



HEALTH SYSTEMS DIVISION

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September 2, 2020

**By Registered Mail and Email**

Christopher Hummer  
Chief Executive Officer  
Trillium Community Health Plan, Inc.  
P.O. Box 11740  
Eugene, OR 97440

NOTICE OF NON-COMPLIANCE AND ORDER REQUIRING CORRECTIVE ACTION RELATING TO  
TRILLIUM CCO CONTRACT No. 161766 FOR THE TRI-COUNTY SERVICE AREA

Dear Mr. Hummer,

Trillium Community Health Plan ("Trillium") is party to a Health Plan Services Contract with the Oregon Health Authority (OHA) for Coordinated Care Organization (CCO) services effective January 1, 2020, and now expiring December 31, 2024, Contract No. 161766 (the "Contract"). On August 14, 2020, OHA sent a letter notifying Trillium that:

1. The service area of Trillium's CCO contract with OHA will be expanded to include Clackamas, Multnomah, and Washington Counties, collectively referred to as the Tri-County service area, effective September 1, 2020; and
2. Trillium's service area expansion will be subject to a Corrective Action Plan ("CAP"), the details of which would follow under separate cover.

The purpose of the present letter is to prescribe the details of the CAP. The CAP applies only to the Tri-County service area.

**BACKGROUND**

Trillium applied to OHA for a contract as a CCO starting January 1, 2020. On July 9, 2019, OHA notified Trillium that it received an award for a new 5-year contract as a CCO that was conditional due to deficiencies in its application. On September 27, 2019, OHA wrote Trillium outlining additional steps Trillium needed to take in order to satisfy conditions to contracting before the contract award would become final.

Subsequently, on November 8, 2019, OHA notified Trillium of failure to meet the conditions outlined in the September 27, 2019 letter sent to Trillium. Because these conditions were not met, OHA denied a final award and notice to proceed for the Tri-County service area. Trillium was offered an opportunity, until June 30, 2020, to remedy deficiencies in its network adequacy for the Tri-County service area. To

remedy these deficiencies, Trillium was asked to submit a revised Delivery System Network (“DSN”) report and satisfy the following conditions:

- All providers in each service category must be listed as under contract and have signed contracts, with none pending;
- All providers listed must have a valid numerical entry for Provider Capacity identifying the contracted number of OHP members the provider agrees to serve;
- The providers listed must be sufficient to establish an adequate provider network that complies with all regulatory and contract requirements; and
- Adequately meet all elements of Readiness Review for the Tri-County service area.

In April 2020, OHA received verbal notice of Trillium’s intent to proceed with expansion in the Tri-County service area on the basis that Trillium now satisfied the conditions in the September 27<sup>th</sup> letter. On May 4, 2020, Trillium submitted an official administrative notice and its revised DSN report for OHA review. Additionally, on July 29, 2020, Trillium presented to OHA on several CCO 2.0 and Readiness Review topics to demonstrate Trillium’s ability to meet various priority areas.

Trillium’s submissions and subsequent July 29, 2020 presentation to OHA did not substantively address a number of concerns remaining about Trillium’s ability to serve OHP members in the Tri-County service area, as communicated to Trillium via email on May 20, 2020, June 10, 2020, and July 17, 2020.

#### **AGENCY AUTHORITY**

Each CCO must comply with all applicable federal and state laws and regulations, state plan requirements, and contract provisions applicable to its participation in the Oregon Health Plan and in the provision of services to Medicaid members. As the single state Medicaid agency for Oregon, OHA is responsible for monitoring CCOs to ensure their compliance with these requirements and to audit and verify the accuracy and appropriateness of payment, utilization of services, medical necessity, medical appropriateness, grievances, quality of care, and access to care. OHA is authorized to monitor compliance with the requirements in 42 CFR 438.66 and Exhibit B, Part 9, Section 1 of the Contract.

