov’t Art. (“SG”) §§ 10-611, et seq. (Maryland Public Information Act or “PIA”)**, which provides public access to certain public records received or maintained by a unit of State government;
- **DHMH Policies**, including **Policy Nos. 01.03.01 (Corporate Compliance Program)** and **02.06.01 (Non-Discrimination)**

III. STATE LAW GOVERING RISK ALLOCATION FOR A LHD AND ITS CONTRACTOR.

3.1. Immunities and Defenses of the State, the LHD, and their Officers and Personnel.

The parties acknowledge that the State, DHMH, LHD, and their units, offices, agencies, and instrumentalities, and their officers, principals, agents, servants, employees, personnel, successors and assigns (jointly and severally referred to hereinafter as “**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 § 12-101, et seq., (Maryland Tort Claims Act or “MTCA”), COMAR § 25.02.02, and SG § 12-201, et seq. (Actions in Contract)**. Pursuant to the MTCA, the State Officers and employees of the LHD, and any State personnel who act without malice or gross negligence, and within the scope of their State employment or other public duties, are personally immune from suit and liability in courts of the State 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 immunities from, liability for tortious acts or omissions set forth at **Md. Code Ann. Cts & Jud. Proc. (“CJP”) § 5-301, et seq., (Local Government Tort Claims Act)**.

3.2. Limited Indemnification and State Liability. Pursuant to **SFP § 7-237 (Contracts)**, THE STATE and the LHD, through their duly authorized officers and agents, agree to indemnify HCCE 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 HCCE that results solely from the misfeasance or nonfeasance of THE STATE. Except as otherwise provided herein or by law, THE STATE has no obligation for the payment of any judgments or the settlement of any claims made against HCCE or its subcontractors as a result of or relating to HCCE’s obligations under this Agreement. THE STATE has no obligation to provide legal counsel or legal defense to the HCCE 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 HCCE or its subcontractors as a result of or relating to HCCE's obligations under this Agreement. HCCE hereby forever releases THE STATE, including without limitation the LHD, from any other obligation or duty to indemnify or defend HCCE for any third-party claims, including without limitation tort or health care 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. HCCE shall immediately give written notice to LHD of any claim or suit made or filed against HCCE or its subcontractors regarding any matter resulting from or relating to the obligations of any Party under this Agreement, and shall cooperate, assist, and consult with THE STATE in the investigation or defense of any claim, suit, or action made or filed against THE STATE as a result of or relating to the obligations of any Party under this Agreement. To the extent, if any, permitted and authorized by law, HCCE shall indemnify and hold harmless the STATE, including without limitation the LHD, and their officers, agents, servants, and employees, against liability for any suits, actions, or claims of any character arising from or relating to the performance under this Agreement of HCCE or its subcontractors. Any attempt by HCCE to limit its liability, if any, to THE STATE for the negligence or willful misconduct of HCCE or of its subsidiaries, 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.

3.3 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 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 HCCE subcontracts provided in **COMAR § 10.09.65.17(A)(4)(h)(assurance of professional liability coverage)** as well as any additional contractual requirements pertaining to the documentation of HCCE's insurance claims history and coverage.

IV. POLICIES, TERMINATION, CONSTRUCTION, BENEFICIARIES, AMENDMENTS, AND ENFORCEMENT.

4.1. 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 each of the Parties' obligations pursuant to the Principal Agreement shall be and have been identified and provided to LHD. HCCE shall provide reasonable notice to LHD of new or amended pertinent Policies.

4.2. Termination. LHD shall have the same discretionary termination rights as are reserved to HCCE in the Principal Agreement. LHD shall have the right immediately to terminate this Agreement

for cause in the event that SCHA reasonably believes that the HCCE will not be able to meet its payment obligations or HCCE commits a material breach of its obligations under this Agreement and does not remedy the breach within ten (10) days of receiving written notice, by certified mail, of the material breach from LHD.

