AGENDA

HEALTH COMMITTEE

MAY 29, 2019

PREVIOUS BUSINESS:

APPROVING PREVIOUS MEETING MINUTES

1. **LOCAL LAW NO. “S” FOR 2018**: A LOCAL LAW TO REQUIRE HOSPITALS TO POST THEIR POLICIES ON REPRODUCTIVE HEALTHCARE, NON-DISCRIMINATION, CHARITY CARE AND ADMISSIONS IN ALBANY COUNTY

2. **RESOLUTION NO. 494 FOR 2018**: PUBLIC HEARING ON PROPOSED LOCAL LAW NO. “S” FOR 2018

3. **LOCAL LAW NO. “E” FOR 2019**: A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, Restricting the sale of flavored tobacco products

CURRENT BUSINESS:

4. AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE NEW YORK STATE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE REGARDING OPPIOID RESPONSE FUNDS

5. AUTHORIZING AGREEMENTS WITH THE CAPITAL BEHAVIORAL HEALTH NETWORK REGARDING MANAGED MEDICAID CONTRACTS
Honorable Andrew Joyce and Members of the Albany County Legislature:

LADIES AND GENTLEMEN:

The Health Committee of the Albany County Legislature met on April 24, 2019. Chairman R. Joyce, Messrs. Cahill, Domalewicz, Ward, Mss. McLean Lane And Willingham were present. Messrs. Drake, Hogan and Ms. Lekakis were excused. The following items were discussed and/or acted upon:

Approving Previous Meeting Minutes: Unanimously Approved.

1. **Local Law No. “S” For 2018:** A Local Law to require Hospitals to post their policies on Reproductive Healthcare, Non-discrimination, Charity Care and Admissions in Albany County: Tabled at the request of the Sponsor.

2. **Resolution No. 494 For 2018:** Public Hearing on proposed Local Law No. “S” for 2018: Tabled at the request of the Sponsor.

3. **Local Law No. “E” for 2019:** A Local Law of the County of Albany, New York, restricting the sale of flavored tobacco products: Tabled at the request of the Sponsor.

4. Authorizing agreements with the New York State Department of Health regarding a Tuberculosis Prevention and Control Program: The Commissioner of the Albany County Department of Health has requested authorization to enter into a five-year agreement with the NYS Department of Health, Bureau of Tuberculosis Control, regarding the Tuberculosis Prevention and Control Program in the amount of $39,166 per year for a total amount not to exceed $195,830 for the term commencing April 1, 2019 and ending March 31, 2024. The Commissioner indicated that the Tuberculosis Prevention and Control Program is a mandated service and that the state funds will be used for salary, fringe, and travel reimbursement. After a brief discussion, the Committee voted unanimously to move the proposal forward for legislative action with a favorable recommendation.

5. Authorizing an agreement with Health Research, Inc. regarding the Public Health Emergency Preparedness Program: The Commissioner of Health has requested authorization to enter into an agreement with the New York State Department of Health (NYSDOH)/Health Research, Inc. (HRI) regarding the Public Health Emergency Preparedness Program in an amount not to exceed $296,658 for the term commencing July 1, 2019 and ending June 30, 2020. The Commissioner indicated that the funding will be used to provide enhanced services in the five focus areas of planning and assessment, surveillance, information and communication technology, risk communication, and
education and training of staff. After a brief discussion, the Committee voted unanimously to move the proposal forward for legislative action with a favorable recommendation.

6. Authorizing the submission of a grant application with the Governor's Traffic Safety Committee regarding the General Highway Safety Grant Program: The Commissioner of Health has requested authorization to submit a grant application to the New York State Governor's Traffic Safety Committee for a General Highway Safety Grant. The Commissioner has indicated that this funding will be used to expand the scale of public awareness activities and to extend the geographic scope of the 2019 General Highway Safety Grant Program initiative which presently addresses the Central Avenue corridor in the City of Albany. After a brief discussion, the Committee voted unanimously to move the proposal forward for legislative action with a favorable recommendation.

7. Amending Resolution No. 39 for 2018 with the New York State Department of Health regarding an extension to the Healthy Neighborhoods Program: The Commissioner of Health has requested an amendment to the Healthy Neighborhoods Program agreement with the NYSDOH in the amount of $263,340 to reflect a new total amount not to exceed $1,295,332 as well as an amendment to the terms of the agreement to reflect an ending date of March 31, 2020 rather than March 31, 2019. After a brief discussion, the Committee voted unanimously to move the proposal forward for legislative action with a favorable recommendation.

8. Amending Resolution No. 411 for 2018 with Cornell Cooperative Extension regarding the Healthy Neighborhoods Program: The Commissioner of Health has requested an amendment to the Healthy Neighborhoods Program agreement with Cornell Cooperative Extension to reflect an ending date of March 31, 2020 rather than March 31, 2019. After a brief discussion, the Committee voted unanimously to move the proposal forward for legislative action with a favorable recommendation.

9. Authorizing an agreement with Health Research, Inc. regarding the Expanded Partner Services Program: The Commissioner of Health has requested authorization to enter into an agreement with the New York State Department of Health/Health Research, Inc. (HRI) regarding the Expanded Partner Services program in an amount not to exceed $105,000 for the term commencing April 1, 2019 and ending March 31, 2020. The Commissioner indicated that the funding will be used to support the provision of HIV prevention and care services for people living with HIV/AIDS within Albany County. After a brief discussion, the Committee voted unanimously to move the proposal forward for legislative action with a favorable recommendation.
10. Authorizing an agreement with the New York State Department of Environmental Conservation regarding the Water Quality Management Program: The Commissioner of Health has requested authorization to enter into a five-year agreement with the New York State Department of Environmental Conservation regarding the Water Quality Management Program in the amount of $10,472 per year for a total amount of $52,361 for the term commencing April 1, 2019 and ending March 31, 2024. The Commissioner indicated that the funding will be used to support staff members who investigate sewage-related complaints made by county residents and who review and approve engineering plans for waste water facility plants and public sewer improvements. After a brief discussion, the Committee voted unanimously to move the proposal forward for legislative action with a favorable recommendation.

Respectfully Submitted,
THE HEALTH COMMITTEE

RAYMOND F. JOYCE, Chairperson
TODD A. DRAKE
CHARLES CAHILL JR.
GARY DOMALEWIECZ
LYNNE LEKAKIS

WANDA F. WILLINGHAM
ALISON MCLEAN LANE
SEAN WARD
BRIAN HOGAN
LOCAL LAW NO. "S" FOR 2018

A LOCAL LAW TO REQUIRE HOSPITALS TO POST THEIR POLICIES ON REPRODUCTIVE HEALTHCARE, NON-DISCRIMINATION, CHARITY CARE AND ADMISSIONS IN ALBANY COUNTY

Introduced: 9/12/18
By Mr. Cahill:

BE IT ENACTED by the Albany County Legislature as follows:

Section 1. Legislative Intent.