In recognition of this oversight role, OHA has broad authority under the Contract to perform audits and request information as necessary to determine the CCO’s compliance with the terms of the Contract, as well as compliance with applicable state and federal laws. If OHA determines a CCO is not in compliance, among other remedies, OHA may impose a sanction including requiring the CCO to develop and implement a time specific plan of correction, as defined in OAR 410-141-3530, for the correction of identified areas of noncompliance.

Due to the concerns that Trillium is not meeting its contractual obligations of network adequacy, language access and health equity and community engagement, OHA is issuing a sanction to Trillium based on Exhibit B, Part 9, Sections 2(a), 2(b)(8), 3(b)(7)(b) and 6 of the Contract. The sanction will require Trillium to prepare a CAP pursuant to 42 CFR 438.702 and OAR 410-141-3530.

#### **EVALUATION AND FINDINGS OF NON-COMPLIANCE**

The documentation and information submitted to OHA leading up to and after the July 29, 2020, presentation by Trillium does not demonstrate sufficient compliance with CFR, OAR and CCO 2.0 Contract requirements in the Tri-County service area regarding network adequacy, language access,

health equity, and community engagement. Pursuant to 42 CFR 438.230, OHA will also monitor Trillium's subcontractor oversight. To ensure Trillium meets the needs of Tri-County OHP members, OHA requires Trillium to develop a CAP to address the concerns described below and ensure compliance with federal and state requirements.

### Network Adequacy

*Requirement:* OHA must ensure network adequacy standards pursuant to 42 CFR 438.68 (a), 42 CFR 438.207 assurances of adequate capacity and services, and 42 USC section 1396u-2(b)(5) federal and state implementing regulations and Exhibit B, Part 4, Section 3 of the Contract, Trillium must secure a network of contracted providers sufficient to serve assigned members and meet time and distance standards for access outlined in OAR 410-141-3515 and per federal authority under 42 CFR 438.68(b). Trillium must ensure that its members have the same access to certain services as other patients in the service area.<sup>1</sup> In addition, Trillium must have sufficient in-network hospitals, primary care providers, specialists, and pediatric oral health providers to meet the time and distance standards in these rules, and Trillium must ensure that it has a sufficient network to provide an array of services, including urgent care within 72 hours; well-care visits within four weeks; emergency oral care within 24 hours; urgent oral care within one week or as indicated in the initial screening; routine oral care within an average of eight weeks; routine oral care for pregnant women within an average of four weeks; and urgent behavioral health care immediately.

Network adequacy should correspond with Trillium's Tri-County maximum member enrollment by county. Member enrollment by county is 12,602 for Clackamas, 24,645 for Multnomah, and 17,753 for Washington, for a total of 55,000 members in the Tri-County service area.

*Findings:* Though Trillium was able to meet the threshold requirements in the November 8, 2019 letter, upon further review of Trillium's DSN provider capacity report, OHA has found Trillium's network adequacy to be deficient in the manner noted below. As of the July 29, 2020 presentation, Trillium identified the number of members each individual provider can serve above their current capacity but lacks the detail and analysis across provider types and member populations accessing the provider network to determine if the member-to-provider ratio is sufficient. In addition, Trillium has not demonstrated adequate network provider capacity to serve members, especially in the area of behavioral health.

*Action Needed:* To address these concerns Trillium's CAP must address the following:

- Demonstrate that Trillium's low numbers of home health agencies (6 non-duplicated facilities as of 6/18/20), hospitals (4 non-duplicated facilities as of 6/18/20), rural health centers (2 non-duplicated facilities as of 6/18/20), and mental health crisis service facilities (3 non-duplicated facilities as of 6/18/20) are adequate to meet member needs, or how Trillium will expand capacity to do so. Trillium will need to show the member-to-provider ratio and geographic distribution of these facility/provider types is sufficient to address member needs.
- Trillium must provide validation of provider capacity to serve the members in each county, as detailed in this section, by supplying executed provider contracts that include each provider's

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<sup>1</sup> See, e.g., OAR 410-141-3515; see also 42 C.F.R. § 438.68.

“accepting new members” capacity or a written attestation from each contracted provider of their capacity commitment for new Medicaid members.

