

CLARK COUNTY STAFF REPORT

DEPARTMENT: Prosecuting Attorney

DATE: June 10, 2015

REQUEST: Consent to the new Amended and Restated Interlocal Agreement for a Joint Regional Support Network, effective as of July 1, 2015, removing Cowlitz County from the Southwest Washington Behavioral Health Regional Support Network.

CHECK ONE: Consent CAO

BACKGROUND

Since October 1, 2012, the Southwest Washington Behavioral Health (SWBH) Regional Support Network (RSN) has been comprised of Cowlitz, Clark, and Skamania Counties. Recently, Cowlitz County began steps to realign its behavioral health needs with Grays Harbor County. At the June 4, 2015 meeting of the Governing Board for SWBH, an amended and restated interlocal agreement was presented for Board approval and passed unanimously, effectively realigning SWBH RSN with just Clark and Skamania Counties. The existing interlocal agreement was amended to:

- 1) Reflect that Cowlitz County will be realigning itself with Grays Harbor Regional Support Network as of July 1, 2015 and will no longer be a SWBH member government;
- 2) Incorporate additional changes reflective of the member government realignment and participating, including the removal of weighted voting for Governing Board Members;
- 3) Incorporate prior amendments.

COMMUNITY OUTREACH

This recommendation will impact those individuals receiving services through SWBH RSN in Cowlitz County. It is not likely to impact Clark County

There was a public hearing regarding the changes to the interlocal agreement on June 4, 2015.

BUDGET AND POLICY IMPLICATIONS

There is no budgetary impact as a result of the amended interlocal agreement.

FISCAL IMPACTS

Yes (see attached form) No

ACTION REQUESTED

Consent to the amended and restated interlocal agreement for SWBH RSN



DISTRIBUTION

Name _____
 Title _____

Approved: _____



CLARK COUNTY
 BOARD OF COMMISSIONERS

June 16, 2015

SR 117-15

FISCAL IMPACT ATTACHMENT

Part I: Narrative Explanation

I. A – Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information

Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Total						

II. A – Describe the type of revenue (grant, fees, etc.)

Part III: Estimated Expenditures

III. A – Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
Total							

III. B – Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual						
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
Total						

SOUTHWEST WASHINGTON BEHAVIORAL HEALTH REGIONAL SUPPORT NETWORK

An Interlocal Agreement for a Joint Regional Support Network

PA 15-31

THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR A JOINT REGIONAL SUPPORT NETWORK (the “Agreement”) is made and entered into between CLARK COUNTY and SKAMANIA COUNTY (collectively, the “Counties” and each individually, a “Party.”), effective as of the 1st day of July, 2015.

WITNESSETH:

WHEREAS, the Counties, together with Cowlitz County, formed Southwest Washington Behavioral Health (“SWBH”), a **Regional Support Network (RSN)** pursuant to that certain Interlocal Agreement for Joint Regional Support Network effective as of July 16, 2012 (the “July Agreement”) to plan, coordinate and administer Mental Health Services for their respective populations; and

WHEREAS, RCW Chapter 39.34, entitled the “Interlocal Cooperation Act” permits local governments to make the most effective use of their power by enabling them to cooperate with each other on the basis of mutual advantage, and thereby provide planning, administrative and program services in a manner that will accord best with geographic, economic and population factors;

WHEREAS, RCW Titles 71.24 and 71.05 provide for the establishment of regional systems of care which integrate planning, administration, and service delivery duties assigned to the counties; and

WHEREAS, RCW 71.24.100 authorizes a group of counties to enter into a joint operating agreement to form a regional support network;

WHEREAS, the Counties together with Cowlitz County amended the July Agreement to terminate the participation of Cowlitz County effective as of July 1, 2015, and left all other provisions thereof intact;

WHEREAS, Section 6 of the July Agreement requires a new Interlocal Agreement to be entered into by Parties desiring to continue SWBH following the withdrawal of any Member Government and the Counties’ desire to amend the July Agreement to reflect the realignment of Cowlitz County and establish the ongoing rights and responsibilities of the continuing Parties to the RSN;

WHEREAS, Section 11 of the July Agreement provides for amendment of its terms by agreement of all the parties;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **PURPOSE:** The purpose of this agreement is to establish a consolidated RSN to be known as the Southwest Washington Behavioral Health Regional Support Network (hereinafter "SWBH") to carry out the responsibilities of a Regional Support Network as defined in RCW 71.24.300 for the residents of Clark, Cowlitz and Skamania Counties. To the maximum extent authorized by law and subject to the approval of member counties as provided herein, the RSN created pursuant to this Agreement also shall have the authority to enter into and provide services pursuant to contracts with the State of Washington (the "State") or any contractor of the State in connection with services established under Chapter 74.09 RCW if specifically approved by the RSN Board.

