



August 2, 2019

Ms. Roylene Dalke
PrimaryHealth of Josephine County, LLC
1867 Williams Hwy, Suite 108
Grants Pass, OR 97527

RE: Written Decision of Oregon Health Authority with Respect to Protest by Applicant
PrimaryHealth of Josephine County, LLC RFA #4690-19

Dear Ms. Dalke:

As the official designated by the Oregon Health Authority (“OHA”) to review and evaluate protests with respect to Request for Application #4690-19 (“RFA”), I write to inform you that, after careful review, OHA rejects the protest filed by PrimaryHealth of Josephine County, LLC (“PHJC”). In making this determination, OHA has also considered the “Amendment” to PHJC’s protest, received by OHA on July 31, 2019, to the extent it provides further detail on the grounds for protest contained in the original protest letter submitted by PHJC.

Because OHA rejects PHJC’s protest, OHA also affirms its decision to deny PHJC’s application, as well as OHA’s decision to grant AllCare CCO, Inc. (“AllCare”) a conditional award for a one-year contract as a Coordinated Care Organization (“CCO”). Finally, OHA rejects PHJC’s request for a one-year contract.

Below are the primary, but not exclusive, reasons for OHA’s rejection of each of PHJC’s grounds for protest.¹

- 1. PHJC Protest:** The protest argues: “Despite Mr. Allen’s statements regarding the reason for the rejection of the application being primarily financial, PrimaryHealth received a passing score on the finance section.”

Decision: OHA rejects these grounds for protest.

The RFA contained six areas of evaluation for written responses. One of those areas was labeled as “Finance.” However, that area of evaluation was distinct and apart from the pro forma evaluation requirement, which is referred to in the evaluation reports as “Financial

¹ The reasons for OHA’s decision set out under each numbered protest heading may also apply to other numbered protest headings.

Analysis.” As discussed more fully below, PHJC’s application fails under the “Financial Analysis” section.

2. **PHJC Protest:** “Executive Summary.” The protest disputes the conclusion that “PrimaryHealth appears to be underfunded and would not meet RBC [risk-based capital] or minimum capital requirements at the start of the contract.” PHJC argues that “[t]hat conclusion is contradicted . . . by the financial review performed by DCBS that found that PrimaryHealth’s Capital and Surplus ‘appears to be sufficient to absorb net losses within the 3 years referencing in [sic] the information provided [in this review], with all other estimated amounts remaining the same for each scenario’”²

Decision: OHA rejects these grounds for protest.

The latter of the two quotes, from the Oregon Department of Consumer and Business Services (“DCBS”), reflects the results of the pro forma projections, “referencing the information provided” by PHJC – i.e., based on the assumptions used by PHJC without regard to the reasonableness of those assumptions. DCBS started by evaluating the pro forma projections as provided by PHJC for the application. However, OHA’s Actuarial Services Unit (“ASU”) concluded that some of PHJC’s assumptions were unreasonable, and ASU and DCBS considered the impact of using reasonable assumptions.³

Specifically, ASU indicated that PHJC’s medical loss ratio (“MLR”) assumption was unreasonably aggressive, and its use resulted in substantially more optimistic projections than if a reasonable assumption had been applied. ASU recommended evaluating the projections outcomes using a reasonable alternative MLR assumption of 89.0%, as compared with the 85.5% assumption selected by PHJC. The alternative assumption is substantiated by the following data points and other considerations:

- PHJC average MLR, 2015-2017: 90.8%
- All CCO average MLR, 2015-2017: 89.0% (excludes one terminated CCO)
- All CCO MLR assumption average for RFA: 89.4% (excluding PHJC)
- Legal minimum MLR: 85%

OHA also notes that 2015 MLRs – and thus the 2015-2017 MLR averages – were unusually low, due to pricing uncertainty surrounding the Affordable Care Act (“ACA”) expansion.

Only one other applicant assumed a comparable MLR: Umpqua Health Alliance (“UHA”). As part of the evaluation process, OHA reviewed UHA’s MLR assumption and concluded that: it was closer to UHA’s recent experience than the assumption used by PHJC was to its recent experience; using an alternative assumption was less justified; and the consequences of an alternative assumption would be less significant than in PHJC’s case.

² The placement of the internal quotation mark has been corrected.

