

**ORANGE COUNTY  
BOARD OF EDUCATION  
AGENDA ITEM ABSTRACT**

**Meeting Date: January 27, 2014**

**AGENDA  
ITEM No. 14-01-(2)-06  
ACTION ITEM: (Y/N) Y**

**SUBJECT:** Employee Assistance Program Contract Approval

**INFO. CONTACT** Dr. Marcie Holland

**PHONE:** 919-732-8126

**ATTACHMENT:** 1. June 3, 2013 Letter from Duke's EAP regarding the end of their program and termination of the contract with the school system  
2. Magellan Health Services Contract with Orange County Schools to provide Employee Assistant Program services

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**PURPOSE:** The purpose of this item is to provide the Board of Education an opportunity to hear about and discuss the benefits available to Orange County Schools' employees.

**BACKGROUND:** As part of the Orange County Schools' Health Advisory Council (SHAC) 2007-2008 review, SHAC recommended that the school system enter into a service contract with the Duke Employee Assistance Program (EAP) to provide support for school system employees. The original contract with Duke EAP was entered into during the 2008-2009 school year. On May 13, 2013, the Board received information regarding the continuation of the Duke EAP agreement for the 2013-2014 school year. On or about May 29, 2013, the Program Director from Duke's EAP contacted our offices to explain that their program would be discontinued and the contract with Orange County Schools would expire on August 29, 2013. A letter explaining this is attached.

Since the conclusion of the Duke contract, contacts with Orange County provided information regarding their provider, Magellan Health Services. Magellan Health Services offers comparable services to that of Duke, including a Customer Service Associate who takes each call and connects the caller with the appropriate services and/or service providers in the area to meet their needs. There are local community providers, which are all listed on the Magellan Health Services website, in Hillsborough, Durham, Roxboro, Mebane, Chapel Hill, Burlington, etc. It also includes a 3-session model for individuals after their initial contact, as well as ten training hours/health fair hours for district use.

The cost of the Magellan program model is \$3.93 per employee, per quarter, or a total of \$15.72 per employee per year, which is an estimated \$15,720.00 per year. This is approximately \$2,700 less per year than the Duke EAP program.

The Contract has been reviewed by the Board attorney.

**FINANCIAL IMPACT:** The annual cost for the Magellan Health Services Employee Assistance Program is estimated at \$15,720.00 per year based on a charge of \$3.93 per employee per quarter. Billing is received each quarter and is based upon the total number of full-time, permanent employees on record that quarter.

**RECOMMENDATION:** The Superintendent recommends the Board of Education approve the contract with Magellan Health Services as the program administrator for the district Employee Assistance Program effective February 1, 2014.



DUKE UNIVERSITY MEDICAL CENTER  
OCCUPATIONAL MENTAL HEALTH PROGRAMS  
Professional and Personal Development Program  
Employee Assistance Program

June 3, 2013

Marcie Holland  
Orange County Schools  
200 East King Street  
Hillsborough, NC 27278

Dear Marcie,

It has been a pleasure providing EAP services to your employee workforce and their dependents. As previously mentioned in our telephone conversation, due to the financial climate and internal changes occurring at Duke, we will no longer be able to provide capitated services, effective August 29<sup>th</sup> 2013. This letter is to provide a formal written notice of our termination of services and as mandated by the contract.

I wanted you to know how much my staff and I have enjoyed our ongoing partnership over the years with HR in providing high quality services to your employees and their family members. We wish you and your employees the best.

Sincerely,

A handwritten signature in black ink, appearing to read 'Judith'.

Judith Holder-Cooper, PhD  
Program Director

## SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the "Agreement") is entered into as of the 1st day of February, 2014 (the "Effective Date") by and between **MAGELLAN BEHAVIORAL HEALTH, INC.**, with offices at 14100 Magellan Plaza Drive, Maryland Heights, MO 63043 ("Magellan") and **ORANGE COUNTY BOARD OF EDUCATION**, with offices at 200 E. King Street, Hillsborough, NC 27278 ("Sponsor").