2. **DURATION OF AGREEMENT:**

Basic Term: This Agreement shall commence upon final approval of the Parties and shall be in force in five year terms, with renewal occurring automatically absent compliance with the notice provisions under Section 6. Any party may withdraw pursuant to Sections 6 or 9.

3. **DUTIES, POWERS, AND RESPONSIBILITIES OF THE RSN:**

a. **Governing Board:**

- i. **Appointment.** SWBH shall be governed by a Governing Board (hereinafter "Board") consisting of two (2) members, one from each member County. The legislative body of each County shall appoint one (1) member to represent that County. Governing Board members shall serve at the pleasure of the appointing authority. Each County shall also appoint one alternate member for each appointed member. Alternate members shall have the same authority to attend, participate in, and vote at any meeting of the Board or a Committee as that County authority's member when such member is absent from the meetings. The appointment and continuing service of Governing Board and alternate members is contingent on compliance with the conflict of interest protocol as established by the SWBH pursuant to RCW 42.23.040, both at the time of the initial appointment and throughout their tenure. Each person so appointed shall commence service upon written notification to SWBH of the name of the appointed member and alternate member.
- ii. **Quorum and voting.** Meetings require a quorum of two members. Except as otherwise provided in this agreement, a majority vote of the members of the Governing Board shall be required for the Board to take action or exercise any of its powers.

- iii. Unanimous vote required in certain instances. The following actions require a unanimous vote:
 - (a) A change in the legal status of the RSN to a corporate or other legal structure;
 - (b) Initial adoption of bylaws. Once adopted the RSN bylaws may be changed by a majority vote; and
 - (c) The addition of parties to this agreement.

The unanimity requirement shall be reconsidered six months following execution of this agreement.

- b. **Financial Affairs.** The Governing Board shall be responsible for the financial affairs of SWBH. SWBH funds shall be deposited with the Clark County Treasurer and the County Treasurer shall be the custodian of such funds, and the Treasurer may make payments from such funds upon audit by the Clark County Auditor as provided for in RCW 71.24.100. The County Treasurer shall establish a special fund on behalf of SWBH to be designated “Operating Fund of Southwest Washington RSN.” Interest on investment of RSN funds shall accrue to the benefit of said operating fund.

Counties party to this Agreement retain individual county control over tax revenues collected under the provisions of RCW 71.20, any other local financial contributions to mental health programs, and grant-funded programs where the application for the grant originated and is retained locally.

- c. **Powers.** The powers of the Board to transact the business of the Southwest Washington Regional Support Network shall include:
 - i. Hiring, evaluating and terminating the SWBH Administrator, who shall serve at the pleasure of the Governing Board and be a point of accountability for SWBH operations and administrative structure, including all hiring and the development, approval, and implementation of all policies and procedures, service delivery plans and operating plans;
 - ii. Participation in the hiring of the Compliance Officer as detailed in the Bylaws. Termination of the SWBH Compliance Officer requires consent of the Governing Board;
 - iii. Reviewing, modifying, approving and adopting SWBH budgets and contracts developed and presented by the SWBH Administrator or the Governing Board;

- iv. Reviewing drafts of all Advisory Board Bylaws as recommended for adoption by any contractually required Advisory Boards, with consent by the Governing Board;
- v. Adopting SWBH Bylaws and approving amendments, alterations or repeals of the SWBH Bylaws. Any such Bylaws shall be consistent with this Agreement and shall be binding on all parties;
- vi. Executing contracts for the operation of the RSN including leases and other contracts for the rental of property;
- vii. Adopting within the Bylaws, policies and procedures for the use and payback of risk reserve funds, further defining the responsibilities and duties of the SWBH Administrator and Compliance officer, and instituting any insurance requirements or coverage that the Governing Board deems prudent; and
- viii. Taking any necessary or proper steps to exercise the powers of the Governing Board. If the SWBH Administrator is unable or unwilling to perform its duties, the Governing Board possesses the authority to act in the Administrator's place. If SWBH is failing to meet state requirements, the Governing Board has authority to take whatever action necessary to bring the RSN into compliance.

d. Board Appointments.