³ As with all of the evaluation reports, the evaluation report on PHJC sets forth in full the DCBS report and the ASU report.

When analyzed under the alternative MLR assumption, PHJC would be expected to have a negative net income, which in turn casts doubt on the sustainability of its business model and raises the risk of insolvency. Insolvency would in turn lead to a number of events that OHA has a legitimate regulatory interest in avoiding, including but not limited to an unscheduled process of member reassignment, and exposure of the State's general fund to liability for claims left unpaid by PHJC.

- 3. PHJC Protest:** "OHA Changed Application Requirements after the Submission Date." In particular, PHJC contends it is unfair for OHA to apply the 2020 capital and surplus ("C&S") standard of \$2.5 million to PHJC, because that standard did not become law until after PHJC submitted its application.

Decision: OHA rejects these grounds for protest.

2019 Senate Bill 1041 ("SB 1041") amended ORS 414.625(1)(b)(B) to require the minimum C&S standard of \$2.5 million. OHA conducted its financial evaluation on the assumption that SB 1041 would be enacted, and in fact it did become law when the Governor signed it on June 20, 2019. The effective date of this provision is January 1, 2020, the same date on which the CCO 2.0 contracts begin. While some parts of SB 1041 must be implemented through administrative rules, the \$2.5 million C&S standard is self-implementing, and OHA is required to follow it.

OHA rejected PHJC's application because of the company's precarious financial position, separate and apart from the minimum C&S standard of \$2.5 million. As explained in the evaluation report,⁴ OHA determined that:

- PHJC's minimal capital meant that, if PHJC did not meet its profitability projections, there would be an unacceptably high risk of PHJC being unable to meet its liabilities;
- PHJC's parent company's 2017 audited financials have a going concern note; and
- PHJC's finances appeared likely to trend downward in future years.

If PHJC was awarded a contract and became unable to cover its liabilities at any point during the five-year contract period, there would be significant challenges for the Medicaid program and Medicaid beneficiaries in Josephine and Jackson counties. Among other things, OHA would need to identify a viable and qualified CCO that could expeditiously take on thousands of new beneficiaries in those counties. Such a change would negatively impact those members, who would have to switch CCOs and navigate a new provider network and care coordination program.

- 4. PHJC Protest:** "PrimaryHealth Meets the RBC Requirements." Specifically, PHJC argues: "OHA stated that PrimaryHealth's 'RBC was above the OHA required 200% in all scenarios' through 2022. Even in the adjusted RBC calculations done by ASU, estimates were that while PrimaryHealth would fall

⁴ CCO 2.0 Final Evaluation Report, PHJC, at 5-11.

below the 200% the first year, PrimaryHealth would not be insolvent until 2022. DCBS specifically found that PrimaryHealth's 'pro-forma results provided appear to be reasonable for projections provided' but then went on to change the assumptions. It was not until it changed assumptions that the RBC fell below the required 200%. No other applicant had its MLR number modified for the purpose of evaluating RBC." (Footnotes omitted.)

Decision: OHA rejects these grounds for protest.

The quotes from the DCBS report that PHJC discusses above are observations of the model outcomes based upon PHJC's projection assumptions. As noted above, if PHJC's MLR assumption is replaced with a more reasonable alternative, the projection results deteriorate significantly, and PHJC falls well below 200% RBC.

OHA did not modify any application in conducting its review. OHA reviewed the assumptions in the projections provided as part of the applications and evaluated the consequences of alternative assumptions in the event that the proposed assumptions were unreasonable.

5. PHJC Protest: "*Additional Capital.*" (Italics in original.) The protest argues: "PrimaryHealth noted in its Application that it was 'in active negotiations with a capital partner.' OHA noted this potential source of capital but discounted it" (Footnote omitted.) "Since submitting the Application, negotiations have been ongoing and productive. Grants Pass Management Services, Inc, dba Oregon Health Management Services, and Asante Health Systems are prepared to announce their desired intent to equally fund a parent organization for PrimaryHealth. Asante has provided a letter of support confirming its intentions, which is attached hereto as Exhibit C. This joint venture will significantly increase the economic reserves available to PrimaryHealth through its parent company. In addition, by partnering with the sole hospital in Josephine County and a key player in the health delivery systems of both Josephine and Jackson Counties, PrimaryHealth, one of the top performing CCOs in the state, will be in an even stronger position to provide quality services to Medicaid enrollees in these areas."

