

ORDINANCE NO. 05-2020

AN ORDINANCE OF THE COUNTY OF BERKS, PENNSYLVANIA AUTHORIZING BERKS COUNTY TO ENTER INTO AN INTERGOVERNMENTAL TRANSFER AGREEMENT (“IGT”) BETWEEN THE PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES, OFFICE OF LONG-TERM LIVING (“DHS-OLTL”) AND BERKS COUNTY (“COUNTY”) TO PROVIDE FOR INTERGOVERNMENTAL TRANSFERS OF FUNDS TO DHS-OLTL IN ORDER TO PROVIDE THE NON-FEDERAL SHARE OF MEDICAL ASSISTANCE PAYMENTS TO COUNTY NURSING FACILITIES FOR FISCAL YEAR 2020-2021.

WHEREAS, pursuant to the provisions of the Social Security Act, and the regulations of the Centers for Medicare and Medicaid Services (“CMS”) (See 42 CFR 433.51 – Public Funds), IT IS HEREBY ENACTED AND ORDAINED by the authority of the same as follows; and

WHEREAS, Berks County owns and operates the Berks Heim Nursing and Rehabilitation, which is an enrolled nursing facility provider in the Commonwealth’s Medical Assistance (“MA”) Program; and

WHEREAS, the Program is administered by the Pennsylvania Department of Human Services (DHS); and

WHEREAS, DHS has established an Intergovernmental Transfer Program (“Program”) to provide increased financial support to county nursing facilities under the MA Program; and

WHEREAS, Berks County desires to participate and enter into an IGT with DHS for the transfer of funds from Berks County to DHS to be used by DHS as the State share of the Capitation Component to the Community HealthChoices Managed Care Organizations as more fully outlined in the IGT.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Commissioners of the County of Berks, Pennsylvania as follows:

1. The Title and Background of this Ordinance set forth above are incorporated herein by reference.
2. The Board of Commissioners of the County of Berks (“Commissioners”) hereby approve entering into the IGT, a copy of which is attached hereto and incorporated herein as Exhibit A, with the intent and effect that the County of Berks (“County”) shall be bound by the Agreement.
3. The Commissioners are hereby authorized and directed on behalf of the County: (i) to execute and deliver the Agreement, subject to final review and approval of the terms and conditions by the Berks County Solicitor’s Office; and (ii) to execute and deliver such additional instruments, and to take such further actions, as may be necessary or appropriate to carry forth the Agreement and the transactions to be effected under the

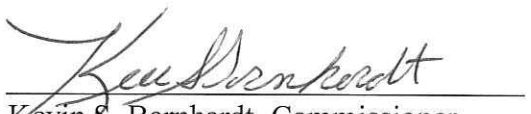
Agreement, including acceptance of payment as may be due the County to administer the terms of the Agreement.

4. The Board of Commissioners, and any agent authorized by the Board of Commissioners are hereby directed to take any such other action as may be necessary or appropriate to carry out the purposes of this Ordinance and of the Agreement.
5. Nothing contained in this Ordinance shall be construed to affect any suit or proceeding in any court, or any rights acquired, or liability incurred, or any cause of action existing prior to the enactment of this Ordinance.
6. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Commissioners that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.
7. Any ordinance, parts of ordinances, resolutions or parts of resolutions conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance's provisions.
8. This Ordinance shall become effective at the earliest date provided by law.

ENACTED AND ORDAINED as an Ordinance by the Board of Commissioners of the County of Berks, in lawful session duly assembled, this 22nd day of October, 2020.

COUNTY OF BERKS

By: 
Christian Y. Leinbach, Chairman

By: 
Kevin S. Barnhardt, Commissioner

Attest:


Maryjo Gibson, Chief Clerk

By: 
Michael S. Rivera, Commissioner

EXHIBIT A

Agreement of
Pennsylvania Department of Human Services,
Office of Long-Term Living
and
Berks County

This Intergovernmental Transfer Agreement ("Agreement"), by and between the Pennsylvania Department of Human Services, Office of Long-Term Living ("DHS, OLTL") and Berks County ("the County") provides for intergovernmental transfers of funds to DHS in order to provide the non-federal share of Medical Assistance ("MA") payments to county nursing facilities.