4.3. Anticompetitive Construction Barred. This Agreement may not be construed or enforced in violation of applicable Antitrust laws or otherwise to impair market competition between, among, or with other HCCEs that would otherwise be available to provide needed Identified Health Care Services and/or covered services (i) to the HCRs or other individuals in need of and eligible for said health care services, or (ii) otherwise for the Underserved Area. Nor may this Agreement be deemed a restrictive covenant or enforced in any manner that limits LHD=s capacity to enter into other Health Care Provider Service Agreements with other HCCEs or their subcontractors. If at any time during the effective period of this Agreement the Secretary determines that other public or private sources of the above Identified Health Care Services are or have become reasonably and reliably available, accessible, and sufficient (i.e., *without* the need for further or continuing provision or supplementation of such services by the LHD under the terms of this Agreement) to assure the public health of the Underserved Area, the Secretary or other undersigned, duly authorized, State health officer shall promptly give notice of the Secretary=s determination to the HCCE and the LHD, shall consult with the HCCE and the LHD concerning the determination, and may thereafter terminate this Agreement for cause pursuant to Paragraph 4.1 above.

4.4 Independent Contractors and Third-Party Beneficiaries. This Agreement may not be deemed or construed to create any relationship between LHD and HCCE other than that of independent entities contracting solely for the purposes of effectuating the terms of this Agreement. Nothing in this Agreement shall be construed to exempt HCCE from any liabilities, duties, or obligations HCCE would otherwise have had under applicable laws and regulations governing the licensing and operation of the HCCE. Neither of the Parties to this Agreement, nor any third party, shall be construed to be the principal, agent, master, servant, employer, 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 other Party and for the benefit of the public health of the Underserved Area identified above, and no HCR or other person or entity shall be a third-party beneficiary of this Agreement.

4.5. Entire Understanding, Amendments, Compliance, Performance, Default, 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 Medical Assistance 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 of this Agreement or any part thereof.

4.6. Governing Law, Enforcement, and Choice of Forum. The Principal Agreement and this Amendment shall be construed and enforced in accordance with, and governed by, the internal laws of the State of Maryland, without regard to choice of law provisions. HCCE agrees to submit to the jurisdiction of the courts of the State of Maryland, and specifically the Circuit Court for Baltimore City, 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 the HEALTH CARE CONTRACTING ENTITY:

Signed: _____ **Date:** _____

NAME: _____ **TITLE:** _____

FOR the LOCAL HEALTH DEPARTMENT:

Signed: _____ **Date:** _____

NAME: _____ **TITLE:** _____

APPROVED as to FORM and LEGAL SUFFICIENCY:*

Assistant Attorney General **Date:** _____

*Approval of this Agreement as to form and legal sufficiency does not constitute approval of, or concurrence in, the business judgment of any party hereto concerning the costs, benefits, and material risks, whether anticipated or not, that may result from transacting business (i) in reliance on representations made by another person in connection with the subject matter of this Agreement, and (ii) pursuant to the substantive recitals, terms and conditions of this Agreement. The scope of this review and approval for form and legal sufficiency is limited solely to this typeset document and does not extend to amendments or modifications hereto unless such amendments/modifications are reduced to writing, dated, and signed by legal counsel for the State of Maryland.

Attachment B

CHECKLIST FOR LOCAL HEALTH DEPARTMENT REVIEW OF PROPOSED
PROVIDER SERVICE AGREEMENTS

PLEASE NOTE: If the HCCE agreed to execute an OAG approved addendum or amendment, this checklist is not necessary. In that case, proceed to Step 2.