Decision: OHA rejects these grounds for protest.

PHJC's representation in its application of "active negotiations with a capital partner" was not sufficient for OHA to approve PHJC's application subject to readiness review. Given the complexity of securing a firm, detailed capital commitment, OHA did not find it reasonable to assume that "active negotiations" would necessarily result in a capital commitment sufficient to address OHA's legitimate concerns and regulatory interests.

OHA has considered PHJC's representation that it is working to obtain additional capital from Asante Health Systems ("Asante"), and the related letter from Asante. OHA has determined that an award will not be made based on information outside the application and outside the investigation done through the evaluation process. PHJC has long known about its

financial position, but it did not secure additional financing prior to responding to the RFA or prior to OHA's conditional award decisions.

Even if OHA considered this new information, it does not warrant a change in the award decision. Neither PHJC's representation nor Asante's letter provide sufficient certainty to allow for a conditional award in light of the unknowns and remaining timeline. PHJC has not actually secured the additional funding; PHJC and Asante have only stated an "intent" to move forward with the financing. Moreover, PHJC provided no similar supporting letter of intent from Oregon Health Management Services. Even if OHA were willing to allow new information at this point, the bare statements of intent from PHJC and Asante, unsupported by any particular terms and conditions or negotiating schedule, do not resolve the deficiency and are insufficient for OHA to believe that PHJC's intended financing would actually and timely materialize.

OHA has also reviewed the "Amendment" to PHJC's protest, received by OHA on July 31, 2019. OHA considered this "Amendment" only to the extent it provides further detail on the grounds for protest already contained in the original protest letter submitted by PHJC.

The "Amendment" states that PHJC is pursuing partnerships with CareOregon and Providence Health Plan and "feel[s] optimistic that if OHA were to overturn our denial, that one or more of these organizations would finalize their partnership with PrimaryHealth." Again, OHA has determined that a contract will not be awarded based on information outside the application and outside the investigation done through the evaluation process. Further, PHJC has not actually secured any agreement or funding from either CareOregon or Providence Health Plan. Thus, this additional information does not resolve OHA's reasonable concerns about PHJC's financial stability. Even if OHA considered all of the information contained in the "Amendment," it would not change OHA's decision to deny PHJC's protest.

- 6. PHJC Protest:** "*Going Concern.*" (Italics in original.) The protest argues: "OHA identified PrimaryHealth's parent company's going concern as raised in a 2017 audit. OHA further noted that PrimaryHealth expected the issues to be resolved in the 2018 audit. In fact, the ASU recommended that OHA review a copy of the 2018 audit for a going concern note. PrimaryHealth submitted its 2018 Audit to OHA on June 25, 2019. The 2018 audit does not include the going concern note. However, rather than looking at the copy in its possession or requesting additional information from PrimaryHealth as recommended by ASU, OHA relied on the 2017 information to deny the Application. Basing a denial on this outdated information when current information was readily available is an abuse of discretion." (Footnote omitted.)

Decision: OHA rejects these grounds for protest.

OHA properly considered the 2017 audited financials, and not the 2018 audited financials, because only the former were available when OHA reviewed PHJC's application. PHJC's parent company did not file its 2018 audited financials until June 25, 2019, after OHA reviewers had completed their evaluation of PHJC's application. By the time the PHJC 2018 Audit had been submitted, the final evaluation report for PHJC, as well as for all the other applicants, had already been completed and submitted to OHA leadership for review. Special

handling for PHJC's 2018 Audit would have required a departure from the approach applied to other applicants. All the other applicants who were incumbents similarly had 2018 audited financials filed with OHA by June 30, 2019, but OHA did not consider the 2018 audited financials for any other applicant as part of the RFA evaluation and award process.

A going concern note is a serious matter, which in PHJC's case coincided with a violation of OHA's net worth requirements as of the quarter ending December 31, 2017, as reported in its Exhibit L3.3. While OHA acknowledges the absence of a going concern note in the 2018 audited financials and improvement in PHJC's financial situation for that period, the existence of a going concern note in a recent audit, combined with the lack of demonstrated capital resources in the application (discussed in other portions of this response), reasonably concerned OHA and informed its decision to deny the application.