### RECITALS

1. Magellan is engaged in the business of providing employee assistance program and related wellness services to employers and labor organizations.
2. Sponsor desires to contract with Magellan for certain of its services and Magellan agrees to provide such services in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, Magellan and Sponsor hereby agree as follows:

### AGREEMENT

#### 1. DEFINITIONS

- 1.1 Base Fee: the PEPM Rate multiplied by the applicable Employee Count.
- 1.2 Contract Anniversary Date: the day following the last day of the initial term or any renewal term of this Agreement.
- 1.3 Contract Year: a one (1) year period commencing on the Effective Date or an anniversary of such Effective Date, as applicable.
- 1.4 Employee: an individual whose current employment or employment status (e.g., retiree, beneficiary under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended) with Sponsor is the basis for the individual's eligibility for Services.
- 1.5 Employee Assistance Program ("EAP"): a systematic program to help individuals resolve personal problems, such as family conflict, stress, and drug or alcohol abuse; to address common work/life issues; and to provide training, consultation, and other management services relating to the effective utilization of the EAP by Sponsor and its Employees.
- 1.6 Employee Count: the number of Employees eligible for Services at any point in time.
- 1.7 ERISA: the Employee Retirement Income Security Act of 1974, as amended.
- 1.8 Household Member: an individual who permanently, physically resides in the household of an Employee or a child of an Employee up to the age of 26.
- 1.9 Participant: an Employee or a Household Member.
- 1.10 PEPM Rate: the sum of the rates that are calculated on a per Employee per month basis as set forth on Addendum B.

1.11 Supplemental Fees: all fees and charges except for the Base Fee as set forth on Addendum B.

## 2. SERVICES

Magellan will provide EAP services to Sponsor and its Employees and Household Members within the United States (including Puerto Rico) as set forth in Addendum A ("Services").

## 3. SERVICE FEES

3.1 Payment Obligation. As consideration for the Services to be performed by Magellan hereunder, Sponsor agrees to pay Magellan the Base Fee and all applicable Supplemental Fees as set forth on Addendum B, all as may be adjusted according to the provisions of this Agreement (collectively, as so adjusted, the "Service Fees"). Any undisputed Service Fees not paid when due shall be subject to interest charges at the lesser of one percent (1.0%) per month or the maximum rate allowed under applicable law.

3.2 Determination of Payment Amounts. The Base Fee will be due in advance in monthly or quarterly installments (or as otherwise required by law), as mutually agreed upon by the parties from time to time. Any Supplemental Fees incurred by Sponsor will be invoiced at the next regular billing interval. The Base Fee shall be calculated in accordance with the PEPM Rate set forth on Addendum B and the Employee Count that exist as of the date no later than the first day of the applicable billing period. Sponsor agrees that any failure to provide Magellan with an accurate Employee Count on which an invoice is based or to correctly calculate any self-bill payment shall not serve as a basis to dispute or adjust the amount of any payment to Magellan without prior notice to Magellan. As appropriate, any retrospective reconciliations and adjustments will be made in accordance with Section 3.4.2. All payments due to Magellan that are not paid via electronic funds transfer shall be addressed to: Magellan Behavioral Health, Inc., Magellan Lockbox, P.O. Box 785341, Philadelphia, PA 19178-5341, or to such other address as may be communicated to Sponsor by Magellan from time to time.

3.3 Covered Population. The PEPM Rate assumes an Employee Count of 1000.

### 3.4 Fee Adjustments.

3.4.1 Renewals. No later than ninety (90) days prior to the Contract Anniversary Date, Magellan will provide Sponsor with the PEPM Rate and Supplemental Fees applicable to the next renewal term and such Service Fees will become effective on the Contract Anniversary Date unless this Agreement is terminated pursuant to the terms of this Agreement.

3.4.2 Population Variances. If the Employee Count reported by Sponsor and used to calculate the Base Fee for any billing period varied by fifteen percent (15%) or more above or below the actual Employee Count for such period or periods, Magellan may adjust the Base Fee in accordance with the new Employee Count as of the effective date of the change in population for a period not to exceed six (6) contract months. As applicable, Sponsor shall pay Magellan the amount of any undisputed underpayment or Magellan shall credit the amount of any overpayment to Sponsor, within thirty (30) days of the resolution of any variation.

3.5 Taxes, Fees and Surcharges. Sponsor shall be responsible for the payment of any and all applicable taxes, fees and surcharges assessed by the federal government or by any state, province or other governmental body against Magellan with respect to Services provided under this Agreement. Any sales, use, premium or other tax, fee or surcharge ("Taxes") imposed on Services provided under this Agreement will be the sole responsibility of Sponsor. Sponsor may direct Magellan to pay any such Taxes and Sponsor shall reimburse Magellan for such payments actually made. In addition, Sponsor shall indemnify Magellan for any such Taxes and penalties and/or interest thereon, actually collected from Magellan in a state or federal action brought against Magellan. Notwithstanding the foregoing, in no event shall Sponsor be liable for any taxes, license fees, or other amounts levied against Magellan that relate to Magellan's normal business operations, income taxes, gross receipts taxes, or state licensing fees.

3.6 Availability of Funds. Pursuant to N.C. General Statute 143C-6-8, it is understood and agreed between Magellan and Sponsor that Sponsor's payment obligation under this Agreement is contingent upon the availability of appropriated funds from which payment for Agreement purposes can be made, and, if payment obligations are made with State of North Carolina funds, upon the availability of appropriated funds that are not State funds.

