

**CONTRACT AMENDMENT NO. 9**

Original Contract Number 15-68384

**1. PARTIES**

This Amendment to the above-referenced Original Contract (hereinafter called the "Contract") is entered into by and between Behavioral Healthcare, Inc., 1290 Chambers Road, Aurora, CO, 80011, (hereinafter called "Contractor"), and the STATE OF COLORADO, acting by and through the Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203 (hereinafter called "Department" or "State.")

**2. EFFECTIVE DATE AND ENFORCEABILITY**

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date.") The Department shall not be liable to pay or reimburse Contractor for any performance hereunder, including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

**3. FACTUAL RECITALS**

The Parties entered into the Contract to administer the Community Behavioral Health Services Program (the Program) that provides comprehensive mental health and substance use disorder services to Medicaid clients in Colorado. The purpose of this Amendment is to modify Exhibit A-3, Statement of Work.

**4. CONSIDERATION**

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment.

**5. LIMITS OF EFFECT**

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

**6. MODIFICATIONS**

The Contract and all prior amendments thereto, if any, are modified as follows:

- A. Section 9, Contractor Records, is hereby deleted in its entirety and replaced with the following:
  - A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that

relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: (i) a period of ten (10) years after the date this Contract expires or is terminated, (ii) a period of ten (10) years after final payment under this Contract is made, (iii) a period of ten (10) years after the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, a period of ten (10) years after such audit is completed and its findings have been resolved (the "Record Retention Period").

**B. Inspection**

Contractor shall permit the State, CMS, the Office of Inspector General, the Comptroller General or their designees to audit, inspect, examine, excerpt, copy and transcribe Contractor Records at any time during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations. The State, CMS, the Office of Inspector General, the Comptroller General or their designees, in their discretion, may inspect the premises, physical facilities and equipment where Medicaid-related activities or work is conducted at any time.

**C. Monitoring**

The State, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

**D. Final Audit Report**

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

**B.** Exhibit A-3, Statement of Work, Section 2.0, Enrollment, Populations Served and Covered Services, Subsection 2.1., Enrollment, Paragraph 2.1.1.2.1., is hereby added as follows:

2.1.1.2.1. Members shall not be retroactively enrolled if the Member's eligibility determination occurs after June 30, 2018.

**C.** Exhibit A-3, Statement of Work, Section 2.0, Enrollment, Populations Served and Covered Services, Subsection 2.1., Enrollment, Paragraph 2.1.2.1., is hereby added as follows:

2.1.2.1. Retroactive capitations will not be paid when a Member's eligibility determination occurs after June 30, 2018 and is determined to be retroactively eligible.

**D.** Exhibit A-3, Statement of Work, Section 4.0, Start-Up and Closeout Periods, Paragraph 4.1.3.1.2.1., is hereby added as follows:

4.1.3.1.2.1. The Department approved Closeout Plan shall be the exhaustive list of Deliverables that will survive the term of the Contract.

- E. Exhibit L, Performance Incentive Program, is hereby deleted in its entirety and replaced by Exhibit L-1, Performance Incentive Program, attached hereto and incorporated by reference into the Contract.

**7. START DATE**

This Amendment shall take effect on its Effective Date.

**8. ORDER OF PRECEDENCE**

Except for the Special Provisions and the HIPAA Business Associates Addendum, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

**9. AVAILABLE FUNDS**

Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available to the Department by the federal government, state government and/or grantor.

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**THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT**

Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

**CONTRACTOR:**

Behavioral Healthcare, Inc.

By:   
Signature of Authorized Officer


Date: 26 March 2018

Patrick Steadman  
Printed Name of Authorized Officer

Chief Executive Officer  
Printed Title of Authorized Officer

**STATE OF COLORADO:**

John W. Hickenlooper, Governor

By:   
~~Tom Massey~~ Kim Bimesteter  
~~Active Executive Director~~ Executive Director  
Department of Health Care Policy and Financing

Date: 4/5/18

**LEGAL REVIEW:**  
Cynthia H. Coffman, Attorney General

By: NA

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

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER:**

Robert Jaros, CPA, MBA, JD

By:   
Department of Health Care Policy and Financing

Date: 4/16/18

### **EXHIBIT L-1, PERFORMANCE INCENTIVE PROGRAM**

The Department may institute a Performance Incentive Program allowing the Contractor to receive incentive payments for the improvement of key performance indicators. The implementation of the Performance Incentive Program is contingent on the availability of funds, as well as state and federal approval.