- 7. PHJC Protest:** "*Returning CCOs.*" (Italics in original.) PHJC states that it is the only existing CCO that was not offered a CCO 2.0 contract, despite being "a top performer in nearly all metrics." PHJC argues that this leaves it with "the distinct impression that OHA simply determined that it did not wish to engage with an additional CCO in the Josephine County region, regardless of its qualifications."

Decision: OHA rejects these grounds for protest.

OHA concurs that PHJC is the only existing CCO that applied for but was not awarded a CCO 2.0 contract.⁵ The remainder of PHJC's contention is factually incorrect. As explained above, OHA did not award a contract to PHJC because of OHA's concerns about PHJC's financial position. OHA's decision to reject PHJC's application, and make a conditional award to AllCare was not based on comparing the evaluation scores of these two applicants but rather was based on PHJC's finances.

- 8. PHJC Protest:** "*RFA specifies the reasons for which an application may be rejected.*" (Italics in original.) The protest argues that "upon initial review, it was determined that PrimaryHealth . . . met the minimum financial solvency requirements [listed in Section 4.9 of the RFA], yet OHA claimed to reject its Application for financial reasons."

OHA never determined that PHJC met the financial solvency requirements. To the contrary, OHA determined that, using reasonable projection assumptions as substantiated above, PHJC failed to meet the minimum financial solvency requirements, as specified in the financial pro forma instructions.

- 9. PHJC Protest:** "*OHA Failed to Grade Evaluation Criterion on a Pass/Fail Basis as Required by the RFA.*" (Italics in original.) PHJC argues that RFA Section 4.12 and OHA's answers to questions in RFA Addendum #5 provided that OHA would grade every evaluation criterion on a pass/fail basis. PHJC further argues that, "looking at the 6 main categories, there is no consistency among the applicants for when, or if, a fail would make an applicant ineligible for a contract."

⁵ Another incumbent CCO, Willamette Valley Community Health, did not apply under the RFA.

PrimaryHealth failed in two categories and was not awarded a contract, yet applicants with 3 or more failed categories were awarded contracts.”

Decision: OHA rejects these grounds for protest.

OHA’s answers in RFA Addendum #5 meant that applicants must receive a passing score on all evaluation criteria to receive an unconditional award. If an applicant did not pass all questions but reviewers determined the application warranted making an award, the award would be conditional on the applicant improving as to the questions it failed. That is in fact the only kind of award that OHA made to applicants that did not receive a passing score on all evaluation criteria.

The RFA made clear that OHA would not award a contract to any entity that could not demonstrate that it was financially stable.⁶ As explained above, and in accordance with the evaluation process described in the RFA, PHJC was not awarded a contract because it was unable to demonstrate that it was financially stable.⁷

PHJC’s assertion about inconsistency in the grading of applicants is incorrect. All applications that passed at least four of the six categories of criteria were granted a conditional award, unless the application failed to demonstrate the applicant’s financial stability. Four entities that passed fewer than four categories were awarded contracts, but only in situations where the CCO was financially stable and the service area would otherwise lack a CCO. Entities that passed fewer than four categories, but were granted a conditional award because the service area was otherwise bare, were conditionally awarded only one-year contracts (not the full five-year contract), the renewal of which will depend on the CCO correcting a number of deficiencies.

10. PHJC Protest: “OHA Granted Awards to Applicants Who Did Not Meet the Evaluation Criterion.” (Underline in original.) The protest argues: “Section 4.14 of the RFA states that applicants who have not met the evaluation criteria will be sent a notice of application rejection. In the Summary of CCO 2.0 Contract Award Decisions published on July 9, 2019, OHA identified 11 applicants that ‘successfully demonstrated their ability to meet the CCO 2.0 requirements.’ This was despite the fact that of these 11 applicants, 4 of them failed in one or more of the identified categories. OHA also identified 4 applicants who ‘did not fully demonstrate ability to meet the CCO 2.0 criteria.’ Under the criteria described in the RFA, these entities are ineligible for an award and should have been sent a notice of rejection. By awarding these entities even a 1-year contract, OHA has failed to conduct the evaluation in accordance with the criteria or process described in the RFA, thereby creating a process that is arbitrary and unfair.”