The Legislature finds that hospitals should post their policies on reproductive healthcare, end-of-life care, non-discrimination, charity care and admissions so that patients are informed whether the medical service they are seeking will be provided to them.

Section 2. Definitions

As used in this Local Law, the following terms shall have the meanings indicated:

(a) "Hospital" shall have the same meaning as provided in the relevant section of the New York State Law.

Section 3. Requirements.

A hospital located in Albany County shall publicly post on their web site their policies on reproductive healthcare, end-of-life care, non-discrimination, charity care and admissions.

Section 4. Rules and Regulations.

The Albany County Department of Health may promulgate such rules and regulations as it deems necessary to implement and enforce the provisions of this Local Law.

Section 5. Applicability.

This article shall apply to all actions occurring on or after the effective date of this Local Law.

Section 6. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this Local Law or the application thereof to any person, individual, corporation, firm,
partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Local Law, or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 7. Effective Date.

This Local Law shall take effect within ninety (90) days of its filing with the Secretary of State.

_Referred to Law and Health Committees—9/12/18_
RESOLUTION NO. 494

PUBLIC HEARING ON PROPOSED LOCAL LAW NO. "S" FOR 2018

Introduced: 10/9/18
By Mr. Cahill:

RESOLVED, By the County Legislature of the County of Albany that a public hearing on proposed Local Law No. "S" for 2018, "A LOCAL LAW TO REQUIRE HOSPITALS TO POST THEIR POLICIES ON REPRODUCTIVE HEALTHCARE, NON-DISCRIMINATION, CHARITY CARE AND ADMISSIONS IN ALBANY COUNTY" be held by the County Legislature in the William J. Conboy II Legislative Chambers, Albany County Courthouse, Albany, New York at 7:15 p.m. on Tuesday, October 23, 2018, and the Clerk of the County Legislature is directed to cause notice of such hearing to be published containing the necessary information in accordance with the applicable provisions of law.

Referred to Law and Health Committee - 10/9/18
LOCAL LAW NO. “E” FOR 2019

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, [RESTRICTING] PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS

Introduced: 3/11/19
By Messrs. Miller, Clay, Ms. Cunningham, Messrs. Ethier, Beston, Cahill, Commissio, Frainier, Ms. McKnight, Willingham, Messrs. Mayo, Domalewicz, Mss. Lekakis, McLean Lane, Plotsky, Messrs. Reinhardt and Simpson:

BE IT ENACTED by the Legislature of the County of Albany as follows:

The Legislature of Albany County hereby finds and declares that:

Section 1: Findings and Intent

This Legislature finds that 81% of youth who have ever used a tobacco product report that the first tobacco product they used was flavored. Flavored tobacco products promote youth initiation of tobacco use and help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and thereby increasing the appeal of tobacco products. As tobacco companies well know, menthol, in particular, cools and numbs the throat to reduce throat irritation and make the smoke feel smoother, making menthol cigarettes an appealing option for youth who are initiating tobacco use. Tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a “graduation strategy” to encourage new users to start with tobacco products with lower levels of nicotine and progress to products with higher levels of nicotine. It is therefore unsurprising that young people are much more likely than adults to use menthol-, candy- and fruit-flavored tobacco products, including not just cigarettes but also cigars, cigarillos, and hookah.

Tobacco use causes death and disease and continues to be an urgent public health threat as evidenced by the fact that every year 480,000 people die prematurely in the United States from smoking-related diseases and 28,000 people die prematurely from second hand smoke making tobacco use the leading cause of preventable death. Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths.

The 2018 National Youth Tobacco Survey cites research showing that youth and young adults identify flavors as a primary reason for e-cigarette use. Given the highly addictive nature of nicotine, it is not surprising that high school students who were current flavored e-cigarette users reported an increase in their frequency of vaping. Some brands have particularly high levels of nicotine in that one single e-cigarette may contain as much nicotine as a pack of 20 cigarettes.
Much as youths disproportionately use flavored tobacco products, the same can be said of certain minority groups. According to the Food and Drug Administration (FDA), 85% of African American smokers, 44% of Hispanic smokers, 38% of Asian smokers and 28% of White smokers smoke menthol cigarettes. Native Americans, people who identify as LGBT, and young adults with mental health problems also have disproportionately high rates of smoking menthol cigarettes. Menthol products are more addictive, and both youth and racial/ethnic minorities find it harder to quit smoking menthol cigarettes.

According to the NAACP, "for decades, data has shown that the tobacco industry has successfully and intentionally marketed mentholated cigarettes to African Americans and particularly African American women as "replacement smokers". The recognition of this harsh reality led the NAACP to adopt a unanimous resolution at their 2016 National Convention supporting state and local efforts to restrict the sale of menthol cigarettes and other flavored tobacco products.

Younger smokers are more likely than older smokers to try these products. When Congress enacted the FSPTCA, it found that the use of tobacco products by the nation’s children is a “pediatric disease of considerable proportions” that results in new generations of tobacco dependent children and adults.

Although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law, neither federal law nor New York State law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah, electronic smoking devices and the solutions used in these devices.

According to the 2018 Surgeon General’s Advisory Regarding the E-cigarette Epidemic Among Youth, e-cigarettes entered the U.S. marketplace around 2007, and since 2014, they have been the most commonly used tobacco product among U.S. youth. E-cigarette use among U.S. middle and high school students increased 900% during 2011-2015. During the past year, current e-cigarette use increased 78% among high school students from 12% in 2017 to 21% in 2018. More than 3.6 million U.S. youth, including 1 in 5 high school students and 1 in 20 middle school students currently use e-cigarettes.

Also according to the Surgeon General, nicotine exposure during adolescence can harm the developing brain that continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase the risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances.
including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.

Since the industry will not reveal what chemicals are in the flavorings in the vapor products, it may be years before we know the full negative impact of the explosive increase in use of e-cigarettes. Scientists have discovered that cinnamon, vanilla, and cherry flavors react with propylene glycol, a main ingredient in many vape juices, to create entirely new chemicals, according to a study published in the journal Nicotine & Tobacco Research. Oct 18, 2018.

The federal government’s National Institute on Drug Abuse reported that teen use of e-cigarettes soared in 2018. The survey, which polled 8th, 10th and 12th graders across the country, found the rise in nicotine vaping was the largest spike for any substance recorded by the study in 44 years.