- Demonstrate increased counts of providers and facilities accepting new Medicaid members for outpatient and community-based mental health treatment services for members with Severe and Persistent Mental Illness (SPMI) in Washington County.
- For the entire Behavioral Health continuum of care capacity, identify and report on key strategies Trillium will implement to increase delivery system capacity and provide access to services, if access to facilities in BH continuum are at maximum capacity.

### Health Equity and Language Access

*Requirement:* With regard to health equity, pursuant to Exhibit K, Section 10 of the Contract, Trillium must develop and implement a Health Equity Plan designed to address the cultural, socioeconomic, racial, and regional disparities in health care that exist among members and communities in the Tri-County service area.

With regard to language access, pursuant to 42 CFR 438.206 (c)(2) and Exhibit B, Part 4, Section 2 of the Contract, Trillium must provide culturally and linguistically appropriate services and supports to members. Further, pursuant to Exhibit B, Part 4, Section 2 g., Trillium must assure communication and delivery of services to members with diverse cultural and ethnic backgrounds, which may require the use of certified or qualified interpreters for members.

*Findings:* Trillium has not demonstrated these requirements are being met across health equity areas including language access. As of July 29, 2020, Trillium’s proposed provider network showed only 8.8% of provider records reflect the presence of a non-English language thereby limiting access to culturally responsive care. Pursuant to Oregon’s 1115 waiver Section V (29) Network Adequacy and Access Requirement and in accordance with Section 4.3.2 of the Contract, Trillium must ensure delivery of culturally competent care is required.

*Action Needed:* Trillium must address the following concerns relating to health equity and language access in the CAP:

- Trillium has indicated it is working with its interpreter service vendors to assess interpretation needs, volumes, and available/needed languages in the Tri-County service area. Trillium must demonstrate how Trillium will use this information to determine the interpreter capacity required to meet member needs and to proactively identify gaps to ensure adequate access to interpreter services, including how often Trillium reviews the information and considers adjustments indicated by the information.
- Demonstrate meaningful access to interpreter services for individuals who speak a language other than English. According to the Department of Justice, meaningful access denotes access that is not significantly restricted, delayed or inferior as compared to programs or activities provided to English proficient individuals. See Department of Justice Language Access Plan, March 2012 at <https://www.justice.gov/sites/default/files/open/legacy/2012/05/07/language-access-plan.pdf>.

- Demonstrate initial and ongoing analysis of demographic data and health equity disparities in the Tri-County service area to inform development, monitoring, and build-out of provider network.
- Demonstrate meaningful engagement of the community to identify health equity issues.
- Demonstrate how health equity demographic information, health equity disparities data and community engagement findings are utilized internally to inform Trillium operations, policies and procedures, and initiatives.
- Demonstrate meaningful engagement with the Regional Health Equity Coalition and begin to actively engage in discussions to prepare Trillium to meet the needs of minority and diverse OHP members.

### Community Engagement

*Requirement:* With regard to community engagement, pursuant to Oregon’s 1115 waiver Section A Part I: Support for Health System Transformation and in accordance with Section 4.3.2 of the Contract, ORS 414.575 and in Exhibit K of the Contract, Trillium is required to establish a Community Advisory Council (per Section 1) to ensure the health needs of Tri-County members are being addressed and draft a Community Health Assessment (per Section 6) and Community Health Improvement Plan (per Section 7) with key partners.

*Findings:* Trillium has not demonstrated these requirements are being met. Documentation submitted on July 31, 2020 focused on Lane County work and best practices and did not show evidence of sufficient engagement with the Tri-County community and stakeholders prior to entry in the area.

*Action Needed:* Trillium must address the following concerns in the CAP:

- Develop formal community engagement plan for Tri-County service area and demonstrate progress towards engaging community stakeholders, recruiting a CAC and RAC, establishing CHA and CHP partnerships, and tribal outreach/engagement.
- Develop a policy and procedure outlining operational processes to engage the community in the decision making and governance structure, which is in addition to the CAC, CHA and CHP work. The policy and procedure must address how Trillium will engage the community in a meaningful manner, ensure community participation in CCO decision making/governance, and ensure a feedback loop exists to support ongoing engagement.