The County and DHS, OLTL (collectively referred to as "the parties") agree as follows:

1. **Program Description.** Berks Heim Nursing & Rehabilitation (hereinafter "the County Nursing Facility") is a Pennsylvania licensed nursing facility located in and controlled by the County. The County Nursing Facility is an enrolled provider in the MA Program. The County will transfer funds to DHS. The transfer of funds from the County to DHS is known as an intergovernmental transfer ("IGT"). DHS will use the IGTs as the non-federal share (or "state share") of the County Nursing Facility access to care capitation component of DHS's capitation payments ("Capitation Component") to the Community HealthChoices Managed Care Organizations ("CHC-MCOs"). The use of IGTs to fund Medicaid expenditures is authorized under the Social Security Act and the regulations of the Centers for Medicare and Medicaid Services ("CMS") (See 42 CFR 433.51 - Public Funds as the state share of financial participation).
2. **CMS Approval Required.** The MA payments described in subsection 5.c. of this Agreement are contingent upon CMS approval of the CHC-MCO agreements authorizing the Capitation Component. The County shall transfer the IGT funds on the date agreed to by the Pennsylvania Coalition of Affiliated Healthcare and Living Communities ("PACAH") and DHS ("IGT Due Date").
3. **Voluntariness.** The County attests that it entered voluntarily into this Agreement to make the IGTs described hereunder. The County further attests that it and its representatives have independently analyzed the validity of the IGTs and MA payments described in subsection 5.c. of this Agreement, and in making the final determination to enter into this Agreement, relied upon the advice of their advisors and legal counsel.
4. **Permissible Sources.** The County shall provide IGT funds to DHS that satisfy the requirements of 42 CFR 433.51 and that are not derived from an impermissible source, including, but not limited to, recycled Medicaid payments, Federal money precluded from use as the state share, impermissible taxes, and non-bona fide provider-related donations. At the time the County makes an IGT to DHS, the County shall certify to DHS that the IGT funds are derived from state or local bonds, tax revenue or other permissible sources using the form attached as Exhibit A.

5. Transfer and Use of Funds. The parties will transfer and use the IGT funds as specified below.
- a. The County shall make a one-time IGT in the total annual amount of \$9,260,885 on the IGT Due Date by transferring those IGT funds to DHS via the Automated Clearing House or via wire transfer to an account designated by DHS.
 - b. DHS, OLTL will use \$2,327,684 of the total annual IGT of \$9,260,885 for state-funded, county-administered human services programs for Fiscal Year 2020-21.
 - c. DHS, OLTL will use \$6,933,201 of the total annual IGT of \$9,260,885 as the state share of the Capitation Component to the CHC-MCOs in the Community HealthChoices ("CHC") Lehigh/Capital, Northwest and Northeast Zones for July 1, 2020 through June 30, 2021. The CHC Lehigh/Capital, Northwest and Northeast Zones are comprised of the counties of Adams, Berks, Bradford, Cameron, Carbon, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Cumberland, Dauphin, Elk, Erie, Forest, Franklin, Fulton, Huntingdon, Jefferson, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne, Wyoming and York. The aggregate amount of IGT funds from Lehigh/Capital, Northwest and Northeast Zone counties, which will be used as the state share of the Capitation Component, is anticipated to be \$48,499,199. DHS, OLTL will include provisions in its agreements with the CHC-MCOs requiring the CHC-MCOs to use the Capitation Component to increase payments to county nursing facilities for nursing facility services ("County Nursing Facility Access to Care Payments"). The total amount of County Nursing Facility Access to Care Payments in the Lehigh/Capital, Northwest and Northeast Zones is anticipated to be \$104,230,084 for the period July 1, 2020 through June 30, 2021. The amount of the increase paid to each individual county nursing facility, including the County Nursing Facility, shall be determined through negotiations between each CHC-MCO and PACAH.
 - d. The County agrees that the dollar amounts set forth in subsections a. through c., above were calculated on the following assumptions, which, if altered, would change those amounts:
 - i. The amounts were calculated using the Federal Medical Assistance Percentage ("FMAP") rates for October 1, 2019 and October 1, 2020. Consequently, the amounts may be adjusted to reflect any changes in the FMAP.

- ii. The amounts were calculated based on the anticipated amount of aggregate IGTs. Consequently, those amounts may be adjusted to reflect any changes in the final aggregate IGT amounts that participating counties have agreed to transfer to DHS.
- iii. The amounts were calculated based on projected CHC enrollment numbers. Consequently, those amounts may be adjusted to reflect any changes in CHC enrollment.

If DHS determines the dollar amounts set forth in subsections a. through c. above should be adjusted based on a change in one or more of the factors described in subparagraphs i, ii or iii, DHS shall provide notice to the County and PACAH. DHS and PACAH will negotiate any adjustments to be made as soon as possible.

6. County Nursing Facility Use of Funds. The County Nursing Facility shall not be required to render the payments funded with IGTs made pursuant to this Agreement, in whole or in part, to the County; however, nothing in this Agreement is intended to, nor does it limit the County Nursing Facility's discretion to use the payments it receives as it deems appropriate.