- i. **Administrator.** The Governing Board shall identify, select and hire individuals to serve in the position of SWBH Administrator and such other administrative officers as the Board may deem necessary. The SWBH Administrator and other administrative officers will be employees of SWBH and will be responsible for operational compliance with all applicable statutes, rules, regulations, policies, Bylaws and contract provisions. The duties and responsibilities of the SWBH Administrator shall be set forth within the Bylaws.
 - ii. **Compliance Officer.** The role of the Board in selecting the Compliance Officer will be addressed in the Bylaws. The Compliance Officer will monitor compliance with the contract requirements of Board executed contracts. The Bylaws shall detail the full authority and responsibilities of this position.
- e. **Advisory Board:** SWBH may be required under its state contract to create one or more Advisory Boards. Consistent with the contract terms, each County, acting through its Board of County Commissioners, shall appoint members to such boards in equal proportion, or as otherwise agreed to by the Governing Board. Membership will be consistent with current contractual

requirements, as applicable. An Advisory Board will meet as required under contract and may rotate the location of these meetings to be approved by the Governing Board. Each county authority shall seek local input in selecting its representatives to an Advisory Board. The mechanism for seeking local input shall be left to the discretion of each county, consistent with contractual requirements. Members of an Advisory Board shall be residents of the appointing Counties. Members of an Advisory Board shall serve at the pleasure of the appointing authority. Appointments to an Advisory Board shall be for two (2) year terms, unless as otherwise required under the applicable contract. An Advisory Board shall elect its own leadership, in accord with contractual requirements.

4. **INSURANCE, RISK MANAGEMENT, AND INDEMNIFICATION**

- a. **Risk Reserves:** SWBH will maintain Risk Reserve Funds as required by its contracts. If at any time, the balance of said Risk Reserve Fund goes below that which is required by SWBH's contracts, the SWBH Administrator shall immediately give notice to each Party to this Agreement and shall give monthly notices of the current balance of said Risk Reserve Fund each month thereafter until the balance of said fund meets the SWBH contracted requirements. Risk Reserve Funds shall only be used as allowed in contract. In addition to risk reserves required by SWBH's contracts, SWBH will determine and manage an Internal Risk Reserve for those funds not governed by SWBH's contracts as set forth in Paragraph 3.c.vii.above. The required amount added to the Internal Risk Reserve for these additional funds will be designated by a percent of the aggregated additional funds received by each party. The specific percent, process and procedure for use and payback of these funds will be governed by SWBH policy and procedure. Non-Risk Reserves encumbered or slated for specific use will be identified and restricted for each party and attached as an Exhibit to this agreement.
- b. **Responsibility for Employees:** SWBH staff members shall be employees of SWBH and shall not be considered employees of any of the member counties. SWBH shall be responsible for the actions of staff members. SWBH agrees to defend, indemnify, and hold harmless the other Parties to this Agreement against any and all claims arising out of the acts or omissions of the SWBH staff members. SWBH additionally agrees to defend, indemnify, and hold harmless each Party to this Agreement against any and all claims brought by SWBH staff members as a result of their employment, including but not limited to claims for wrongful termination and for violation of employee rights, to the extent that such claims do not relate to the direct action or inaction of the Party's Governing Board representative.
- c. **Claims Based on Acts of Subcontractors:** This paragraph shall not be construed to create any rights whatsoever in any person or entity not a party to this Agreement. The sole purpose of this paragraph is to allocate contribution

among the Parties to this Agreement, in the event of claims brought against SWBH as a result of the acts or omissions of SWBH's subcontractors. It is the intent of the Parties to this Agreement that SWBH and the Parties to this Agreement are not liable for the acts or omissions of SWBH's independent contractors. The SWBH Governing Board shall include in all subcontracts provisions requiring subcontractors to indemnify SWBH and each Party against any and all claims attributed to the acts or omissions of said subcontractors. The SWBH Governing Board shall also require all subcontractors to maintain policies of general and, where applicable, professional liability insurance with limits of not less than \$1,000,000.00 per occurrence, and \$3,000,000.00 in the aggregate.