Flavors appeal to youth and drive youth experimentation with tobacco products:

- Beyond improving palatability, perceptible flavor provides an avenue for youth marketing;
- Youth tobacco users typically begin with flavored products and, overall, use flavored products at higher rates than their older peers;

Flavored tobacco products promote youth tobacco initiation and drive young occasional smokers to daily smoking; Consumers incorrectly perceive flavored tobacco products to be less harmful:

- The presence of characterizing flavors signals product palatability, which incorrectly associated with lower relative harm, influencing consumer brand preference and use;
- Adolescents are more likely to believe that fruit and chocolate or other sweet flavors are less harmful than flavors like alcohol, tobacco, and spice flavors;
- Youth e-cigarette users perceive lower harm from flavored e-cigarettes than from unflavored e-cigarettes despite research documenting harmful constituents present in e-cigarette flavoring.
- The majority of youth who use tobacco choose flavored tobacco products;

E-cigarettes can also be used to deliver other drugs including marijuana. In 2016, one-third of U.S. middle and high school students who ever used e-cigarettes had used marijuana in e-cigarettes.

Albany County has a substantial and important interest in ensuring that existing state and local tobacco sales regulation is effectively enforced:

- Although it is unlawful to sell tobacco products to minors, 5 percent of New York retailers sold to minors between 2010 and 2012;
• A local tobacco retail licensing system will help ensure that tobacco sales comply with the Adolescent Tobacco Use Prevention Act, other tobacco control laws, and the business standards of Albany County;
• Licensing laws in other communities have been effective in reducing the number of illegal tobacco sales to minors;

A local licensing system for retailers of tobacco products, electronic cigarettes, and other products regulated by Article 13-F of New York State Public Health Law is necessary and appropriate for the public health, safety, and welfare of our residents;

Neither federal nor New York law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigarillos, cigars, smokeless tobacco, shisha, e-cigarettes or e-cigarette solutions. It is the intent of Albany County to implement effective measures through this Bill to restrict access to flavored iterations of these products, and thus reduce tobacco experimentation, promote successful cessation, and narrow tobacco-related health disparities; prevent the sale or distribution of contraband tobacco products, and facilitate the enforcement of tax laws and other applicable laws relating to tobacco products.

Section 2: Definitions

As used in this [Bill]Law, the following terms shall have the meanings indicated:

ACCESSORY means any product that is intended or reasonably expected to be used with or for the human consumption of a Tobacco Product or Electronic Aerosol Delivery System; does not contain tobacco and is not made or derived from tobacco; and meets either of the following: (1) is not intended or reasonably expected to affect or alter the performance, composition, Constituents, or characteristics of a Tobacco Product or Electronic Aerosol Delivery System; or (2) is intended or reasonably expected to affect or maintain the performance, composition, Constituents, or characteristics of a Tobacco Product or Electronic Aerosol Delivery System but [(a)] solely controls moisture and/or temperature of a stored Tobacco Product or Electronic Aerosol Delivery System.

APPLICANT means an individual, partnership, Limited Liability Company, corporation, or other business entity seeking a Tobacco Retail License.

COMMISSIONER means the Commissioner of the Albany County Department of Health.

COMPONENT OR PART means any software or assembly of materials intended or reasonably expected: (1) to alter or affect the Tobacco Product’s or Electronic Aerosol Delivery System’s performance, composition, Constituents, or characteristics; or (2) to be used with or for the human consumption of a Tobacco Product or Electronic
Aerosol Delivery System. Component or Part excludes any Constituent and any Accessory, and includes, but is not limited to e-liquids, cartridges, certain batteries, heating coils, programmable software, rolling papers and flavorings for Tobacco Products or Electronic Aerosol Delivery Systems.

CONSTITUENT means any ingredient, substance, chemical or compound, other than tobacco, water, or reconstituted tobacco sheet, which is added by the manufacturer to a Covered Product during the processing, manufacture, or packing of the Covered Product. This term shall include smoke and aerosol constituent.

COVERED PRODUCT means a Tobacco Product, Electronic Aerosol Delivery System, or another product regulated by Article 13-F of the New York State Public Health Law.

DEPARTMENT means the Albany County Health Department.

ELECTRONIC AEROSOL DELIVERY SYSTEM means an electronic device that, when activated, produces an aerosol that may be inhaled, whether or not such aerosol contains nicotine. Electronic Aerosol Delivery System includes any Component or Part but not Accessory, and any liquid or other substance to be aerosolized, whether or not separately sold. Electronic Aerosol Delivery System does not include drugs, devices, or combination products authorized for sale by the state or U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

EMISSION means any substance, chemical, or compound released or produced during use of a Covered Product. This term shall include, but is not limited to, smoke, aerosol, saliva, sputum.

FLAVORED PRODUCT means any Covered Product containing a Constituent that imparts a [p]Perceptible taste or aroma different from tobacco or produces an Emission or byproduct that imparts a [p]Perceptible taste or aroma different from tobacco, either before or during use of the Covered Product. A Covered Product is presumed to be a Flavored Product if a Tobacco Retailer, manufacturer, or a manufacturer's agent or employee has:

i. made a statement or claim directed to consumers or the public, whether expressed or implied, that the Covered Product, Emission, or byproduct of the Covered Product smells or tastes different from tobacco, or

ii. Taken action that would be reasonably expected to result in consumers receiving the message that the Covered Product, Emission, or byproduct of the Covered Product smells or tastes different from tobacco.
No product shall be determined to be a Flavored Product solely because of the use of additives or flavorings or the provision of ingredient information.

NEW TOBACCO RETAIL LICENSE means any Tobacco Retail License that is not a Renewed Tobacco Retail License.

PERSON means any natural person, company, corporation, firm, partnership, business, organization, or other legal entity.

PERCEPTIBLE means perceivable by the sense of taste or smell.

RENEWED TOBACCO RETAIL LICENSE means a Tobacco Retail License issued to an Applicant for the same location at which the Applicant possessed a valid Tobacco Retail License during the previous 12 months.

TOBACCO PRODUCT means any product made or derived from tobacco or which contains nicotine, marketed or sold for human consumption, whether consumption occurs through inhalation, or oral or dermal absorption. Tobacco Product includes any Component or Part, but not Accessory. Tobacco Product does not include drugs, devices, or combination products authorized for sale by the state or U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

TOBACCO RETAILER means a retailer licensed pursuant to this [Bill]Law.

TOBACCO RETAIL LICENSE means a license issued by the Department to a Person to engage in the retail sale in Albany County of a Covered Product.