#### 4. TERM AND TERMINATION

4.1 Term. The term of this Agreement shall be for three (3) years beginning on the Effective Date. Thereafter, the Agreement shall automatically renew for successive one (1) year terms from the Contract Anniversary Date unless terminated as provided in Section 4.2 or either party gives the other written notice of nonrenewal not less than sixty (60) days prior to the expiration of the term of this Agreement or any renewal thereof.

4.2 Termination. This Agreement may be terminated as follows:

4.2.1 Material Breach. Either party may terminate for a material breach of the Agreement, other than non-payment of Service Fees, but only if the party seeking to terminate has first given the party in breach written notice specifying the nature and, so far as then known, the extent of the breach and the action required to correct the breach. The party in breach shall be afforded thirty (30) days (or such additional time as the non-breaching party may reasonably allow, as confirmed in writing) to cure the breach or achieve substantial cure if a complete cure cannot be reasonably effectuated within the designated period. If the breach remains uncured at the expiration of the designated period, the non-breaching party may, at any time that the breach remains uncured thereafter, terminate this Agreement upon five (5) business days' advance written notice.

4.2.2 Non-payment of Fees. Magellan may terminate for a default by Sponsor in its payment obligations under this Agreement unless there is a bona fide dispute regarding the Service Fees due. Provided, Magellan shall not terminate the Agreement for non-payment of undisputed Service Fees unless Sponsor's payment is delinquent for more than thirty (30) days, Sponsor has been duly notified of the delinquency by Magellan, and at least thirty (30) days have elapsed since the date of notification of delinquency. If Sponsor pays the delinquent amount in full, including any accrued interest, prior to the next payment date after cancellation of the Agreement and the Agreement was not previously cancelled for non-payment during the 12-month period prior to the effective date of cancellation, Magellan shall reinstate the Agreement as though it had never terminated. During the period of time from the date of notice to Sponsor of the delinquency through any reinstatement of the Agreement, Magellan shall not be obligated to perform on-site services (e.g., Service Hours, CISM Services), deliver print communications materials to Sponsor, or refer new Participant cases to an EAP Counselor for In-Person Sessions (as defined in Addendum A of this Agreement).

4.2.3 Miscellaneous Events. Either party may terminate this Agreement immediately upon written notice to the other party if: (a) the other party engages in fraud or intentional misrepresentation in connection with a decision to enter into this Agreement or fulfill any obligations hereunder, (b) the other party ceases to operate, (c) the other party becomes legally disqualified to perform, unless such disqualification can be remedied without a disruption in the performance of this Agreement or (d) the failure by Sponsor or, as applicable, the State of North Carolina, to appropriate the necessary funds required to pay the Service Fees.

4.3 Effect of Termination.

4.3.1 Continuity of Care. Sponsor and Magellan shall cooperate to avoid any interruption in the continuity of care to Participants.

4.3.2 Reports. Provided Sponsor has paid Magellan all undisputed Service Fees due under this Agreement, Magellan shall release to Sponsor all final aggregate utilization reports on the next scheduled report date.

4.3.3 Use of Materials. Sponsor's right to use Magellan proprietary materials furnished during the term of this Agreement, including without limitation, manuals, videotapes, DVDs, employee print communications, and Web site, shall cease upon the effective date of termination. Upon Magellan's request, Sponsor shall return or destroy any such proprietary materials.

4.3.4 Return of Service Fees. Magellan shall, within thirty (30) days of termination, return to Sponsor the pro rata portion, if any, of the Service Fees paid to Magellan which corresponds to any unexpired period for which payment has been received, less any undisputed amount then due Magellan.

## 5. OBLIGATIONS OF SPONSOR

5.1 Sponsor Cooperation. Sponsor agrees to cooperate with Magellan by furnishing accurate information necessary for the delivery of Services hereunder on a timely basis in a form and manner reasonably specified by Magellan.

5.2 Notice of Employee Count. If at any time the actual Employee Count varies from the previously reported Employee Count by fifteen percent (15%) or more, Sponsor shall provide prompt notice to Magellan of such variation, the effective date of the change, and the revised Employee Count. Sponsor shall bear the risks associated with an inaccurate Employee Count reported to Magellan, whether such report was made by Sponsor or by a third party on behalf of Sponsor.

## 6. INSURANCE AND INDEMNIFICATION

6.1 Insurance. Without limiting the scope or extent of the protection afforded Sponsor for the liabilities assumed by Magellan under this Agreement, Magellan agrees to maintain during the term of this Agreement the following coverages: (a) commercial general liability insurance with limits of liability of no less than \$1,000,000 per occurrence and \$3,000,000 aggregate, and (b) managed care errors and omissions insurance with limits of liability of no less than \$5,000,000 per claim and aggregate.