- d. Liability, Property Damage and Governing Board member's Errors and Omission Insurance:** The Parties agree that each Governing Board member shall serve on the Governing Board in the ordinary course of his or her employment with a Party and shall retain, to the maximum extent possible, immunity from suit for acts or omissions taken in good faith execution of his or her duties as a member of the Governing Board. The SWBH Governing Board, with SWBH Funds, shall purchase and maintain a liability and property damage policy that includes Governing Board members' Errors and Omission Insurance with limits of liability of not less than \$1,000,000.00, combined single limit. The Parties shall be included as additional named insureds on such policy and such policy shall include each county's officials, employees, agents, and volunteers when they are performing an official function for SWBH as authorized by the SWBH Governing Board or Administrator. As an additional level of protection, SWBH shall, with SWBH funds, purchase a policy or policies of liability insurance to cover liability claims. The limits of said additional insurance shall not be less than the sum of \$5,000,000, combined single limit which policy shall name each of the counties as an additional named insured.
- e. Excess Liability:** Any third party claims, damages, costs, judgments, settlements, liabilities, or related attorneys' fees ("Damages") incurred by or awarded against any Party arising out of the operations of SWBH shall be considered the responsibility of SWBH. The Parties shall be jointly but proportionally liable for the amount of any Damages against SWBH that cannot be covered by SWBH funds or the insurance proceeds delineated above or proceeds from judgments against third parties. Proportional liability for the purpose of this Agreement will be determined by the ratio of the covered lives (as defined in the Bylaws) multiplied by the current rate with the product being divided by the total consideration paid under the state contract.
- f. Cooperation:** The Parties shall cooperate in the defense of any such claims or lawsuits. Whenever any party receives a claim or lawsuit that could arise from SWBH operations, it shall promptly give written notice thereof to each member of the Governing Board. If any Party terminates its participation

under paragraph 6 below, that Party shall share in the collective responsibility only for claims, damages, costs, judgments, settlements, and other liabilities arising from SWBH operations through the date of that Party's termination. This paragraph shall survive the termination of this Interlocal Agreement.

- g. Hold Harmless:** Each Party to this Agreement agrees to defend, indemnify and hold harmless all other Parties to this Agreement, their officers, agents, and employees for any claim, action, including but not limited to actions for misappropriation of funds, and provision of services, judgment, or lien for injury to persons or property damage caused by, resulting from or arising out of the sole negligence, recklessness or willful misconduct of the indemnifying Party, its officers, agents or employees.

5. PROPERTY OF SWBH:

- a. Disposal of Assets upon Termination:** Business office assets acquired on or after October 1st, 2012 shall be the property of SWBH, unless otherwise specified by the Governing Board at the time of acquisition of such asset. In the event of termination of this Agreement, all assets of SWBH, after payment of all claims obligations, and expenses of SWBH, shall be distributed to terminating member governments proportionate to their respective aggregate funds received. The Governing Board shall distribute the assets to terminating member governments within six (6) months after the disposition of the last pending claim by SWBH.
- b. Property:** Except for business office assets held by SWBH on October 1st, 2012 and donations of real property, SWBH shall not acquire real property. SWBH may acquire, hold and dispose of personal property subject to the same restrictions as imposed by Washington State law upon a County of the State of Washington.
- c. Contingent Liabilities:** Upon termination, the Governing Board shall complete and dissolve the business affairs of SWBH. If liabilities of SWBH at the time of termination exceed assets, each party shall pay its share of any additional amounts necessary for final disposition of all claims, as determined according to the contribution and indemnification principles established in Section 4 of this Agreement and after determining the appropriate share of third parties, if any, including but not limited to contractors of SWBH and the State.
- d. Transfer of Assets to Cowlitz County:** Upon the effective date of this Agreement, the parties agree to transfer assets to Cowlitz County as follows:

For Funding contributed by Cowlitz County at the inception of SWBH, Cowlitz shall be entitled to the full amount of their contribution.

With regard to reserves accumulated since the creation of SWBH, the parties agree that the reserves (see Attachment A) will be redistributed to Cowlitz County based upon the proportional share of the total Medicaid and non-Medicaid populations in Cowlitz County based upon the finalized revenue expenditure for July 1, 2015, provided to the state of Washington.

On July 1, 2015, SWBH will transfer 50% of Cowlitz County's proportional share of reserved to Grays Harbor RSN based upon the anticipated revenue and expenditure report for July 1, 2015.

Final distributions will be reconciled based upon the finalized June 30, 2015 revenue and expenditure report provided to the state of Washington. On October 1, 2015, the remainder of Cowlitz County's proportionate share of the reserves will be transferred to Grays Harbor RSN. Grays Harbor RSN will be responsible for paying any outstanding claims for services delivered prior to July 1, 2015 for Cowlitz County residents.