Section 3: Requirement for Tobacco Retail License

(A)(1) No Person shall sell, offer for sale, or permit the sale of a Covered Product by retail within Albany County, without a valid Tobacco Retail License. A Tobacco Retail License is not required for a wholesale dealer who sells products to retail dealers for the purpose of resale only and does not sell a Covered Product directly to consumers.

(A)(2) Notwithstanding the requirements set forth in Section 3(A)(1), this [Bill]Law shall not apply to registered organizations pursuant to Title V-A of Article 33 of New York Public Health Law.

(B) A Tobacco Retail License issued pursuant to this [Bill]Law is nontransferable and non-assignable and valid only for the Applicant and the specific address indicated on the Tobacco Retail License. A separate Tobacco Retail License is required for each
address where a Covered Product is sold or offered for sale. A change in business ownership or business address requires a New Tobacco Retail License.

Section 4: License Application and Application Fee

(A) An application for a New Tobacco Retail License or Renewed Tobacco Retail License shall be submitted to the Department in writing upon a form provided by the Department and shall contain information as required by the Department. The Department may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

(B) Each application for a Tobacco Retail License shall be accompanied by a nonrefundable application fee of $50, or as determined by the Commissioner.

(C) Upon the receipt of a completed application for a Tobacco Retail License and the application fee required by Section 4(B), the Department shall inspect the location at which tobacco sales are to be permitted. The Department may ask the Applicant to provide additional information that is reasonably related to the determination of whether a license may issue.

Section 5: Issuance of Licenses

(A) No Tobacco Retail License shall be issued to any seller of a Covered Product that is not in a fixed, permanent location.

(B) The issuance of a Tobacco Retail License pursuant to this Bill is done in Albany County’s discretion and shall not confer upon licensee any property rights in the continued possession of such a license.

(C) The Department shall collect from the Applicant the Tobacco Retail License fee proscribed in Section 6 prior issuing the Tobacco Retail License.

(D) The Department may refuse to issue a Tobacco Retail License to an Applicant if it finds that one or more of the following bases for denial exists:

(1) The information presented in the application is incomplete, inaccurate, false, or misleading;

(2) The fee for the application has not been paid as required;

(3) The Applicant does not possess valid certification of registration or licensure required by state or federal law for the sale of a Covered Product;
(4) The Department has previously revoked a Tobacco Retail License issued under this Bill to the Applicant;

(5) The Department has previously revoked a Tobacco Retail License issued under this Bill for the same address or location;

(6) The Applicant has been found by a court of law or administrative body to have violated any federal, state, or local laws pertaining to (a) trafficking in contraband Tobacco Products or illegal drugs, (b) the payment or collection of taxes on a Covered Product, (c) the display of a Covered Product or of health warnings pertaining to a Covered Product, or (d) the sale of a Covered Product;

(7) The Applicant has not paid to Albany County outstanding fees, fines, penalties, or other charges owed to Albany County, including the fee for the Tobacco Retail License required by Section 6; or

(8) The Department determines, in accordance with written criteria established to further the purposes of this Bill, that the Applicant is otherwise not fit to hold a Tobacco Retail License.

Section 6: License Term and Annual License Fee

(A) A Tobacco Retail License issued pursuant to this Bill shall be valid for no more than one year and shall expire on the thirty-first day of December of the calendar year for which it is issued. As set forth in Section 8, a Tobacco Retail License may be revoked for cause by the Department prior to its expiration for cause.

(B) The Department shall charge an annual Tobacco Retail License fee of $250 or as determined by the Commissioner.

(C) The Commissioner may discount the Tobacco Retail License fee required by Section 6(B) for an application received within ten (10) months of the expiration date.

(D) Beginning two years from the effective date of this Bill, the Department may, on an annual basis, modify the Tobacco Retail License fee required pursuant to Section 6(B). The Tobacco Retail License fee shall be calculated so as to recover the cost of administration and enforcement of this Bill, including, for example, issuing a license, administering the license program, hiring and training staff, identifying Flavored Products, retailer and community education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Bill. All fees and interest upon
proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

**Section 7: License Display**

(A) A Tobacco Retail License issued pursuant to this Bill shall be conspicuously displayed at the location where a Covered Product is sold so that it is readily visible to customers.

(B) Selling, offering for sale, or permitting the sale of any Covered Product without a valid Tobacco Retail License displayed in accordance with Section 7(A) constitutes a violation of this Bill.

**Section 8: Sale of Flavored Products [Restricted] Prohibited**

[(A)(1) Except as specified in Section 8(A) (2),] No Tobacco Retailer shall distribute without charge, sell, offer for sale, or possess with intent to sell, offer for sale, or distribute without charge a Flavored Product. This applies to remote transactions, including but not limited to internet or mail-order sale, by a Tobacco Retailer licensed pursuant to this [Bill]Law.

[(A)(2) Section 8(A) (1) shall not apply to a Tobacco Retailer that:
  i. is also a retail tobacco business or retail electronic cigarette store, as defined by N.Y. Public Health Law §§ 1399-n (7 and 11), and
  ii. does not permit entry to persons below age 21 years or Albany County minimum legal sales age for a Tobacco Product, whichever is higher, and
  iii. Sells, offers for sale, or distributes a Covered Product exclusively for use on the premises of the Tobacco Retailer.]

**Section 9: Revocation of Licenses**

(A) The Department may suspend or revoke a Tobacco Retail License issued pursuant to this Bill for violations of the terms and conditions of this Bill or for violation of any federal, state, or local law or regulation pertaining to (a) trafficking in contraband Tobacco Products or illegal drugs, (b) the payment or collection of taxes on Covered Products, (c) the display of Covered Products or of health warnings pertaining to Covered Products, or (d) the sale of a Covered Product.

(B) The Department may revoke a Tobacco Retail License if the Department finds that one or more of the bases for denial of a license under Section 5 existed at the time application was made or at any time before the license issued.

**Section 10: Violations and Enforcement**
(A) The Department or its authorized designee(s) shall enforce the provisions of this Bill. The Department may conduct periodic inspections to ensure compliance with this Bill.

(B) In addition to the penalties provided for in Section 8, any Person found to be in violation of this Bill shall be liable for civil penalty of not more than $500 for the first violation, not more than $1000 for the second violation within a two-year period, and not more than $5000 but no less than $1500 for the third and each subsequent violation within a two-year period, or as determined by the Commissioner. Each day on which a violation occurs shall be considered a separate and distinct violation. These fines will be used for County anti-smoking/anti-vaping public health efforts.