Title and effective date of the attached proposed Agreement: _____

Name of the Health Care Contracting Entity that is proposing the Agreement: _____

1.	Does the proposed agreement come from an entity that has NOT registered to do business in Maryland?	Yes __ No __
2.	Does the proposed agreement require a signature from a person other than the county health officer or his or her designee?	Yes __ No __
3.	Does the proposed agreement expressly waive, limit or relinquish any defenses of the State or its agencies?	Yes __ No __
4.	Does the proposed agreement have an indemnification clause that requires the Local Health Department to reimburse the contracting entity for any judgment entered against the contracting entity?	Yes __ No __
5.	Does the proposed agreement require the Local Health Department to buy insurance?	Yes __ No __
6.	Does the proposed agreement allow State personnel to be held personally liable?	Yes __ No __
7.	Does the proposed agreement create a relationship like a partnership or principal/agent between the contracting entity and the Local Health Department?	Yes __ No __
8.	Does the proposed agreement have a provision that applies the law of a State other than Maryland?	Yes __ No __
9.	Does the proposed agreement require disputes related to the agreement to be litigated in a state other than Maryland?	Yes __ No __

If the answer to all of the above questions is No, then the agreement may be forwarded to the Secretary for approval. If any of the answers is **Yes**, the Health Officer may wish to review the matter with counsel and explore possible next steps.

Completed by: _____
Name Title Date

Attachment C

MEMORANDUM

**TO: Joshua M. Sharfstein, M.D.
Secretary of Health and Mental Hygiene**

**FROM: _____
Health Officer _____ County**

**RE: Request for Approval by the Secretary, pursuant to Section § 3-306(d) of the
Health-General Article, to execute the attached Provider Service Agreement**

DATE: _____, 20 _____

~~~~~  
The \_\_\_\_\_ County Health Department requests your approval to sign the attached Agreement with \_\_\_\_\_.

The proposed Agreement would establish the County Health Department as an in-network provider of health care services with \_\_\_\_\_ and governs reimbursement to the County Health Department for its services at a more cost effective rate than would be available out-of-network. In addition, the Agreement provides the County Health Department with a fiscally responsible opportunity to further health care reform efforts in Maryland by promoting increased access to affordable health care services for Maryland residents who are covered members/enrollees/participants of \_\_\_\_\_.

The attached Agreement was made with the consent of the governing body of \_\_\_\_\_ County.

Thank you for your consideration. Please contact me at \_\_\_\_\_ if you require additional information or wish to discuss this further.

Encl.

Cc (w/ attachments): Laura Herrera, M.D., Deputy Secretary for Public Health Services

## Attachment D

### Secretary's Approval of Agreement

Pursuant to section 3-306(d) of the Health-General Article of the Annotated Code of Maryland, the Secretary of Health and Mental Hygiene (the "Secretary") approves the execution of the attached agreement (the "Agreement") between \_\_\_\_\_ County (Local) Health Department (the "LHD") and \_\_\_\_\_ (the "Contracting Entity"). The Secretary's approval is based on the following understandings, the accuracy of which is material to the Secretary's decision.

#### Understandings

1. The Contracting Entity is authorized to provide, finance, coordinate, facilitate or otherwise deliver health care services in the State of Maryland.
2. State officers, employees, and agents who provide services under the Agreement have the immunity from suit and liability described in the Maryland Tort Claims Act, Md. Code Ann., State Gov't §§ 12-101 to 12-110 (2009 & Supp. 2010), COMAR 25.02.02, and section 5-522 of the Courts and Judicial Proceedings Article.
3. The Agreement does not contain any provision that waives, surrenders or relinquishes any privilege, immunity, or defense applicable to the State, the LHD, or any official or employee of the State or the LHD.
4. In accordance with section 7-237 of the State Finance and Procurement Article of the Annotated Code of Maryland, the Agreement does not require the LHD to indemnify or reimburse the Contracting Entity for any claim made, or judgment entered, against the Contracting Entity.
5. The Agreement does not require the LHD to purchase insurance.
6. The Agreement does not create a partnership, principal/agent relationship or similar relationship between the LHD and the Contracting Entity.
7. The Agreement is governed by and construed under the laws of the State of Maryland and is subject to enforcement only in a court of the State of Maryland.
8. The local governing body has consented to execution of the agreement.
9. The approval of the Agreement rests in the sole and exclusive discretion of the Secretary, and the Secretary may revoke the approval in the Secretary's sole discretion.

**Date:** \_\_\_\_\_

**Joshua M. Sharfstein, M.D., Secretary**