6.2 Indemnification. As allowed by law, each party (the "Indemnifying Party") agrees to defend and indemnify the other party, its affiliates and their respective officers, directors and employees (the "Indemnified Party") from any claims, losses, damages, liabilities, or expenses (including court costs and reasonable attorneys' fees) arising out of or resulting from the negligent or willful act or omission or breach of this Agreement by the Indemnifying Party or its officers, directors, employees, or agents, but only if the Indemnified Party has not, by act or failure to act, materially jeopardized the position of the Indemnifying Party with respect to the resolution or defense of the claim. The Indemnified Party must promptly notify the Indemnifying Party upon receipt of notice of any claim or lawsuit and must permit the Indemnifying Party's authorized attorneys and personnel to handle and control the defense of any such claim or lawsuit. The Indemnified Party agrees to fully cooperate and aid in such defense at its own cost. An Indemnifying Party may not, without the prior written consent of the Indemnified Party, settle or compromise any claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim, and does not contain any equitable order, judgment or term which in any manner affects, restrains or interferes with the business of the Indemnified Party or any of its respective affiliates.

## 7. PROPRIETARY INFORMATION

In connection with the performance of Services under this Agreement, each party may disclose to the other certain confidential information concerning the disclosing party's business, including confidential information that may have been disclosed prior to execution of this Agreement, regardless of whether such information is marked or

otherwise designated "confidential" or "proprietary," and regardless of whether such information is furnished in oral, written, or electronic form ("Proprietary Information"). The parties recognize and agree that any such Proprietary Information shall remain the exclusive property of the disclosing party and shall not be used or disclosed for any purpose other than as contemplated by this Agreement. By disclosing Proprietary Information, neither party shall be deemed to have waived any copyright, trademark or patent right that it, its parent, subsidiary or affiliate, may have. In the event that the receiving party is requested, or required by applicable law, regulation or legal process, to disclose any Proprietary Information of the disclosing party, the receiving party agrees that it will provide the disclosing party with prompt notice of such request or requirement and reasonable cooperation in order to enable the disclosing party to seek an appropriate protective order or take such other steps as it deems reasonably necessary. This section shall not apply to any information which the receiving party can demonstrate (a) was already available to the public at the time of disclosure, or subsequently became available to the public, other than by breach of this Agreement, (b) was available to the receiving party on a nonconfidential basis prior to its disclosure by the disclosing party, (c) becomes available to the receiving party on a nonconfidential basis from a person other than the disclosing party who is not otherwise bound by a confidentiality agreement with the disclosing party, or is otherwise not under an obligation to the disclosing party or any of its representatives not to transmit the information to the receiving party, or (d) was independently developed or discovered by the receiving party.

## 8. MISCELLANEOUS

8.1 Compliance with Laws. Each party shall comply with all applicable federal, state and local laws and regulations relating to performance under this Agreement including, without limitation, all applicable privacy laws and the Jessica Lunsford Act for North Carolina. Magellan further agrees it will not discriminate against any Participant or applicant for employment because of race, color, religion, gender, national origin, ancestry, marital status, sexual orientation, age, disability or other protected class. Magellan will reasonably accommodate Participants seeking Services.

8.2 Fiduciary Status. To the extent that any Services hereunder are governed by ERISA, Magellan shall be a fiduciary, within the meaning of ERISA, of the applicable group health plan. Such fiduciary status, however, is limited to the responsibilities specified in this Agreement. Magellan is not intended to be and shall not be the plan administrator, within the meaning of ERISA, of such group health plan.

8.3 Status of the Parties. Magellan and Sponsor agree that they are independent contractors and neither Magellan nor Sponsor is the agent of the other, nor is either party authorized to act on behalf of the other in any manner.

8.4 Third Party Beneficiaries. The parties have not created and do not intend to create by this Agreement any enforceable rights in any Participant, provider, or other person not a party to this Agreement.

8.5 Survival. Any terms of this Agreement that by their nature extend beyond their expiration or termination shall remain in effect until fulfilled. No confidentiality or indemnification obligation contained in this Agreement shall be affected by expiration or termination of this Agreement. This Agreement shall bind the parties and their legal representatives, successors, heirs and assigns.