Decision: OHA rejects these grounds for protest.

⁶ See CCO 2.0 RFA, ¶¶ 4.9, 5.4, 5.7; *id.*, at 12.

⁷ CCO 2.0 Final Evaluation Report, PHJC, at 5-11.

The RFA and OHA regulations clearly contemplate that some applicants may need to demonstrate improvements during the readiness review process.⁸ All the awards issued on July 9, 2019 are conditioned on the successful applicants taking a number of steps to address deficiencies in their application during that readiness review process.

11. PHJC Protest: “OHA Changed PrimaryHealth’s Application without Authority and Consultation.” (Underline in original.) PHJC contends: “in performing its evaluation of PrimaryHealth’s pro-forma financial statements, OHA changed the assumptions provided by PrimaryHealth. In essence, OHA changed the Application then purportedly failed PrimaryHealth as a result of the change. There is nothing in the RFA process that allows OHA to change an application.” (Footnote omitted.) PHJC further contends that “OHA stated that the pro-forma results submitted by PrimaryHealth appeared to be reasonable considering the projections provided,” (footnote omitted), and “[i]f OHA had concerns with the projections provided, the stated procedure for addressing such concerns was to require additional information or analysis from PrimaryHealth, not to change PrimaryHealth’s Application.” Finally, PHJC contends that “OHA changed one assumption (regarding MLR) in isolation and apparently did not consider (or care) whether changing that one assumption would impact other assumptions PrimaryHealth had made in its financial projections,” and “by changing PrimaryHealth’s Application, OHA failed to conduct its evaluation of PrimaryHealth’s Application in accordance with the criteria or process described in the RFA.”

Decision: OHA rejects these grounds for protest.

OHA did not “change” anything in PHJC’s application. Rather, OHA and DCBS appropriately probed PHJC’s financial data and assumptions. Upon finding some assumptions unreasonable, the agencies analyzed PHJC’s financing under reasonable alternative assumptions that were not presented by PHJC. PHJC does not dispute that OHA has the “authority . . . to perform a comprehensive evaluation” of PHJC’s finances, which is exactly what the agency did.

As noted above, DCBS initially reviewed the pro forma projections PHJC submitted. PHJC’s application was unchanged and evaluated in its own right. As noted above, OHA also evaluated the assumptions and inputs to the projections. This evaluation was performed to ensure that the assumptions used were reasonable, and that the inputs were consistent with recent financial reports and the RFA materials. When ASU determined that the MLR assumption was unreasonable, it requested DCBS to evaluate the impact of using the alternative assumption.

While the RFA materials indicate that OHA “*may* request additional information and/or analysis from the Applicant,” (emphasis added), OHA was not required to do so.

OHA considered the impact of other assumptions in connection with the MLR assumption. PHJC’s assumptions relating to trend, enrollment levels, and capitation rates

⁸ See CCO 2.0 RFA ¶5.7; OAR 410-141-3010(3).

were reviewed by OHA, found to be generally reasonable, and therefore did not influence the decision to deny the application. OHA found some difference in the assumed capitation rates, but adjusting the assumed capitation rates to reflect the RFA materials did not have significant impact on the application. Ultimately, capitation rates are built to reflect the cost of care, so higher capitation rates do not necessarily translate to higher net income.

In reviewing the protest, ASU noted that, given the projection of negative net income under the adjusted MLR assumption, it would be reasonable to estimate a \$0 tax burden in the projections. Reflecting this change to the modeling significantly reduces the projected net loss for PHJC. However, the remaining net loss still fails to meet the requirement of the RFA because a minimum RBC of 200% is not achieved and maintained. Failing to meet this requirement, and having projected net losses, entails potential solvency issues over the long term. In addition, on account of year-to-year volatility in medical expenses, a single “bad year” in the short term could lead to PHJC again failing to meet OHA’s capital requirements, and possibly extend to insolvency.

As part of reviewing the original application, ASU also reviewed the administrative expenses and case management assumptions. ASU found no clear basis to recommend changes to those assumptions.