Section 11: Rules and Regulations

The Department may issue and amend rules, regulations, standards, guidelines, or conditions to implement and enforce this Bill.

Section 12: Severability

The provisions of this Bill are declared to be severable, and if any section of this Bill is held to be invalid, such invalidity shall not affect the other provisions of this Bill that can be given effect without the invalidated provision.

Section 13: Effective Date

The effective date of this ordinance shall be 120 days subsequent to its filing with the Office of the Secretary of State.

Referred to Law and Health Committees - 3/11/19
May 13, 2019

Honorable Andrew Joyce, Chairman
Albany County Legislature
112 State St., Rm. 710
Albany, NY 12207

Dear Chairman Joyce,

The Albany County Department of Mental Health (ACDMH) requests permission to apply for New York State Opioid Response Grant funds. The funds will be used to increase access to addiction treatment services countywide. The Grant will result in the development of plans that will allow for a quicker and stronger response to the Opioid crisis.

Feel free to contact me or Kelle Roberts if you have any questions concerning this request.

Sincerely,

Stephen Giordano, Ph.D.
Director

cc: Hon. Dennis A. Feeney, Majority Leader
Hon. Frank A. Mauelillo, Minority Leader
Kevin Cannizzaro, Majority Counsel
Minority Counsel
REQUEST FOR LEGISLATIVE ACTION

Authorization to apply for NYS Opioid Response Grant
Click or tap here to enter text.

Date: May 8, 2019
Submitted By: Mark Gleason
Department: Mental Health
Title: Operations Analyst
Phone: 518-447-3014
Department Rep.
Attending Meeting: Dr. Stephen Giordano, Director

Purpose of Request:

☐ Adopting of Local Law
☐ Amendment of Prior Legislation
☐ Approval/Adoption of Plan/Procedure
☐ Bond Approval
☐ Budget Amendment
☐ Contract Authorization
☐ Countywide Services
☐ Environmental Impact/SEQR
☐ Home Rule Request
☐ Property Conveyance
☒ Other: (state if not listed) Apply for Additional State Opioid Grant Funding

CONCERNING BUDGET AMENDMENTS

Increase/decrease category (choose all that apply):
☐ Contractual
☐ Equipment
☐ Fringe
☐ Personnel
☐ Personnel Non-Individual
File #: TMP-0859, Version: 1

☐ Revenue

Increase Account/Line No.: Click or tap here to enter text.
Source of Funds: Click or tap here to enter text.
Title Change: Click or tap here to enter text.

CONCERNING CONTRACT AUTHORIZATIONS

Type of Contract:
☐ Change Order/Contract Amendment
☐ Purchase (Equipment/Supplies)
☐ Lease (Equipment/Supplies)
☐ Requirements
☐ Professional Services
☐ Education/Training
☒ Grant

Choose an item.
Submission Date Deadline Rolling
☐ Settlement of a Claim
☐ Release of Liability
☐ Other: (state if not listed) Click or tap here to enter text.

Contract Terms/Conditions:

Party (Name/address): Click or tap here to enter text.

Additional Parties (Names/addresses): Click or tap here to enter text.

Amount/Raise Schedule/Fee:
Scope of Services: Provide increased access to opioid services in rural communities to
individuals with opioid use disorders

Bond Res. No.: Click or tap here to enter text.
Date of Adoption: Click or tap here to enter text.

CONCERNING ALL REQUESTS

Mandated Program/Service: Yes ☐ No ☒
If Mandated Cite Authority: Click or tap here to enter text.
Is there a Fiscal Impact: Yes ☐ No ☒
Anticipated in Current Budget: Yes ☐ No ☒
County of Albany

Justification: (state briefly why legislative action is requested)
Additional Federal grant funding has been made available through the NYS Office of Alcoholism and Substance Abuse Services (OASAS) to combat opioid addiction and improve treatment access countywide. DMH is requesting permission to apply for $250,000 in additional grant funding. The funding will be used to develop outreach and engagement services in order to reach historically difficult to engage populations (e.g., residents of rural areas of Albany County; veterans; etc.); and, to build partnerships with the provider community to enhance services countywide. The funding will result in the development of services that will allow for a quicker and stronger response to the opioid epidemic, particularly in the rural areas of Albany County. Additionally, funding will be used for community education and improved access to resources for individuals with an opioid use disorder.
May 8, 2019

Honorable Andrew Joyce, Chairman
Albany County Legislature
112 State St., Rm. 710
Albany, NY 12207

Dear Chairman Joyce,

The Department of Mental Health requests permission to join the Capital Behavioral Health Care Collaborative, a network of local behavioral health providers, to prepare for entering into Managed Medicaid contracts with Value Based Payment arrangements. In the Value Based Payment model, healthcare providers are paid based on the health outcomes of their patients as contrasted to the current fee for service model which providers are reimbursed based on the amount of healthcare services that are delivered to their patients. This is a New York State Department of Health, Office of Mental Health and Office of Alcoholism and Substance Abuse Services initiative to ensure adequate services for the region. Authorization was received on December 4, 2017 by the County Legislature to sign a letter of intent to become a member of the Capital Behavioral Health Care Collaborative. There is no County share associated with this contract.

Feel free to contact me or Kelle Roberts if you have any questions concerning this request.

Sincerely,

Stephen Giordano, Ph.D.
Director

cc: Hon. Dennis A. Feeney, Majority Leader
    Hon. Frank A. Mauriello, Minority Leader
    Kevin Cannizzaro, Majority Counsel
    Minority Counsel
REQUEST FOR LEGISLATIVE ACTION

Intergovernmental Agreement to participate in the Capital Behavioral Health Care Collaborative
Click or tap here to enter text.

Date: Monday May 5
Submitted By: Mark Gleason
Department: Mental Health
Title: Operations Analyst
Phone: 518-447-3014
Department Rep.
Attending Meeting: Dr. Stephen Giordano, Director

Purpose of Request:

☐ Adopting of Local Law
☐ Amendment of Prior Legislation
☐ Approval/Adoption of Plan/Procedure
☐ Bond Approval
☐ Budget Amendment
☒ Contract Authorization
☐ Countywide Services
☐ Environmental Impact/SEQR
☐ Home Rule Request
☐ Property Conveyance
☐ Other: (state if not listed) Click or tap here to enter text.