8.6 Notices. Unless otherwise provided in this Agreement, all notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently provided if given by personal service or sent by registered, certified or express mail, reputable overnight courier service or facsimile with receipt confirmed as follows:

To Magellan:	Magellan Behavioral Health, Inc. 14100 Magellan Plaza Drive Maryland Heights, MO 63043 Attention: Legal Department FAX: 314-387-4958
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To Sponsor: Orange County Board of Education  
200 E. King Street  
Hillsborough, NC 27278  
Attn: Dr. Marcie Holland, Assistant Superintendent for Human Resources  
FAX: 919-732-8120

From time to time, either party may designate a different name or address for purposes of notice by notice to the other party given in accordance with this paragraph.

8.7 Waiver. The failure of any party in any one or more instances to insist upon strict performance of any of the terms and provisions of this Agreement, or to exercise any option conferred in this Agreement, shall not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms, provisions or options on any future occasion.

8.8 Force Majeure and Excuse of Performance. Neither party shall be liable to the other for damages or monetary penalties of any kind or deemed in default under this Agreement for any failure to perform or delay in performing to the extent that its performance is hindered, delayed, or rendered impossible due to an event or occurrence beyond the reasonable control of the party, and without its fault or negligence, including, without limitation, the breakdown, malfunction or other failure of any external third party telecommunication system or other system or mechanism by which information and data is stored or transmitted.

8.9 Enforceability. The invalidity or unenforceability of any term or provision herein shall in no way affect the validity or enforceability of any other term or provision.

8.10 Entire Agreement. This Agreement, including all attached addenda, represents the entire agreement between the parties and supersedes any and all prior written or oral agreements or understandings related to the subject matter hereof. Notwithstanding the foregoing, this Agreement hereby incorporates any business associate agreement executed by or on behalf of the parties in compliance with the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA").

8.11 Modification of Agreement. Any modification, alteration, or change to the terms of this Agreement, or any addenda attached hereto, shall be made only by a written agreement duly executed by the parties, subject to the approval of any applicable regulatory authority if required by applicable law or regulation.

8.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement

**[THIS SECTION INTENTIONALLY BLANK]**



IN WITNESS WHEREOF, Magellan and Sponsor have executed this Agreement by their duly authorized representatives.

**MAGELLAN BEHAVIORAL HEALTH, INC.**

**ORANGE COUNTY BOARD OF EDUCATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Vice President

Title: Superintendent

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: Board Chair

Date: \_\_\_\_\_

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Officer  
Orange County Schools

\_\_\_\_\_  
Date

**ADDENDUM A  
STATEMENT OF WORK**

**A. EAP Services**

1. Definitions.

1.1 Brief Counseling: a problem-focused form of individual or family outpatient counseling that (a) seeks resolution of problems in living (e.g., parenting concerns, emotional stress, marital and family distress, alcohol- and drug-related problems) rather than basic character change, (b) emphasizes counselee skills, strengths and resources, (c) involves setting and maintaining realistic goals that are achievable in a one (1) to five (5) month period, (d) encourages counsees to practice behavior outside the counseling session to promote therapeutic goals, and (e) in which the counselor provides structure, interprets behavior, offers suggestions, and assigns “homework” activities.

1.2 Crisis Counseling: the process of responding to a request for immediate services in order to determine whether an emergency exists and, based on that determination, of making a referral to emergency behavioral health services, to community resources, or to an EAP Counselor. Crisis Counseling includes communication with the person in crisis that is focused on defusing the person’s severe emotional reaction to a situation in order to enable that person to accept the referral and deal with the immediate crisis without causing harm to self or others.

1.3 Critical Incident Stress Management (“CISM”) Services: a response to and consultation in connection with a sudden, unanticipated, traumatic incident or circumstance (e.g., accident, death, threat of violence, natural disaster) that produces a high degree of distress in the affected workplace of Sponsor or an immediate or delayed emotional reaction in Employees, that surpasses normal coping mechanisms.

1.4 Customer Service Associate or “CSA”: an intake service representative employed by Magellan at its service center to respond telephonically to Participant requests for EAP services.

1.5 EAP Consultant: a licensed behavioral health professional employed by Magellan at its service center to respond telephonically to Participant requests for EAP services.

1.6 EAP Counselor: a psychologist, clinical social worker, marriage family and child counselor, or other professional licensed or certified to deliver behavioral health counseling services under the laws of the state in which he or she practices, who is under contract with Magellan to provide EAP services, and who has (a) training and experience in assessing substance abuse problems and in conducting focused, problem-resolution counseling and (b) at least a master’s level degree in an appropriate field.

1.7 Episode of Care: a continuous course of counseling for a specific problem or set of problems, up to the number of In-person Sessions specified in Section 3.2 of this Addendum A.

1.8 In-person Session: a counseling session of approximately 50 minutes at the office of an EAP Counselor for a Participant, individually or with Participants or others, as appropriate.

