

AUG 08 2013



COMMONWEALTH of VIRGINIA

Department of Health

Office of Licensure and Certification

Cynthia C. Romero, MD, FAAFP
State Health Commissioner

TTY 7-1-1 OR
1-800-828-1120

9960 Mayland Drive, Suite 401
Henrico, Virginia 23233-1485
FAX: (804) 527-4502

July 31, 2013

RE: Memorandum of Agreement
Agreement Number: COPN-07/2013

Deborah D. Oswalt
Executive Director
Virginia Health Care Foundation
707 East Main Street, Suite 1350
Richmond, VA 23219

Dear Ms. Oswalt:

The above referenced agreement is enclosed for your signature. When you have signed the agreement please keep a copy and send the original back to be included in the Office of Licensure and Certification's files.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erik O. Bodin, III".

Erik O. Bodin, III, Director
Office of Licensure and Certification

cc: Peter Boswell, Director
Division of Certificate of Public Need

DIRECTOR
(804) 367-2102

ACUTE CARE
(804) 367-2104

COPN
(804) 367-2126

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LONG TERM CARE
(804) 367-2100

Memorandum of Agreement Between the
Center for Quality Health Care Services and Consumer Protection
Of the Virginia Department of Health
And
Virginia Health Care Foundation

This Memorandum of Agreement (Agreement) is entered into by the Center for Quality Health Care Services and Consumer Protection (the **Center**) of the Virginia Department of Health and the Virginia Health Care Foundation (**Foundation**) for the purpose of defining the requirements that each will fulfill in support of the Certificate of Public Need (COPN) program of the Commonwealth of Virginia.

WHEREAS, the **Center** desires to enter into an agreement with the **Foundation** for the collection and disbursement of funds acquired as a result of a condition¹ placed on a COPN;

WHEREAS, the **Foundation** desires to perform such services;

NOW, THEREFORE, in consideration of their respective undertakings, the **Center** and the **Foundation** hereby covenant and agree as follows:

ARTICLE I – SCOPE OF SERVICES

The **Foundation** agrees to the following during the term of this Agreement:

1. The **Foundation** shall be one of three (3) recipients for funds received from applicants with conditioned COPNs.

2. The **Foundation** shall establish accounting and reporting mechanisms according to generally accepted accounting principles (GAAP) to track receipt and disbursement of such funds and shall file reports with the **Center** as follows:

a. Annual reports itemizing receipt of funds that shall include, but are not limited to:

1) A listing of the COPN recipients providing direct financial support for community based health care services;

¹ “Condition” means the agreed upon qualifications placed on a project by the State Health Commissioner when granting a Certificate of Public Need. Such conditions shall direct an applicant to provide a level of care to indigents, accept patients requiring specialized needs, or facilitate the development and operation of primary care services in designated medically underserved areas of the applicant’s service area.

- 2) A listing of the community based services receiving COPN conditioned funds;
and
 - 3) A summary of the amount of funds received and disbursed.
- b. An annual report, submitted by July 1 of each year for the previous calendar year, of the number of patient visits to medically underserved individuals as a result of the receipt of COPN conditioned funds and, if available, the nature of services provided.
3. The **Foundation** shall assist, as appropriate, the **Center** in developing reports related to the provision of health care services to the under-insured and un-insured.

The **Center** agrees to the following during the terms of this Agreement:

1. The **Center** will inform all conditioned COPN applicants of the three (3) organizations designated to accept direct financial support for community-based services.
2. The **Center** shall provide information annually to the **Foundation** relevant to the collection of conditioned funds for disbursement to the **Foundation's** entities.
3. The **Center** shall provide the **Foundation** with a quarterly update of the facilities that have newly placed conditions.

ARTICLE II – SPECIAL TERMS AND CONDITIONS

Funds received in execution of this Agreement must be used in the direct provision of health care services to the medically underserved individuals by the Foundation and/or Virginia health safety net organizations, and shall not be used to underwrite annual administrative costs, or to purchase equipment, by the **Foundation**. In addition, the **Foundation** and its entities receiving COPN conditioned funds are prohibited from using said funds for lobbying activities. However, this should not be construed to limit the **Foundation** or its entities' ability to provide technical assistance to legislators or legislative committees, as requested.

The **Foundation** will distribute funds as appropriate within the COPN applicant's planning region.

All questions regarding dispersal of funds received related to this Agreement should be directed to the:

COPN Data Analyst
Virginia Department of Health
Office of Licensure & Certification
9960 Mayland Drive, St. 401
Henrico, Virginia 23233-1485
804.367.2102

The **Foundation** and any employee hired under this agreement shall adhere to the confidentiality provisions contained in § 32.1-127.1:03 of Title 32.1 of the Code of Virginia.