CONCERNING BUDGET AMENDMENTS

Increase/decrease category (choose all that apply):
☐ Contractual
☐ Equipment
☐ Fringe
☐ Personnel
CONCERNING CONTRACT AUTHORIZATIONS

Type of Contract:
☐ Change Order/Contract Amendment
☐ Purchase (Equipment/Supplies)
☐ Lease (Equipment/Supplies)
☐ Requirements
☐ Professional Services
☐ Education/Training
☐ Grant
        Choose an item.
        Submission Date Deadline: Click or tap to enter a date.
☐ Settlement of a Claim
☐ Release of Liability
☒ Other: (state if not listed)  Network Provider in Capital Behavioral Health Care Collaborative (BHCC)

Contract Terms/Conditions:

Party (Name/address):
    Capital Behavioral Health Care Collaborative, Inc. (BHCC)
    255 Washington Ave Extension
    Suite 100
    Albany NY 12206

Additional Parties (Names_addresses):
    Click or tap here to enter text.

Amount/Raise Schedule/Fee: 0
Scope of Services: Join the Capital Behavioral Health Care Collaborative as a network provider to prepare for Value Based Payment contracting for Medicaid Managed Care Services.

Bond Res. No.: Click or tap here to enter text.
Date of Adoption:  Click or tap here to enter text.

CONCERNING ALL REQUESTS
Mandated Program/Service: Yes ☐ No ☒
If Mandated Cite Authority: Click or tap here to enter text.
Is there a Fiscal Impact: Yes ☐ No ☒
Anticipated in Current Budget: Yes ☐ No ☐

County Budget Accounts:
Revenue Account and Line: Click or tap here to enter text.
Revenue Amount: Click or tap here to enter text.
Appropriation Account and Line: Click or tap here to enter text.
Appropriation Amount: Click or tap here to enter text.

Source of Funding - (Percentages)
Federal: Click or tap here to enter text.
State: Click or tap here to enter text.
County: Click or tap here to enter text.
Local: Click or tap here to enter text.

Term
Term: (Start and end date) July 1, 2019 to June 30, 2022
Length of Contract: 3 years

Impact on Pending Litigation
Yes ☐ No ☒
If yes, explain: Click or tap here to enter text.

Previous requests for Identical or Similar Action:
Resolution/Law Number: #487
Date of Adoption: December 4, 2017

Justification: (state briefly why legislative action is requested)
The Albany County Department of Mental Health (ACDMH) seeks permission to join the Capital Behavioral Health Care Collaborative, a network of 44 non-profits, for profit and governmental agencies that offer mental health, substance abuse and other support services to the community. The goal of the network is to negotiate and manage value-based payment contracts for Medicaid services on behalf of the member agencies. In the value-based-payment model, healthcare providers are paid based on the health outcomes of their patients as contrasted to the current fee-for-service model which providers are reimbursed based on the amount of healthcare services that are delivered to their patients. ACDMH is joining as a class C member with no economic interest or risk. This is a New York State Department of Health, Office of Mental Health and Office of Alcoholism and Substance Abuse Services initiative to ensure adequate services for the region.
BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT (the "Agreement"), effective on the First day of July, 2019, between Albany County Department of Mental Health (hereinafter referred to as the "Covered Entity") and CAPITAL BEHAVIORAL HEALTH NETWORK LLC (hereinafter referred to as the "Business Associate").

WITNESSETH:

WHEREAS, Business Associate is a Behavioral Health Care Collaborative as contemplated by the New York State Office of Mental Health and Office of Alcoholism and Substance Abuse Services;

WHEREAS, Covered Entity intends to be or is part of the Behavioral Health Care Collaborative and Business Associate intends to provide certain services to the Covered Entity as part of the Behavioral Health Care Collaborative, which may include population health management, utilization review, quality assessment and improvement activities, and payment activities;

WHEREAS, Business Associate’s provision of such services qualifies it as a "business associate" of Covered Entity, as defined in the Privacy and Security Standards; and

WHEREAS, Covered Entity and Business Associate do hereby desire to enter into this Agreement as required under the Privacy and Security Standards.

NOW, THEREFORE, for the reasons set forth above and in consideration of the mutual promises and agreements set forth herein, Covered Entity and Business Associate do hereby contract and agree as follows:

1. Definitions. Terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.

(a) **Business Associate.** "Business Associate" shall mean the entity defined above.

(b) **Covered Entity.** "Covered Entity" shall mean the entity defined above.

(c) **Data Aggregation.** "Data Aggregation" shall have the same meaning as the term "Data Aggregation" in 45 CFR § 164.501.

(d) **Individual.** "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

(e) **HIPAA.** "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and any amendments thereto.
(f) **Privacy and Security Rules.** “Privacy and Security Rules” shall mean the Standards for Privacy and Security of Individually Identifiable Health Information at 45 CFR Parts 160, 162 and 164.

(g) **Privacy Standards.** “Privacy Standards” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

(h) **Protected Health Information.** “Protected Health Information” shall have the same meaning as the term “Protected Health Information” in 45 CFR § 164.501, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

(i) **Required by Law.** “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.501.

(j) **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

2. **Obligations and Activities of Business Associate.**

(a) **Confidentiality.** Business Associate agrees to hold Protected Health Information confidentially and shall not use or disclose it other than as permitted or required by this Agreement, 45 CFR § 164.504(e), the Privacy Standards or as Required by Law.

(b) **Safeguard Protected Health Information.** Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement. Business Associate shall secure all Protected Health Information such that it cannot be accessed or viewed by those who do not have a need to know the information. Business Associate shall comply with 45 CFR §§ 164.308, 164.310, 164.312 and 164.316 and relevant provisions of Subtitle D of the American Recovery and Reinvestment Act and its related regulations, as such provisions and regulations become effective and as applicable to business associates, as defined by 45 CFR § 160.103.

(c) **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

(d) **Subcontractors.** Business Associate agrees to take commercially reasonable steps to ensure that any agent, including a subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of the Business Associate agrees in writing enforceable in favor of Covered Entity to the same restrictions, conditions, and requirements that apply throughout this Agreement to Business Associate with respect to such information. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate
such conditions and restrictions and shall mitigate the effects of any such violation of which Business Associate becomes aware, at the direction of Covered Entity.

(e) **Access.** Business Associate agrees to make available to Covered Entity, at the request of Covered Entity, within five (5) days of any such request, the Protected Health Information of Individuals, within the control of Business Associate or any agent or subcontractor of Business Associate, to enable Covered Entity to provide access to, or a copy of such Protected Health Information, to an individual in order to meet the requirements under 45 CFR § 164.524.

(f) **Amendments.** Business Associate agrees to make any amendment(s) to Protected Health Information maintained by Business Associate or its agents or subcontractors that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity within five (5) days of receipt of such request.