2. Magellan Web Site. Magellan will provide Sponsor and Participants with access to its Web site, which includes information on wellness subjects, general health, workplace topics for organizations, interactive self-improvement programs and self-assessment tools, a directory of EAP Counselors and a database of child and elder care providers. In addition, Sponsor and Participants may access an enhanced comprehensive, interactive, online health improvement program that includes a personal health assessment, e-coaching courses, an enhanced wellness library, exercise and nutrition planners, health and fitness trackers, a fitness club discount affinity program, managed blogs, email wellness reminders and online competitive challenges between individuals and groups (“E-Wellness Services”).

3. Personal Consultation Services.

3.1 Telephonic EAP Services. Magellan will maintain a toll-free telephone access line twenty-four (24) hours per day, seven (7) days per week, for Participants to access EAP services. EAP Consultants will be available through the telephone access line to assess the caller's problem, arrange for appropriate assistance (e.g., provide coaching and/or educational materials, refer to benefit program, community resource or other service provider) and provide any necessary Crisis Counseling.

3.2 In-person EAP Services. Magellan will link each Participant who requests in-person counseling services to an EAP Counselor. The EAP Counselor will assess the Participant's problem(s) and, in accordance with the EAP Counselor's best judgment, provide Brief Counseling and/or refer the Participant to an appropriate treatment provider and/or community resource. Each Participant is eligible for up to three (3) In-person Sessions per problem per year, as clinically appropriate.

3.3 Run-off Services. For a period of thirty (30) days following termination of this Agreement, Magellan will provide In-person Sessions, so long as In-person Sessions remain available and are clinically appropriate, to those Participants with open routine cases as of the effective date of termination. Any open formal supervisory referrals to the EAP will be transitioned to a successor vendor or other provider as directed by Sponsor.

4. Treatment Compliance Monitoring. Upon request and with the concurrence of the Employee, Magellan will monitor an Employee's compliance with a substance abuse treatment program monthly, as needed, for up to one (1) year.

5. Management Consultation. Upon request, Magellan will provide telephonic consultation services (i) to any supervisor who is considering the referral of an Employee to the EAP, and in the case of a formal, supervisor-referred Employee, remain in regular contact with the referring supervisor regarding work performance issues; (ii) with regard to the management of high-risk situations in which an Employee's personal problems may create a threat of violence in the workplace; and (iii) as appropriate and to the extent authorized by an Employee or permitted by law, on the process required to facilitate an Employee's return to work. In addition, for payment of a Supplemental Fee to be mutually agreed upon, Magellan will provide onsite conflict management consultation in any situation in which two (2) or more Employees experience difficulty in their work relationship. Any advice or recommendations made pursuant to this paragraph is not and shall not be construed as a legal opinion.

6. Orientation. Magellan will provide any reasonably necessary Employee orientations to the EAP upon implementation of EAP services. At Sponsor's option, orientations may be conducted in person at a Sponsor worksite in exchange for an equivalent number of Service Hours (as defined below). All other orientations will be conducted telephonically or via Webinar.

7. Seminars and Related Services. At the request of Sponsor and a minimum of three (3) weeks' notice, Magellan will attend Sponsor health fairs or open enrollments and/or provide Magellan's standard employee wellness seminars and supervisor training ("Service Hours"). Ten (10) Service Hours are included in the Base Fee per Contract Year. Unless otherwise agreed by Magellan and Sponsor, all Service Hours shall be delivered at a Sponsor worksite. Service Hours in excess of those included in the Base Fee, if any, are available for a Supplemental Fee at the rate indicated on Addendum B. Service Hours do not include non-local travel expenses (i.e., those reasonable expenses in connection with travel in excess of fifty (50) miles or one (1) hour from the office of the Magellan representative to the worksite, charged at Magellan's actual cost), special instructional materials and certain specialized training services, if any. In the event that any service is scheduled and subsequently canceled with less than five (5) business days' notice, Sponsor will be billed or debited as if the scheduled services had been delivered.

8. Critical Incident Stress Management. At the request of Sponsor, Magellan will provide CISM Services to impacted Employees. Up to ten (10) hours per incident will be made available to Sponsor at no additional charge for services delivered within the United States. There is no limitation on the number of incidents for which CISM Services

may be requested. Unless otherwise agreed by Magellan and Sponsor, CISM Services shall be delivered at a Sponsor worksite. In the event that any CISM session is scheduled and subsequently canceled with less than a minimum notice of seventy-two (72) business hours, Sponsor will be charged a cancellation fee in accordance with Addendum B. CISM Services do not include non-local travel expenses (*i.e.*, those reasonable expenses in connection with travel in excess of fifty (50) miles or one (1) hour from the office of the Magellan representative to the Sponsor worksite, at Magellan's actual cost).