7. Deferrals and Disallowances.

- a. DHS will use its best efforts to notify the County and PACAH within ten (10) business days if CMS defers or disallows Federal Financial Participation ("FFP") in the Capitation Component or in the County Nursing Facility Access to Care Payments made by CHC-MCOs to the County Nursing Facility which are funded through the Capitation Component. DHS will consult with and provide the County and PACAH a copy of DHS's response to the CMS deferral or disallowance.
- b. If CMS disallows FFP in the Capitation Component or the County Nursing Facility Access to Care Payments made by the CHC-MCOs to the County Nursing Facility, DHS shall recoup or require the CHC-MCOs to recoup the disallowed FFP, and any related interest and penalties, if any, by offsetting the amount of the disallowance from payments otherwise due to the County Nursing Facility under the following terms:
 - i. If the reason for the disallowance is ultimately found to be attributed to the County (for example, among other things, if CMS, or, if an appeal is taken, the court of final recourse, determines that the County did not provide proper documentation; that the County did not provide the IGT funds from a permissible source; or that the County was not a public entity for purposes of the IGT), then DHS shall recoup or require the CHC-MCOs to recoup the full amount of the disallowance associated with the County Nursing Facility Access to Care Payment to the County Nursing Facility;

- ii. If the reason for the disallowance is ultimately found to be attributed to the design/structure of the IGT (for example, among other things, if CMS, or if an appeal is taken, the court of final recourse, determines that this Agreement was impermissible), then DHS shall recoup or require the CHC-MCOs to recoup the full amount of the disallowance associated with the County Nursing Facility Access to Care Payment to the County Nursing Facility less fifty percent (50%) of the amount used for state-funded county-administered human services programs under subsection 5.b.

The amount recouped from the County Nursing Facility as a result of any disallowance shall not exceed the amount the County Nursing Facility receives in County Nursing Facility Access to Care Payments less the amount of \$6,933,201. In the event the amounts due under this subparagraph cannot be offset against payments otherwise due to the County Nursing Facility, the County Nursing Facility shall take such other measures as may be necessary to return the amount due under this subparagraph, at the discretion of DHS. The County Nursing Facility shall be permitted to retain the state share identified in subsection 5.c. above.

- c. If DHS determines that meritorious grounds exist to appeal CMS's disallowance of FFP in the Capitation Component or in the County Nursing Facility Access to Care Payments made by CHC-MCOs to the County Nursing Facility, DHS shall file an appeal with the United States Department of Health & Human Services Departmental Appeals Board contesting the CMS's disallowance. In the event DHS files such an appeal, DHS will not object if the County and/or County Nursing Facility seeks to intervene in and to appear with DHS as a party to the appeal.
8. Record Maintenance. The parties shall maintain necessary records and supporting documentation applicable to the IGTs and the payments to County Nursing Facilities and other Medicaid payments to assure that claims for total funds and federal funds are in accordance with applicable federal requirements.
 9. Records Access and Cooperation. The County shall provide DHS or its designee access to the County's records and the supporting documentation relating to the IGTs and shall cooperate and assist DHS, as requested, in any federal or state review or audit of the IGTs or payments funded with those IGTs.

10. Notices. Any written notice required by the Agreement shall be sent to:

For the Department

For Berks County

Name: Diane Bamford

Name: Terry Brennan

E-mail address: dbamford@pa.gov

E-mail address: tbrennan@countyofberks.com

Mailing address:
Department of Human Services
OLTL/Forum Place, 6th Floor
Bureau of Finance
P.O. Box 8025
Harrisburg, PA 17105-8025

Mailing address:
P.O. Box 1495
Reading, PA 19603

11. Rights and Responsibilities. This Agreement is only intended to establish the IGT set forth above, and nothing in this Agreement shall be construed to limit, restrict or modify the respective rights and responsibilities of either party under federal or state law and policies, including the right of DHS to recover overpayments made to the County Nursing Facility other than the state share set forth in subsection 5.c., above.

The parties, by their authorized representatives, have duly executed this agreement and each party acknowledges the receipt of a duly executed copy of this agreement with original signatures.

PENNSYLVANIA DEPARTMENT OF
HUMAN SERVICES

BERKS COUNTY

Printed Name: _____

Printed Name: Christian Y. Leinbach

Title: _____

Title: Chair

By: _____

By: _____

Date: _____

Date: _____

Attest: _____

Printed Name: _____

Title: _____

By: _____

Date: _____

Exhibit A

Certification for Intergovernmental Transfers Agreement

I certify that I am authorized to sign this certification on behalf of the County entity listed below and that the source of funds submitted to the Commonwealth of Pennsylvania for the intergovernmental transfer (IGT) identified below is derived from state or local bonds, tax revenue or other permissible sources.

Signed: _____

Print Name: _____

Title: _____

Name of County entity: _____

Name of Nursing Facility(s) Receiving Payment: _____

Total Amount of IGT: _____

Date: _____