(g) **Internal Books and Records.** Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(h) **Accounting for Disclosures.** Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528. Business Associate agrees to provide to Covered Entity or, as directed by the Covered Entity, directly to an Individual, all required information in response to such request for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 and relevant provisions of Subtitle D of the American Recovery and Reinvestment Act and its related regulations.

(i) **Business Associate Carrying Out Covered Entity Obligations.** To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

(j) **Other Privacy Laws.** Business Associate agrees to follow other relevant laws and regulations related to protecting health information, including, but not limited to, requirements in New York State Mental Hygiene Law § 33.13 and related regulations, New York State Public Health Law Article 27-F and related regulations, and 42 CFR Part 2.

3. **General Use and Disclosure Provisions.**

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of,
Covered Entity, provided that such use or disclosure would not violate the Privacy Standards if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

4. **Specific Use and Disclosure Provisions**

   (a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.

   (b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

   (c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information as specifically requested by Covered Entity to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

   (d) Except as otherwise limited in this Agreement, Business Associate may de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of the Privacy Standards. The parties acknowledge and agree that de-identified data does not constitute Protected Health Information and is not subject to the terms of this Agreement.

   (e) Business Associate, and its agents or subcontractors, shall only request, use and disclose the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure.

5. **Obligations of Covered Entity**

   (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice, to the extent that such changes may affect Business Associate’s use or disclosure of Protected Health Information.

   (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate’s permitted or required uses and disclosures.

   (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with
45 CFR § 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of Protected Health Information.

6. **Permissible Requests by Covered Entity.**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Standards if done by Covered Entity, except as permitted in Section 4(c) of this Agreement.

7. **Term and Termination.**

(a) **Term.** The Term of this Agreement shall be effective July 1, 2019 and terminate on June 30, 2022.

(b) **Termination for Cause.** Upon Covered Entity’s knowledge of a material breach, as determined by Covered Entity, by Business Associate under this Agreement, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within the commercially reasonable time specified by the Covered Entity, then Covered Entity may terminate this Agreement. If Business Associate has breached a material term of this Agreement and cure is not possible, Covered Entity may immediately terminate this Agreement.

(c) **Effect of Termination.**

(1) Except as provided in subparagraph (2) of this paragraph, upon termination of this Agreement, for any reason, Business Associate shall, as directed by Covered Entity, return to Covered Entity, or a third party designated in writing by Covered Entity, or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon agreement by Covered Entity that return or destruction of the Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information, which shall be the amount of time required by statute, law or regulation.
8. **Miscellaneous.**

(a) **Regulatory References.** A reference in this Agreement to a section in the Privacy or Security Standards means the section as in effect or as amended, and for which compliance is required.

(b) **Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Standards and the Health Insurance Portability and Accountability Act, Public Law 104-191 and other applicable laws relating to the security or confidentiality of Protected Health Information.

(c) **Survival.** The respective rights and obligations of the parties under Section 7(c) of this Agreement shall survive the termination of this Agreement.

(d) **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Standards.

(e) **Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors and assigns of the parties any rights, remedies, obligations, or liabilities whatsoever.

(f) **Disclaimer.** Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Business Associate’s own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of Protected Health Information.

(g) **Choice of Law.** This Agreement shall be governed by the laws of the State of New York without regard to conflict of laws principles thereof.

(h) **Severability.** If any section or portion of this Agreement shall be determined to be invalid, such determination shall not affect the enforceability or validity of the remainder of this Agreement.

(i) **No Waiver.** No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or of any later breach of the same provision. No delay in action with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach.

(j) **Notices.** Any notices to be given hereunder to a party shall be made via certified U.S. Mail or express courier to such party’s address given below.
If to Covered Entity, to:
Albany County Department of Mental Health
175 Green Street
Albany NY 12202
Attn: Dr. Stephen Giordano, Ph.D.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the First day of July 2019.

Covered Entity
By: Albany County
Name:
Title:

Business Associate
By: ____________________________
Name:
Title:
CAPITAL BEHAVIORAL HEALTH NETWORK LLC
JOINER AGREEMENT

THIS JOINER AGREEMENT (the "Joiner Agreement"), effective as of the First day of July, 2019 ("Effective Date"), by and among CAPITAL BEHAVIORAL HEALTH NETWORK LLC (the "Network"), a New York limited liability company, the sole member of which is CAPITAL BEHAVIORAL HEALTH COLLABORATIVE, INC., a New York not-for-profit corporation, and Albany County Department of Mental Health, ("New Member"), a New York Government Entity, are collectively referred to herein as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, CAPITAL BEHAVIORAL HEALTH COLLABORATIVE, INC., a New York State not-for-profit corporation, is the sole Member of Network (the "Collaborative"); and

WHEREAS, eight founding members of Network (the "Founders") have equal capital accounts and percentage interests in Network indirectly through their membership the Collaborative;

WHEREAS, New Member wishes to become a Member of Network; and

WHEREAS, the Board of Managers of Network have approved the admission of New Member on the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. New Member is hereby admitted as a Class C Member of Network.

2. It is intended that each Class B Member and each Founder have equal economic interests in Network. If New Member is admitted as Class B Member, New Member shall be credited with a capital account and percentage interest in Network equal to the aggregate of (a) the Founders indirect capital accounts and percentage interests (through the Collaborative), and (b) the capital accounts and percentage interests of all other Class B Members.

3. It is intended that each Class C Member shall participate in the governance of Network but will have no economic interest therein. If New Member is admitted as a Class C Member, such member shall not be credited with a capital account and percentage interest in Network.

4. Network hereby waives the requirement in Section 3.12(b) of Network’s Operating Agreement (the "Operating Agreement"); that New Member execute and deliver a participating provider agreement to Network as a condition to admission. New Member agrees to cooperate with Network to develop a standard form of participating provider agreement for all
participating providers, and to execute and deliver a participating provider agreement to Network substantially in the form approved by the Board of Managers of Network.

5. Network hereby waives the requirement in Section 3.12(c) of the Operating Agreement that New Member make an initial capital contribution to Network, if admitted as a Class B Member. New Member acknowledges that Class B Members may be called upon to make capital contributions as approved by the Board of Managers.

6. Network hereby waives the requirement in Section 3.12(d) of the Operating Agreement that New Member pay an initiation or membership fee to Network, if admitted as a Class C Member. New Member agrees to pay such membership fees to Network as may be approved from time to time by the Board of Managers.

7. By execution of this Joinder Agreement, New Member (a) shall be deemed a party to the Operating Agreement as if New Member were identified as a Class B or C Member of Network as reflected in Section 1 above as of the Effective Date; and (b) hereby agrees to be bound by the terms and conditions of the Operating Agreement, as the same may be amended or modified in accordance with its terms, as if New Member were an original party to the Operating Agreement.