Under the Performance Incentive Program, the overall incentive funds available to the Contractor are proportionally contingent on the Contractor's performance as it relates to the following three (3) participation measures:

1. All corrective action plan submissions and activities shall be in accordance with the provisions of the Contract, for the duration of the Contract term.
  - 25% of the overall incentive funds are allocated to this participation measure.
  - To qualify for the portion of overall incentive funds allocated for this participation measure, the Contractor shall demonstrate 100% compliance.
2. Encounter data shall be submitted monthly in accordance with the provisions of the Contract, for the duration of the Contract term.
  - 25% of the overall incentive funds are allocated to this participation measure.
  - To qualify for 100% of the portion of overall incentive funds allocated for this participation measure, the Contractor shall submit flat file data that is 100% accurate for a minimum of ten (10) months for the duration of the Contract term.
  - In the event of a submission beyond the due date, up to two (2) months, the Contractor shall remain eligible for participation in the performance incentive program at a 10% reduction for each month beyond the due date. Inaccurate flat file submissions will be rejected by the Department and the Contractor shall continue to resubmit until the data is accurate.
3. The Contractor shall demonstrate documentation accuracy in the 2018 Contractor reported 411 audit.
  - 50% of the overall incentive funds are allocated to this participation measure.
  - The portion of overall incentive funds allocated for this participation measure is adjusted based on the average percentage of compliance achieved by the Contractor for the following six (6) documentation categories:
    - Procedure Code
    - Diagnosis Code
    - Place Service
    - Service Program Category
    - Units
    - Staff Requirements.
  - The percentage of total incentive payments for which the Contractor qualifies is determined by the accuracy of the above six (6) measures as follows:
    - 90% accuracy qualifies the Contractor for 100% of the portion of overall incentive funds allocated for this participation measure;
    - 85% accuracy qualifies the Contractor for 90% of the portion of overall incentive funds allocated for this participation measure;

- 80% accuracy qualifies the Contractor for 80% of the portion of overall incentive funds allocated for this participation measure.

If the Contractor meets the abovementioned minimum requirements, the Contractor can qualify for incentive payments based on minimum improvements in incentive performance measures and by percentage of compliance with incentive process measures.

Minimum improvement for each incentive performance measure is defined as the Contractor “closing their performance gap by 10%” from a respective benchmark (based on FY 2015-16 rates) and FY 2016-17 performance. The table below lists each of the incentive performance measures and the percentage of incentive funding allocated for each measure. The benchmark for each measure is established by adding 10% to the highest validated FY 2015-16 Behavioral Health Organization score for associated measures.

	<b>Incentive Performance Measure</b>	<b>Percentage of Funding Allocated for Measure</b>
Indicator 1	Mental Health Engagement (all members excluding Foster Care)	15%
Indicator 2	Mental Health Engagement (Foster Care)	5%
Indicator 3	Engagement of SUD Treatment	10%
Indicator 4	Follow-up Appointment within 7 days after a hospital discharge for a mental health condition	5%
Indicator 5	Follow-up Appointment within 30 days after a hospital discharge for a mental health condition	5%
Indicator 6	Emergency Department Utilization for mental health condition	7.5%
Indicator 7	Emergency Department Utilization for substance use disorder condition	7.5%

The table below lists each of incentive process measures, the percentage of funding allocated for each measure, and the percentage of compliance that is required to qualify for an incentive payment.

	<b>Incentive Process Measure</b>	<b>Percentage of Compliance</b>	<b>Percentage of Funding Allocated for Measure</b>
Indicator 8	Suicide Risk Assessment	80%	10%
Indicator 9	Documented Care Coordination Agreements	100%	15%
Indicator 10	Denials: Dual Diagnosis	80%	20%

In accordance with 42 CFR 438.6(b)(2) incentive payments may not provide for payment in excess of 105% of the approved capitation payments. Incentive payments must be considered when determining the cost effectiveness of the Community Behavioral Health Services Program.

The incentive arrangements specified in the Performance Incentive Program are necessary to support program initiatives as specified in the state's behavioral health quality strategy, in accordance with 42 CFR 438.6(b)(2)(v).

Incentive payments may only be available for a fixed period of time and incentive performance must be measured during the rating period under the contract in which the performance incentive program is applied, in accordance with 42 CFR 438.6(b)(2)(i). The Department must remit qualifying incentive payments earned during the performance period, July 1, 2017 to June 30, 2018, to the Contractor between July 1, 2018 and March 1, 2019.

In accordance with 42 CFR 438.6(b)(2)(ii) - (iv) Performance Incentive Program arrangements:

- Are not renewed automatically.
- Are made available to both public and private contractors under the same terms of performance.
- Are not conditioned on the Contractor entering into or adhering to intergovernmental transfer agreements.