9. Employee Communications Program. Magellan will provide its standard communications materials to Sponsor for use and dissemination to its Employees. Materials will be delivered to one (1) Sponsor location and may consist of print and/or electronic materials including, employee brochures with wallet cards, workplace posters that include the toll-free telephone number for accessing Services, a supervisor manual, and employee and supervisor videos. Sponsor agrees that Magellan's obligation under this section does not include the costs associated with home mailings and notices to Employees or Household Members required by state or federal law.

10. Legal and Financial Consultation Services.

(a) Legal Consultation Services. Services ("Legal Consultation Services") consist of an initial telephonic or in-person consultation with a plan attorney located in the Participant's state of domicile for routine legal needs. During the consultation, a plan attorney will explain the Participant's rights, identify options, and, if needed, recommend a course of action, which may include referral to a different plan attorney. The Participant will choose whether to retain a plan attorney at his or her expense or adopt an alternative plan of action, which may include referral to a different plan attorney. Participants who elect to retain legal counsel from a plan attorney after the initial consultation will be entitled to a twenty-five percent (25%) reduction in fees from the plan attorney's normal hourly rate and/or fee schedule, as applicable. Participants are entitled to one (1) free initial office or telephone consultation with a plan attorney per separate legal matter per Contract Year. Legal Consultation Services do not include services (i) in connection with employment-related matters, (ii) in connection with disputes or proceedings involving Magellan, its subsidiaries, affiliates or customers, a Participant's employer, Magellan's legal and/or financial services vendor(s) or any of its attorneys, or (iii) that are frivolous, harassing, or otherwise involve the violation of ethical rules.

(b) Financial Consultation Services. Services ("Financial Consultation Services") include telephonic information and consultation on debt management, basic financial planning, insurance, retirement, savings and investments, budgeting for vacations, family financial issues and identity theft resolution. Participants are entitled to one (1) free telephone consultation per separate financial matter per Contract Year. Financial Consultation Services are intended to assist Participants in formulating financial planning strategies and to serve as an information resource and planning tool. Financial consultants will not advise nor instruct Participants as to any course of action, nor be responsible for any decisions made by Participants about their financial planning.

11. Work/Life Services. Magellan will provide, or arrange for a third party to provide, telephone consultation, information, education, access to an expanded on-line library of information and tools, and referral services in connection with child care, elder care, parenting issues, children with special needs, schooling and education, teen and young adult issues and adoption assistance, as well as personal convenience services such as pet care, relocation assistance, home or auto repair and improvement, and similar services ("Work/Life Services"). Participants may access Work/Life Services by telephoning the assigned Magellan toll-free telephone number. Work/Life Services are available twenty-four (24) hours per day, seven (7) days per week. When a Participant requests a referral for child care or elder care, a consultant will gather information about the Participant's dependent care needs and send the Participant a packet of educational materials and a list of no fewer than three (3), to the extent available, licensed, certified or registered dependent care providers with confirmed vacancies matching the Participant's expressed needs. In all cases, the information about, and description of, a particular information agency, resource organization, placement agency, or direct child care or elder care service provider has been provided by the agency, organization, or direct child care or elder care service provider.

12. Commencement and Termination of Coverage. The eligibility of an Employee for Services under this Agreement shall commence on the first day of his or her employment by Sponsor (or such other time as specified by Sponsor) on or after the Effective Date. A Household Member shall commence eligibility on the later of the date he or she becomes a Household Member and the date on which the Employee becomes eligible. The eligibility of an Employee for Services under the Agreement shall terminate on the earlier of (i) the last day of the month following the month of his or her termination of employment by Sponsor, or, if Employee is a COBRA beneficiary, the last day of his or her continuation coverage under COBRA or (ii) termination of the Agreement. Household Members shall remain eligible for Services until the eligibility of the Employee related to them ceases or until they cease to be Household Members, whichever occurs first. Notwithstanding, each Participant will be entitled to receive the full number of In-person Sessions identified in Section 3.2 of this Addendum A for an identified problem, as clinically appropriate, if he or she has scheduled an appointment with an EAP Counselor for that problem prior to the last date of eligibility as specified in this section. Magellan reserves the right to terminate the eligibility of any Participant, without right of reinstatement, for fraud or deception in the use of Services or for knowingly permitting such fraud or deception by another, for threatening the safety of Magellan employees, EAP Counselors, or others eligible for or receiving Services and for repeated behavior substantially interfering with Magellan's ability to furnish or arrange services for the Participant or others or the ability of an EAP Counselor to provide services to others. Any such termination will be effective on the date Magellan mails notice of cancellation, unless the notice specifies a later date. Magellan will not terminate the eligibility of any Participant because of his or her health status or use of the EAP. A Participant does not have the right to renew his or her eligibility for Services under this Agreement once his or her relationship (employment or otherwise) to Sponsor is terminated. A Participant's right to receive Services is determined solely by this Agreement.

