

ORDINANCE NO. 05-2017

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.

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 MA payments 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.

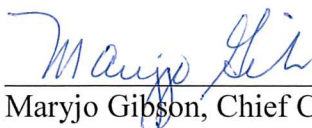
ENACTED AND ORDAINED as an Ordinance by the Board of Commissioners of the County of Berks, in lawful session duly assembled, this 21st day of December, 2017.

COUNTY OF BERKS

By: 
Christian Y. Leinbach, Chairman

By: 
Kevin S. Barnhardt, Commissioner

Attest:


Maryjo Gibson, Chief Clerk

By: 
Mark C. Scott, Esq., 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 enhanced MA payments to the County Nursing Facility as outlined in this Agreement, which, in turn, will be matched by additional Federal Financial Participation. 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 enhanced MA payments set forth in this Agreement are contingent upon CMS approval. To obtain CMS approval, DHS will submit a State Plan Amendment ("SPA") that includes the enhanced MA payments. The County shall transfer IGT funds only after DHS receives approval from CMS for the enhanced MA payments.
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 enhanced MA payments, 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 \$7,438,642 on a date agreed to by DHS and the Pennsylvania Coalition of Affiliated Healthcare and Living Communities ("PACAH").
 - b. The County shall transfer those IGT funds to DHS via the Automated Clearing House or via wire transfer to an account designated by DHS prior to the payments by DHS, OLTL for safety net payments to County Nursing Facilities as may be permitted under the Commonwealth's State Plan.
 - c. DHS, OLTL will use \$4,760,428 of the total annual IGT to fund the non-federal share (or "state share") of a safety net payment to the County Nursing Facility for fiscal year ending June 30, 2018 ("FYE June 30, 2018"), as authorized by the aforementioned, CMS-approved SPA. The total amount of the safety net payment will be \$9,880,507.
 - d. DHS, OLTL will use \$2,678,214 of the total annual IGT to offset the amount appropriated for state-funded county-administered human services programs and for satisfaction of the County's obligation of ten percent (10%) of the non-federal share of public nursing home care under 62 P.S. § 472 for calendar year 2018.
 - e. The County agrees that the dollar amounts set forth in subsections a. through c., above, were calculated on two assumptions, which, if altered, would change those amounts:
 - i. The amounts were calculated using the Federal Medical Assistance Percentage ("FMAP") rate for October 1, 2017. Consequently, the amounts may be adjusted to reflect any changes in the FMAP; and
 - ii. The amounts were calculated based on the anticipated aggregate amount of the IGTs. Consequently, those amounts may be adjusted to reflect any changes in the aggregate IGT amounts received by DHS.

DHS shall provide notice of revisions to the dollar amounts set forth in subsections a. through c., above, that are due to a shortfall in the anticipated aggregate IGTs no later than five (5) business days prior to the anticipated date of submission of the SPA.

- f. DHS shall use its best efforts to pay the safety net payments specified in subsection c., above, through its then-existing payment process within twenty-one (21) calendar days from the date that DHS receives the full IGT amount that is referenced in subparagraph 5.a. from the County.

6. 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 safety net payment made to the County Nursing Facility. DHS will consult with and provide the County and PACAH a copy of DHS response to the CMS deferral or disallowance.
- b. If CMS disallows FFP in the safety net payment paid to the County Nursing Facility, DHS shall recoup the disallowed FFP, and any related interest and penalties, if any, (collectively "the Disallowance") 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 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 the full amount of the Disallowance;
 - ii. If the reason for the Disallowance is ultimately found to be attributed to the design/structure of the IGT program (for example, among other things, if CMS, or if an appeal is taken, the court of final recourse, determines that this Agreement was impermissible or the public notice for the safety net payments was a defective notice), then DHS shall recoup the Disallowance less fifty percent (50%) of the amount appropriated for state-funded county-administered human services programs under Section 5.d.

The Disallowance shall not exceed the amount of the safety net payment of \$9,880,507 less the amount of the associated state share of \$4,760,428, as identified in Section 5. c., above. In the event the amount 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 Section 5. c., above.

- c. If DHS determines that meritorious grounds exist to appeal the Disallowance of FFP in the safety net payment made 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' 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. If, after the County has made the IGT but before DHS pays the safety net payment authorized by an approved SPA, CMS, for any reason, does not permit or revokes approval of the IGT program described herein, then DHS is required to return the same amount of IGT funds to the County within twenty-one (21) calendar days of DHS receiving such notification.
- 9. 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.
- 10. 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.

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

For the Department

For Berks County

Name:
Peggy Morningstar

Name: Terence J Brennan, Administrator
Berks Heim Nursing & Rehabilitation

E-mail address:
pmorningst@pa.gov

E-mail address: tbrennan@countyofberks.com

Mailing address:
Department of Human Services
Office of Long Term Living
555 Walnut Street, 6th Floor
Harrisburg, PA 17105-8025

Mailing address: 1011 Berks Road
Leesport, PA 19533

- 12. Term; Termination. This Agreement shall become effective on the earliest date it is fully executed by both parties. Notwithstanding the foregoing, either party may terminate this Agreement by providing written notice received by the other party prior to the date that DHS, OLTL submits the SPA for the enhanced payments to CMS. DHS will provide the County with notice of the anticipated date of its submission of the SPA no later than five (5) business days prior to the anticipated date.

13. 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 paragraph 5.b., 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: _____

Printed Name: _____

Title: _____

By: _____

Date: _____