8. MISCELLANEOUS PROVISIONS.

8.1. Amendments. No amendment to this Joinder Agreement shall be effective unless made in a writing duly executed by the Parties and specifically referring to each provision of this Agreement being amended.

8.2. Application of New York Law. This Joinder Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of New York, and specifically the Limited Liability Company Act.

8.3. Further Assurances; Execution of Additional Instruments. The Parties shall execute and deliver all documents, provide all information and take or forbear from all such action as may reasonably be necessary or appropriate to carry out the terms and conditions of this Joinder Agreement.

8.4. Construction. Whenever the singular number is used in this Joinder Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa; and the word “person” or “party” shall include a corporate firm, partnership, proprietorship or other form of association.

8.5. Headings. The headings in this Joinder Agreement are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Joinder Agreement or any provision hereof.

8.6. Waivers.
(a) Any consent or waiver executed in writing by a Party shall be binding upon such party from and after the date of execution thereof unless a later or earlier date is specified therein.

(b) No delay or failure to exercise any remedy or right occurring upon any default shall be construed as a waiver of such remedy or right, or an acquiescence in such default, nor shall it affect any subsequent default of the same or a different nature.

8.7. Rights and Remedies Cumulative. The rights and remedies provided by this Joinder Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

8.8. Severability. If any provision of this Joinder Agreement or the application of any provision hereof to any person or circumstances is held to be legally invalid, inoperative or unenforceable, then the remainder of this Joinder Agreement shall not be affected unless the invalid provision substantially impairs the benefit of the remaining portions of this Joinder Agreement to the other Party or Parties.

8.9. Successors and Assigns. This Joinder Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns, but this section shall not be construed or deemed to authorize any Transfer or assignment not expressly permitted under this Joinder Agreement.

8.10. Venue and Acceptance of Service of Process.

(a) Each party to this Joinder Agreement hereby agrees and consents that any legal action or proceedings with respect to this Joinder Agreement shall only be brought in the courts of the State of New York and in the County of Albany. By execution and delivery of this Joinder Agreement, each such party hereby (i) accepts the jurisdiction of the aforesaid courts; (ii) agrees to be bound by any judgment of any such court with respect to this Joinder Agreement; (iii) waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the venue set forth above; and (iv) further waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(b) At the option of any party bringing such action, proceeding or claim, service of legal process may be made upon any other party by transmitting a copy of such process by registered or certified mail, return receipt requested, postage prepaid, to such other party at the address set forth above. Such mailing shall be deemed personal service and shall be legal and binding upon the party so served in any such action, proceeding or claim.

8.11. No Third Party Rights. Except as expressly provided in this Joinder Agreement, this Joinder Agreement is intended solely for the benefit of the Parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the Parties hereto.
8.12. Counterparts. This Joinder Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

8.13. Arm's Length Negotiations; Drafting. Each Party herein expressly represents and warrants to the other Parties hereto that before executing this Joinder Agreement, said Party has fully informed itself of the terms, contents, conditions, and effects of this Joinder Agreement; said Party has relied solely and completely upon its own judgment in executing this Joinder Agreement; and said Party has had the opportunity to seek and has obtained the advice of counsel before executing this Joinder Agreement, which is the result of arm's length negotiations conducted by and among the Parties and their respective counsel. This Joinder Agreement shall be deemed drafted jointly by the Parties and nothing shall be construed against one Party or another as the drafting Party.

8.14. Attorneys' Fees. The prevailing party in any proceeding shall be entitled to recover its reasonable attorneys' fees and costs of collection to enforce any provision of this Joinder Agreement.

Each of the Parties has executed this Joinder Agreement as of the day and year first written above.

CAPITAL BEHAVIORAL HEALTH NETWORK LLC
CAPITAL BEHAVIORAL HEALTH COLLABORATIVE, INC., Class A Member

By: _________________________________
    Dorothy Cucinelli, Chief Executive Officer

By: _________________________________
    Kevin Connally, Chairperson of the Board

Albany County Department of Mental Health
[New Member]

By: _________________________________
    Name: ______________________________
    Title: ______________________________
Who we are
- A network of 44 nonprofit, for profit and government agencies that offer mental health, substance abuse and other support services to the communities they serve in nine NE NY counties
- Not a direct service provider
- Incorporated in July 2018 as an LLC
- Funded by a three-year grant from OMH
- Office located at 255 Washington Ave Extension, Suite 100, Albany

Goals
Negotiate and manage value-based payment contracts for Medicaid services on behalf of its member agencies

What Value Based Payment is...and is not
- Replacement for traditional fee for service payments with a contracted fee that will be based on patient care outcomes. The goal of NYS is to have 80% of Medicaid payments in a VBP payment arrangement by April 2020
- Not a three-year project
- Does not include private insurance payers at this time

Why CBHN is important
- Creates the critical mass of services that is needed to successfully negotiate rates with third parties
- Creates a coordinated network of providers with common purpose and standards, reducing fragmentation of services for clients
- Will have the legal structure (Independent Practice Association or IPA) needed to legally negotiate rates on behalf of the group

What does CBHN do
- Establish data collection infrastructure
- Collect and analyze data to determine outcomes and costs
- Share data with members
- Negotiate group contracts for its members based on value of services
- Work with members to establish common standards of care as part of contracts
CBHN Legal Considerations

Affiliate/Network members
- Affiliate or network “member” designation applies to VBP Readiness project only
- Separate corporation was established to create necessary legal structure for contracting

Structure
- Capital Behavioral Health Collaborative is the nonprofit parent of CBHN
  - Consists of the founding 8 founding agencies
  - Assumes risk for losses
- Capital Behavioral Health Network (CBHN) is the for profit (LLC) subsidiary

Membership in CBHN
- Level A members
  - CBH Collaborative is the sole Level A member
  - Each agency on CBH Collaborative board has one CBHN board seat (8)
  - Have already made significant contributions in resources
  - Shares in profit and losses
  - Would make capital contribution if needed to cover losses
- Level B members
  - Shares in profit and losses
  - May be required to make capital contribution if needed to cover losses
  - No initial membership fee is required
  - All level B members will select up to three members for board seats
- Level C Members
  - Do not share in profit or loss
  - Will not be asked for a capital contribution to cover losses
  - No initial membership fee is required
  - All Level C members will select up to three members for board seats

Documents
- Joinder agreement
- Business Associate Agreement- pick one:
  - BAA/QSOA- for substance abuse service providers
  - BAA- All other providers