

ORDINANCE NO. 01-2016

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 PAYMENT 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 MA Program is administered by the Pennsylvania Department of Human Services (DHS); and

WHEREAS, the Pennsylvania Department of Human Services (“DHS”) has established an Intergovernmental Transfer Program (“Program”) to provide increased financial support to county nursing facilities under the MA Program; and Department is facing a shortage of beds for housing state-committed inmates, it is in the best interest of the Commonwealth to transfer certain Department inmates to county correctional facilities with available bed space; and

WHEREAS, on January 14, 2016 the Berks County Board of Commissioners (“Commissioners”) approved Resolution No. 15-16 and consented to provide a nonbinding letter of interest to participate in the 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.

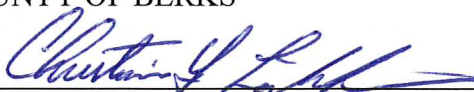
NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Commissioners of the County of Berks, Pennsylvania as follows:


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.

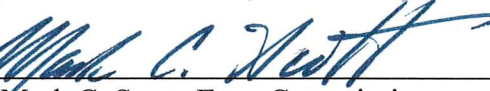
3. The Commissioners are hereby authorized and directed on behalf of the County: (i) to execute and deliver the Agreement, subject to final review and approval of the terms and conditions by the Berks County Solicitor's Office; and (ii) to execute and deliver such additional instruments, and to take 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 April, 2016.

COUNTY OF BERKS

By: 
Christian Y. Leinbach, Chairman

By: 
Kevin S. Barnhardt, Commissioner

By: 
Mark C. Scott, Esq., Commissioner

Attest:


Maryjo Gibson, Chief Clerk

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. 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 state share of MA payments 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 County shall transfer funds only after DHS receives approval from CMS for the enhanced payments.
3. Voluntariness. The County attests that it entered voluntarily into this Agreement to make the IGTs described hereunder.
4. Permissible Sources. The County shall ensure that the IGT funds provided to DHS meet the requirements of 42 CFR 433, Subpart B, and are not derived from an impermissible source, including recycled Medicaid payments, Federal money precluded from use as the State Share, impermissible taxes, and non-bona fide provider-related donations. Each time the County makes an IGT to DHS, the County shall specify the source of the IGT funds (e.g., governmental taxes – state taxes, county taxes; governmental operations).
5. Transfer and Use of Funds. The parties will transfer and use the IGT funds as specified below.
 - a. The County shall transfer 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 Medical Assistance Day One Incentive (MDOI) Payments to County Nursing Facilities permitted under 62 P.S. § 443.1(7) and set forth in State Plan Attachment 4.19 D, Part Ia.

- b. The County shall make an IGT in the total annual amount of \$4,954,168.00 on a date agreed to by DHS and the Pennsylvania Coalition of Affiliated Healthcare and Living Communities.
 - c. DHS, OLTL will use \$3,619,280.00 of the total annual IGT funds for the non-federal share for MDOI Payments made pursuant to State Plan Amendment 15-0040, the State Plan Attachment 4.19 D, Part Ia and 55 Pa. Code Chapter 1189 relating to County Nursing Facility Services.
 - d. DHS, OLTL will use \$1,334,888.00 of the total annual IGT fund to offset the amount appropriated for the non-federal share for payments made pursuant to the Case-Mix Payment System for Nursing Facility Services section of Attachment 4-19D of the Pennsylvania Medicaid State Plan 4.19-D, Part IA and 55 Pa. Code Chapter 1189 relating to County Nursing Facility Services for Medical Assistance days of care paid through the Medicaid per diem rate.
 - e. DHS shall use its best efforts to pay the MDOI Payments through its then-existing payment process within twenty-one (21) calendar days from the date DHS received the IGT from the County.
6. County Nursing Facility Indemnification Prohibited. A county nursing facility receiving payments funded with IGTs made pursuant to this Agreement shall not be required to return the payments, in whole or in part, to the County or to reimburse the County for IGTs made to DHS.
7. Indemnification by County to the State. If, after the County renders the IGT and DHS has made the MDOI Payments, CMS disallows all or some of the Federal Financial Participation related to the IGTs or payments for which IGT funds were used, then Berks County shall pay DHS only the disallowed Federal Financial Participation, including any interest and penalty, or otherwise indemnify and hold DHS harmless at the discretion of DHS.
8. Indemnification by the State to the County. If, after the County has made the IGT but before DHS makes the MDOI payment, 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 funds transferred by the IGT 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 L. Morningstar

Name:

E-mail address: pmorningst@pa.gov

E-mail address:

Mailing address:

Mailing address:

Department of Human Services
Office of Long-Term Living
555 Walnut St, 6th Floor
Harrisburg, PA 17105-8025

12. Term; Termination. This Agreement shall become effective on the earliest date it is fully executed by both parties and shall terminate on June 30, 2016 or on the date that the County receives the MDOI payment authorized under paragraph 5.c., above, whichever date is later. Notwithstanding the foregoing, either party may terminate this Agreement by providing 30 days advance written notice to the other party.

13. Survival. Sections 4 and 6 through 10 of this Agreement shall survive termination of the Agreement.

14. Authority. Nothing in this Agreement shall be construed to limit, restrict or modify DHS's powers, authority or duties under federal or state law and policies derived therefrom.

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: Peggy L. Morningstar

Printed Name: _____

Title: CFO/Director of Finance

Title: _____

By: _____

By: _____

Date: _____

Date: _____