### **ORDER**

Based on the requirements and findings outlined above, OHA finds that Trillium is not in compliance with state and federal requirements and with contractual requirements regarding the operation of a managed care organization. Therefore, pursuant to OAR 410-141-3530 and Exhibit B, Part 9 Section 1(d) of the Contract, OHA hereby requires Trillium to:

(1) Develop and implement a plan (the “Corrective Action Plan”) that is acceptable to OHA for correcting the issues set forth in this Notice and Order. The Corrective Action Plan shall:

- I. Describe actions and activities designed to specifically address a turn-around plan to address areas of non-compliance and show continual monthly improvement toward resolution of the identified issues;
- II. List data that will be submitted to OHA as evidence of monthly progress toward remediation and compliance; and,
- III. Be submitted to OHA within 30 business days from the date of this Notice and Order at the following addresses:
  1. [CCO.MCOTDeliverableReports@dhsoha.state.or.us](mailto:CCO.MCOTDeliverableReports@dhsoha.state.or.us)
  2. [Lori.A.Coyner@dhsoha.state.or.us](mailto:Lori.A.Coyner@dhsoha.state.or.us)

OHA will need to review and approve the CAP submitted by Trillium prior to implementation and the start of reporting. For OHA to approve the plan, the plan should outline in detail how Trillium will dedicate internal organizational resources to remediate the issues described in this Notice and Order and provide evidence and assurance of how Trillium will develop, implement and provide oversight of the CAP. If the CAP does not substantively address the identified issues in this Notice and Order, OHA will request additional revisions to the CAP prior to finalizing.

(2) Submit monthly reports to OHA of all progress towards achieving compliance. These reports shall be delivered every month within five (5) working days after the end of each month and must include all data and documentation and demonstrate progress in the prior month.

The first monthly report shall be submitted no later than November 5, 2020,<sup>2</sup> and shall continue for a period of at least six (6) months and until such time as Trillium is notified by OHA that monthly reporting is no longer required. The reports shall be sent to the following addresses:

1. [CCO.MCOTDeliverableReports@dhsoha.state.or.us](mailto:CCO.MCOTDeliverableReports@dhsoha.state.or.us)
2. [Lori.A.Coyner@dhsoha.state.or.us](mailto:Lori.A.Coyner@dhsoha.state.or.us)

If Trillium's response to the requirements set forth above is deemed inadequate, OHA will require resubmission of a compliant CAP or may exercise additional remedies available to OHA. OHA will monitor Trillium's compliance with this Order and the CAP and reserves the right to impose additional Sanctions, up to and including termination of the Contract, or other remedies available to it under the Contract, or as provided by law, based on continued noncompliance and failure to correct the violations set forth in this Notice and Order.

## **APPEAL RIGHTS**

If Trillium believes it has not violated the provisions set forth above and has information relevant to its compliance that it believes OHA should consider and wishes to appeal this Notice of Non-Compliance and Order, Trillium has the right to file a request for Administrative Review with the Director of OHA in writing within 30 days of issuance of this notice pursuant to Exhibit B, Part 9 Section 8 and OAR 410-120-1580(4)-(6). The request for Administrative Review shall be sent to:

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<sup>2</sup> Date subject to revision based on the OHA final approval date of CAP submitted by Trillium.

Patrick Allen  
Director  
Oregon Health Authority  
500 Summer St. NE, E-20  
Salem, OR 97301  
[Patrick.Allen@dhsoha.state.or.us](mailto:Patrick.Allen@dhsoha.state.or.us)

Sincerely,



Lori Coyner  
Medicaid Director  
Health Systems Division  
Oregon Health Authority

CC:

Patrick Allen, OHA Director  
Margie Stanton, Health Systems Division Director  
David Baden, Chief Financial Officer  
David Inbody, CCO Operations Manager  
Veronica Guerra, Quality Assurance and CCO Contract Oversight Manager  
Cheryl Henning, CCO Contract Administrator  
Contract File