

## **SETTLEMENT AGREEMENT**

**THIS AGREEMENT** (the "Agreement"), dated as of February 23, 2022, is by and between **CAPITAL DISTRICT PHYSICIANS' HEALTH PLAN, INC.** ("**CDPHP**"), a New York not-for-profit corporation having a principal place of business at 500 Patroon Creek Boulevard, Albany, NY 12206, and Albany County Department of Mental Health ("**Provider**"), a New York Municipality and operator of a New York State OMH-licensed clinic having a principal place of business at 175 Green Street, Albany, New York 12201. Provider and CDPHP shall hereinafter be referred to individually as a "Party" and collectively as the "Parties."

### **RECITALS**

A. CDPHP is certified as a health maintenance organization under Article 44 of the New York Public Health Law and is a participating health plan in the Child Health Plus program. Provider is licensed by either (i) the New York State Department of Health ("DOH") under Article 28 of the Public Health Law, (ii) the New York State Office of Mental Health ("OMH") under Article 31 of the Mental Hygiene Law, or (iii) the Office of Alcoholism and Substance Abuse Services ("OASAS") under Article 32 of the Mental Hygiene Law, and is authorized to provide behavioral health services to individuals enrolled in Child Health Plus program health plans ("Child Health Plus Members").

B. CDPHP and Provider have entered into a participating provider contract ("Provider Contract") pursuant to which Provider provides health care services to CDPHP's Child Health Plus Members and CDPHP pays for such services at the fees set forth in the Provider Contract (the "Contract Rates").

C. The final 2015-2016 New York State budget included a provision that requires the fees paid by health plans to providers licensed under Article 28 of the Public Health Law or under Article 31 or 32 of the Mental Hygiene Law for ambulatory behavioral health services provided to Child Health Plus Members to be equivalent to the payments established for such services under the Ambulatory Patient Group ("APG") rate-setting methodology, applicable to services provided on or after April 1, 2015 (see Part C of Chapter 57 of the Laws of 2015). To allow health plans to implement the new requirement to pay fees equivalent to the APG methodology, the law further required DOH to determine the applicable services and establish the specific fees for Child Health Plus services in consultation with OMH and OASAS.

D. DOH did not issue final guidance or regulations necessary to allow health plans to determine the equivalent fees under the APG methodology. Therefore, CDPHP continued to pay Provider for Child Health Plus services at the Contract Rates during the period from April 1, 2015 to December 31, 2021 (the "Settlement Period"). At the direction of DOH, CDPHP has examined the claims data and repriced the claims using the APG software currently in use for the DOH Medicaid program.

E. DOH is now directing health plans to reimburse providers licensed pursuant to Article 28 of the Public Health Law and Articles 31 and 32 of the Mental Hygiene Law for paid claims for ambulatory behavioral health services provided by certified or licensed professionals to Child Health Plus Members during the period from April 1, 2015 to December 31, 2021 (the "Settled Claims"), the difference between the rates payable under the APG methodology and the Contract Rates.

**NOW, THEREFORE**, in consideration of the Recitals and the mutual promises and covenants contained herein, the Parties hereby contract and agree as follows:

1. Incorporation of Recitals. Each of the Recitals set forth above is incorporated by reference into this Agreement.
2. Claims Review. The Parties have reviewed all of the Settled Claims (see Attachment A) and have now determined that the full amount payable by CDPHP to Provider to reconcile the payments made by CDPHP with the rates payable under the interim APG methodology does not exceed Fifty-Two Thousand Eight Hundred Forty-Two Dollars and 72/100 (\$52,842.72). The Parties agree that this amount is not subject to any interest or late payment penalty.
3. Release. This Agreement formally resolves any and all claims of Provider against CDPHP for the obligation under Part C of Chapter 57 of the Laws of 2015 to pay for the Settled Claims at fees which are equivalent to the payments established for such services under the APG rate-setting methodology. In consideration of the full and timely performance of all terms and conditions as set forth in this Agreement, Provider will not seek any additional payment or adjustment, including interest, for any of the Settled Claims. Provider represents and warrants that, to the best of its knowledge, no entity or person other than Provider had, has, or claims, any interest in the Settled Claims.
4. Payment. To avoid incurring administrative costs and burdens, the Parties have agreed to a lump sum payment in lieu of resubmitting and reprocessing the Settled Claims for adjustment in accordance with APG requirements and methodology. In consideration for the release set forth herein, and in consideration of the rights and obligations created by this Agreement, CDPHP shall pay Provider the total sum of Fifty-Two Thousand Eight Hundred Forty-Two Dollars and 72/100 (\$52,842.72) within twenty (20) calendar days after this Agreement is executed by both Parties.
5. APG Claims Submission Requirements. Effective upon a mutually agreed upon date (the "APG billing date"), Provider will bill and CDPHP will pay in accordance with the APG rate-setting methodology and APG billing requirements for Child Health Plus services. The Parties agree to execute a separate settlement agreement to resolve any payment differences for services rendered after the Settlement Period but before the APG billing date. Nothing herein shall prohibit the Parties from negotiating, for any future period, a different reimbursement methodology or rate that fully complies with Part C of Chapter 57 of the Laws of 2015 and any other applicable federal or state law, rule, regulation, regulatory directive or guidance.
6. Binding Effect. The terms of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns.
7. No Third-Party Beneficiary. No provision of this Agreement shall be construed to confer any third-party beneficiary rights to any non-party.
8. Severability. If any provision of this Agreement is deemed to be unlawful or otherwise unenforceable, it shall be automatically stricken from this Agreement, and this Agreement shall otherwise remain in full force and effect, to be construed as closely as possible under the circumstances to effectuate the original intent of the parties hereto.

9. Amendments. This Agreement may not be amended except by the written and executed agreement of the Parties.

10. Survival. All provisions of this Agreement that by their nature or express terms survive the expiration or termination of this Agreement, shall survive such expiration or termination.

11. Governing Law; Venue. This Agreement shall be construed and governed by the laws of the State of New York without reference to choice of laws or conflict of law principles. Any litigation commenced pursuant to this Agreement shall be exclusively in Rensselaer or Albany County in the State of New York.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute a single instrument.

13. Entire Agreement. This Agreement, including any exhibits or schedules annexed hereto, constitutes the entire understanding and agreement between the Parties with regard to all matters herein. There are no other agreements, conditions or representations, oral or written, express or implied, with regard thereto. This Agreement supersedes, in the entirety, any and all previous agreements, whether oral or written, between the Parties concerning the subject matter hereof.

14. Authorization; Enforcement. Each signatory hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she signs. Each Party represents and warrants to the other Party that it has all requisite power and authority to enter into this Agreement and to carry out its obligations hereunder.

**IN WITNESS WHEREOF**, the Parties hereto have signed this Agreement on the date written below, to be effective as of the date first above written.

**CAPITAL DISTRICT PHYSICIANS'  
HEALTH PLAN, INC.**

**ALBANY COUNTY DEPARTMENT OF  
MENTAL HEALTH**

By: \_\_\_\_\_  
Denise Corcoran  
Senior Vice President  
Healthcare Network Strategy  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
County Executive \_\_\_\_\_  
Date: \_\_\_\_\_