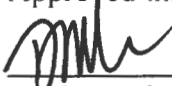
6. **WITHDRAWAL:** Any Party hereto shall have the right to withdraw from this Agreement at any time, PROVIDED that the remaining Parties to this Agreement shall have received written notification of the Party's intention to withdraw at least 210 days prior to the proposed effective date of such withdrawal; and PROVIDED FURTHER, that such notification is received at least 210 days prior to the expiration of the current fiscal year period. Withdrawal of one (1) or more Parties shall not terminate this Agreement for the remaining Parties. In the event that a Party withdraws from the SWBH the remaining parties may amend the Agreement for up to six (6) months to continue funding for services for eligible individuals residing within the geographic boundaries of the former members county so as not to disrupt services to individuals enrolled for mental health services with the contracted provider in that area of the SWBH. A new interlocal agreement must be adopted by the remaining member counties if they determine that they wish to continue Southwest Washington Behavioral Health Support Network. The newly adopted interlocal agreement will identify the geographic areas where mental health services will be provided under that agreement. No withdrawing Party shall be entitled to payment or return of any property contributed to SWBH or to any distribution of assets.
7. **NEW MEMBERS:** SWBH through its Bylaws shall provide for the reasonable admission of new member governments through amendment of this Interlocal Agreement.
8. **FINANCING AND BUDGET:** SWBH shall be financed from State, Federal and local public and other private funds legally available for the provision of behavioral health and other health and human services. The Governing Board shall establish and maintain such funds and accounts as may be required by good accounting practices, the State Budget Accounting Reporting System ('BARS'), and any other relevant contractual requirements.

9. **TERMINATION OF THE AGREEMENT:** This Agreement may be terminated with 210 days' notice by the unanimous written consent of all of the Parties. Upon termination, this Agreement and the RSN shall continue for the purpose of disposing of all claims, distribution of assets, discharge of contractual requirements, and all other functions necessary to wind up the affairs of SWBH.
10. **LEGAL NOTICES:** Legal Notices to Parties shall be sent prepaid by certified mail to the Governing Board member of the respective Party at such addresses as may be given in writing to the SWBH.
11. **AMENDMENTS:** This Agreement may be amended at any time by the written approval of all of the Parties.
12. **PROHIBITION AGAINST ASSIGNMENT:** No Party may assign any right, claim, or interest it may have under this Agreement. No creditor, assignee, or third party shall have any right, claim, or title to any part, share, interest, fund, or asset of SWBH.
14. **ENFORCEMENT:** SWBH may enforce the terms of this Agreement. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement shall be instituted in a court of competent jurisdiction. The Parties agree that any claim or dispute relating to this agreement, or any other matters, disputes, or claims among the Parties, shall be subject to non-binding mediation, if agreed to by all Parties.
15. **COUNTERPARTS:** This Agreement may be signed in counterpart or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes. This Agreement shall be effective upon its execution by the named parties.
16. **FILING OF AGREEMENT:** A copy of this Agreement shall be filed with the County Auditor of Clark County as required by RCW 39.34.040.
17. **COMPLETE AGREEMENT:** The foregoing constitutes the full and complete agreement of the parties. All oral understandings and agreements are set forth in writing herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement by authorized officials thereof on the dates indicated.

CLARK COUNTY BOARD OF COUNCILORS

Approved this 16th day of June, 2015

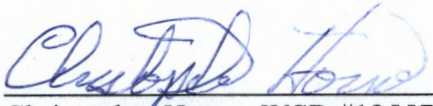


David Madore, Chair

Jeanne E. Stewart, Councilor

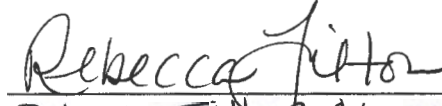
Tom Mielke, Councilor

Approved as to form:



Christopher Horne, WSB #12557
Clark County Deputy Prosecutor

As witnessed by:



Rebecca Tilton, Clerk of Board

SKAMANIA COUNTY BOARD OF COMMISSIONERS

Approved this _____ day of _____, 2015

Christopher Brong, Commissioner

Bob Hamlin, Commissioner

Doug McKenzie, Commissioner

Approved as to form:

Adam N. Kick, WSB#27525
Prosecuting Attorney

As witnessed by:

Debbie Slack, Clerk of the Board