13. Exclusions. The EAP services provided hereunder do not include any of the following:

- (a) Evaluations required by any state or federal judicial officer or other governmental official or agency mandating that a Participant undergo counseling;
- (b) Court-mandated counseling and evaluations or recommendations to be used in child custody proceedings, child abuse proceedings, criminal proceedings, workers' compensation proceedings, or any legal actions of any kind;
- (c) Evaluations for fitness for duty determinations or excuses for leaves of absence or time off;
- (d) Medical care, including services for a condition that requires psychiatric treatment (for example, a psychosis);
- (e) Inpatient treatment;
- (f) Services by providers who are not part of Magellan's EAP Counselor network;
- (g) Group counseling;
- (h) In-person Sessions that were not accessed through Magellan (either through the toll-free telephone access line or the on-line self-referral service) for the particular Episode of Care;
- (i) Psychological, psychiatric, neurological, educational, or IQ testing;
- (j) Remedial and social skills education services, such as evaluation or treatment of learning disabilities, learning disorders, academic skill disorders, language disorders, mental retardation, motor skill disorders, or communication disorders; behavioral training; cognitive rehabilitation;
- (k) Medication or medication management;
- (l) Examinations and diagnostic services in connection with obtaining employment or a particular employment assignment, admission to or continuing in school, securing any kind of license (including professional licenses), or obtaining any kind of insurance coverage;
- (m) Testimony, creation of records, or other services in connection with legal proceedings;
- (n) Guidance on workplace issues when the Participant sues, or threatens to sue, Sponsor;
- (o) Acupuncture;
- (p) Biofeedback or hypnotherapy; and
- (q) Services to permit individuals to fulfill any group health plan prerequisite that EAP services be utilized prior to behavioral health services becoming available.

14. Choice of Providers. Participants may select an EAP Counselor identified by an EAP Consultant or CSA, or through the online referral service at MagellanHealth.com. Magellan has no obligation to provide or arrange for EAP services by any person who is not an EAP Consultant or EAP Counselor.

15. Financial Responsibility. Participants have no financial responsibility in connection with EAP services provided under this Agreement. However, fees for professional services provided by resources other than Magellan or EAP Counselors, including, but not limited to, the retention of lawyers, financial consultants, dependent care providers, or other professional or service providers, will be the responsibility of the Participant and/or his or her group health plan or other benefit programs, as applicable.

#### **B. Administrative Services**

1. Account Management. Magellan will designate a member of its account management staff to act as a liaison to Sponsor and to respond to questions, resolve service delivery issues, facilitate consultation on behavioral health topics and provide advice on the effective use of services. All account management services will be delivered telephonically unless otherwise mutually agreed upon by the parties.

2. Reports and Reporting. Subject to any legal restrictions on the release of confidential or other personally identifiable information, Magellan will provide to Sponsor a statistical report of Participant utilization of Services on a quarterly basis. Such reports will reflect aggregate data and will not include Participant-identifiable information. Upon request, Magellan will provide customized reports exclusively designed for Sponsor for an additional fee to be mutually agreed upon.

#### **C. Limited Liability and Warranties**

Magellan warrants that it and its third party vendors will make every effort to ensure the accuracy of the information or the appropriateness of any service or product provided to Participants. Referrals given by Magellan to Participants for elder or child care, legal or financial consultation services or other community services are not endorsements or recommendations for the referred programs or providers. The responsibility for selecting and engaging such providers lies solely with the Participant. Vendors and such other providers are not and shall not be deemed agents of Magellan or Sponsor.

#### **D. Suspension of Services**

Magellan reserves the right to suspend or terminate access to Legal Consultation Services, Financial Consultation Services, Work/Life Services and/or E-Wellness Services upon ninety (90) days' written notice if, in Magellan's judgment, such services cease to be available on commercially reasonable terms from third party vendors. If Magellan elects to suspend or terminate any such services, the remaining provisions of this Agreement will remain in full force and effect, except that Magellan will adjust its Service Fees pro rata to reflect the suspension or termination of these services.

**ADDENDUM B  
FEE SCHEDULE**

**PEPM Rate**

1-3 In-person Session, CSA Answer (including all Services per Addendum A)	\$1.31
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**Supplemental Fees**

Service Hours, in excess of 10 per Contract Year	\$230.00 per hour plus non-local travel costs (per Addendum A)
CISM Services, in excess of 10 hours per incident	\$250.00 per hour plus non-local travel costs (per Addendum A)
CISM Cancellation Fee	\$250.00 per hour