Nothing in this Agreement or any activities of the parties or documents emanating from the alliance in connection with this Agreement shall supersede or be inconsistent with applicable law or regulation. It is understood that the **Foundation** shall hold harmless the Department of health and, when applicable, the designated representatives of the Department, from any kind of claims, suits, actions, liabilities, and costs of any kind caused by the performance of the **Foundation's** entity pursuant to this Agreement. It is further understood that the **Foundation** executing this agreement, its employees, assignees, contractors, or other representatives shall not be deemed employees of the Commonwealth of Virginia or the Department of Health while performing under this Agreement. It is further understood that none of the parties shall be bound by this Agreement, beyond the extent of funds available, or to become available, as a result of conditioned COPNs.

In the allocation and distribution of conditioned funds, the **Foundation** and any employees hired for the purposes of this Agreement shall comply with the standards required of public employees pursuant to the State and Local Government Conflict of Interests Act found in Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

ARTICLE III – TERM OF AGREEMENT AND TERMINATION

The period of this Agreement is for 1 year beginning July 1, 2013. At the end of this term, this Agreement shall be renewed and continue in force and effect each year thereafter unless terminated, revised, or otherwise modified in writing by the parties at least 30 days before taking effect. Provided, however, that this Agreement shall be reviewed and re-executed at the end of three years from the beginning date specified, unless sooner terminated, revised or otherwise modified.

This Agreement may be terminated prior to the expiration of the term hereof as follows:

1. By mutual agreement of the parties 30 days after written notice;
2. By the Center, for any egregious breach of the Agreement by the Foundation. In such event, the Center shall have the right to rescind, revoke or terminate this Agreement immediately; or
3. By either party upon 60 days written notice.

For any non-egregious breach by the **Foundation**, the **Center** may give written notice to the **Foundation** specifying the manner in which the Agreement has been breached. If such notice is given and the **Foundation** has not substantially corrected the breach within 30 days of receipt of the written notice, the **Center** shall have the right to terminate this Agreement.

In the case of any termination of this Agreement, any funds not disbursed to a **Foundation** entity shall be returned, with a full accounting, to the **Center** within 30 days to:

Business Manager
Office of Licensure & Certification
9960 Mayland Drive, Ste. 401
Henrico, Virginia 23233-1485

ARTICLE IV – GENERAL PROVISIONS

Nothing in this Agreement shall be construed as authority for either party to make commitments that will bind the other party beyond the Scope of Services contained herein. Furthermore, the **Foundation** shall not assign, sublet, or subcontract any work related to this Agreement or any interest it may have herein without the prior written consent of the **Center**.

ARTICLE V – NONDISCRIMINATION

In the performance of this Agreement, the **Foundation** warrants that it will not discriminate against any employee or applicant for employment because of race, color, sex, religion, age, disability, or national origin.

ARTICLE VI – NOTICES

Any notices required or permitted hereunder shall be sufficiently given if hand delivered or if sent by registered or certified mail, postage prepaid, addressed or delivered to the Virginia Health Care Foundation, 707 East Main Street, Suite 1350, Richmond, VA 23219 and/or to Director, Virginia Department of Health, Office of Licensure & Certification, 9960 Mayland Drive, Suite 401, Henrico, VA 23233-1485.

ARTICLE VII – INTEGRATION AND MODIFICATION

This Agreement constitutes the entire understanding of the parties as to the matters contained herein. No alteration, amendment or modification of this Agreement shall be effective unless it is reduced to writing by the parties at least 30 days before taking effect.

ARTICLE VIII – SEVERABILITY

If any provision of the Agreement is held to be invalid or unenforceable for any reason, this Agreement shall remain in full force and effect in accordance with its terms, disregarding such unenforceable or invalid provision.

ARTICLE IX – CAPTIONS

The caption headings contained herein are used solely for convenience and shall not be deemed to limit or define the provisions of this Agreement.

ARTICLE X – WAIVER

Any failure of a party to enforce that party's rights under any provision of this Agreement shall not be construed or act as a waiver of said party's subsequent right to enforce any of the provisions contained herein.

ARTICLE XI – GOVERNING LAW

This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court of the City of Richmond, John Marshall Courts Building, unless waived by the **Center**.

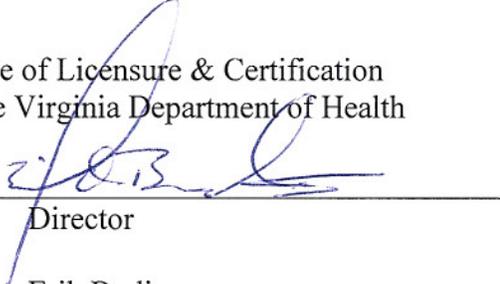
APPROVED BY:

Virginia Health Care Foundation

By: 
Executive Director

Deborah D. Oswalt
Printed Name

Office of Licensure & Certification
of the Virginia Department of Health

By: 
Director

Erik Bodin
Printed Name

Date: August 8, 2013

Date: 30 July 2013

FIN Number: 54-1639924