12. PHJC Protest: *“Failing to Conduct the Evaluation of Applications in Accordance with the Criteria or Process Described in the RFA Resulted in Arbitrary and Capricious Determinations.”* (Italics in original.) PHJC contends that it was arbitrary and capricious for OHA to “allow[] some applicants time to correct deficiencies and not others.” PHJC argues that “some applicants were allowed additional time to secure or prove additional capital,” but PHJC was not, “despite the fact that Primary Health indicated it was actively working on securing additional capital and others made no mention of available sources.” PHJC further contends that “OHA apparently awarded the contract to AllCare and not PrimaryHealth because AllCare, with a stated maximum capacity of 91,596, can adequately cover Josephine County, while PrimaryHealth with a stated maximum capacity of 15,000 cannot.” PHJC contends that it was arbitrary and capricious for OHA to award only one contract in the service area, instead of awarding contracts in the service area to both AllCare and PHJC. PHJC notes that AllCare failed five of six categories of evaluation criteria, whereas PHJC passed four of those six categories and, if AllCare fails to correct its deficiencies within a year, OHA will need to find another CCO to cover over 91,000 members, whereas if “PrimaryHealth was successful in correcting its relatively fewer deficiencies, then OHA would only have to find capacity for approximately 76,000 lives.”

Decision: OHA rejects these grounds for protest.

As explained above, the RFA made clear that OHA would not award a contract to an entity that was not financially stable. OHA appropriately rejected PHJC application because PHJC was unable to demonstrate that it was a financially stable entity.⁹

For the reasons explained above, PHJC's pending effort to secure additional capital did not persuade OHA that PHJC was financially sound, even if OHA had considered post-application information. While OHA may ask other applicants to secure or prove additional capital as part of the readiness review process, those applicants' financial position was sufficiently sound to justify a conditional award at the time the decision was made.

The DCBS report on PHJC, set forth in full in the evaluation report, says: "the applicant would not be considered to have a viable business plan that would allow for the operation of a CCO in a manner that would be financially viable through the contract period without causing a detriment to the OHP members, Oregon citizens, the impacted providers and OHA, as a whole." (Underline in original.) No other applicant's DCBS report had a similar warning. In addition, the ASU report recommended that "OHA consider denying [PHJC's] overall application based on current and projected finances, or instead requiring additional capital and possibly additional shareholders." No other applicant's ASU report had a similarly unqualified negative recommendation. OHA reasonably relied on the expertise and professional judgments in the reports prepared by its financial advisers at DCBS and ASU, as it is entitled to do.

OHA did not grant a conditional award of a one-year contract to AllCare over PHJC because of AllCare's larger maximum capacity. OHA granted the conditional award to AllCare because OHA determined that AllCare met the State's financial criteria. PHJC did not.

Several entities that passed fewer than four categories were granted conditional awards, but only in situations where the service area would otherwise lack any CCO. The conditional awards were only for one-year contracts (as opposed to five-year contracts), the renewal of which is dependent on the CCO correcting a number of deficiencies.

As explained above, OHA appropriately declined to award a contract to PHJC because PHJC was unable to demonstrate that it was financial stable. Facing the possibility of not having any CCOs serving Josephine and Jackson counties, OHA conditionally awarded AllCare a one-year contract, even though AllCare's application failed five of the six categories of evaluation criteria. OHA concluded that awarding a one-year contract to AllCare was in the best interests of Medicaid beneficiaries in the service area given the lack of alternatives. OHA does not believe it is in the best interest of the Medicaid program to award a second contract to this service area to PHJC, given PHJC's financial difficulties.

* * * *

As explained above, OHA rejects PHJC's protest, affirms OHA's decision to reject PHJC's application, affirms OHA's decision to grant a one-year contract to AllCare, and rejects PHJC's request for a one-year contract. In making these decisions, OHA has given due

⁹ CCO 2.0 Final Evaluation Report, PHJC, at 5-11.

consideration to all grounds advanced in PHJC's protest and has worked to provide PHJC with a prompt written decision. OHA reserves the right to supplement the reasons articulated in this written decision in the event of further proceedings.

This is a final order of OHA in other than a contested case. Pursuant to OAR 410-141-3010(9), "[j]udicial review of [OHA's] decisions relating to a . . . contract award is governed by the Oregon Administrative Procedures Act (APA)."

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Allen", with a long horizontal line extending to the right.

Patrick M. Allen
Director