

**BOARD OF COMMISSIONERS
COUNTY OF YORK
COMMONWEALTH OF PENNSYLVANIA
ORDINANCE 2017 - 03**

**AN ORDINANCE TO CREATE THE YORK/ADAMS HEALTHCHOICES
JOINDER BOARD PURSUANT TO 53 PA.C.S.A. §2301, *ET SEQ.***

WHEREAS, the County of York is responsible for providing mental health and drug and alcohol services to citizens of York County under Pennsylvania’s Mental Health and Intellectual Disability Act of 1966, 50 P.S. §§4101 *et seq.* (1966 MH/ID Act); Mental Health Procedures Act of 1976, 50 P.S. §§7101 *et seq.*; and Drug and Alcohol Abuse Control Act, 71 P.S. §§1690.101 *et seq.*, as amended;

WHEREAS, pursuant to the HealthChoices Behavioral Health Program (“HealthChoices Program”), administered by the Pennsylvania Department of Human Services (“DHS”), the County of York, as the Primary Contractor of the HealthChoices Program, has effectuated a comprehensive and integrated network of locally accountable publicly-funded services for the purpose of promoting excellence in the delivery of behavioral health care, not only for the covered citizens of York County, but also the covered citizens of the County of Adams;

WHEREAS, DHS has established parameters for contracting with multi-governmental entities or, in the alternative, requiring counties to submit delivery and oversight of behavioral health services for county residents to DHS or other state agencies;

WHEREAS, the York County Commissioners do hereby determine that it is in the best interest of the citizens of York and Adams Counties that are covered by the HealthChoices Program that the network of locally accountable publicly-funded behavioral health services be administered by a multi-governmental entity created by the Counties of York and Adams;

WHEREAS, the Counties of York and Adams (“Counties”) are authorized pursuant to 53 Pa.C.S.A. §§2301, *et seq.*, to enter into an intergovernmental cooperation agreement for the creation of an intergovernmental cooperative entity to administer and deliver behavioral health services for the residents of the Counties of York and Adams;

WHEREAS, to implement the foregoing objectives, the York County Commissioners intend to adopt the appropriate ordinance in accordance with 53 Pa.C.S.A. §§2301, *et seq.*; and

WHEREAS, the York County Commissioners authorize the execution of an intergovernmental cooperation agreement with the County of Adams for the creation of an intergovernmental cooperative entity, with the initial members being York County, Pennsylvania and Adams County, Pennsylvania, for the purpose of implementing the objectives contained in the intergovernmental cooperation agreement (“Agreement”) and such Agreement is incorporated by reference herein, and its material provisions are set forth in the Ordinance below in accordance with 53 Pa.C.S.A. §§2301, *et seq.*

NOW THEREFORE, with the above matters incorporated by reference herein, it is **HEREBY ORDAINED AND ENACTED**, the following Ordinance, as follows:

Section 1. Name of Entity. The name of this intergovernmental cooperative entity shall be the “York/Adams HealthChoices Joinder Governing Board” (“YAJB”).

Section 2. Incorporation. The Counties shall incorporate the YAJB as a Pennsylvania nonprofit corporation. The YAJB shall be organized pursuant to 53 Pa.C.S.A. §§2301, *et seq.*

Section 3. Purpose. The purpose of the YAJB shall be to directly contract with DHS in order to serve as the Primary Contractor for the HealthChoices Program for the Counties of York and Adams, to contract with a Behavioral Health Managed Care Organizations (“BH-MCO”), to administer and operate the HealthChoices Program on behalf of the Counties of York and

Adams, and to meet the medical and social service needs of the individuals in the Counties of York and Adams, as set forth by the HealthChoices Program

Section 4. Authority and Responsibility.

A. Authority rests in state law under Pennsylvania’s Mental Health and Intellectual Disability Act of 1966, 50 P.S. §§4101 *et seq.* (1966 MH/ID Act); Mental Health Procedures Act of 1976, 50 P.S. §§7101 *et seq.*; Drug and Alcohol Abuse Control Act, 71 P.S. §§1690.101 *et seq.*, as amended; and pursuant to the HealthChoices Program, administered by DHS. The Agreement shall act as the bylaws for the YAJB.

B. YAJB is mandated to:

(1) Do any and all lawful things to meet the behavioral health care needs, including the medial and social service needs, of the citizens of York and Adams Counties covered by the HealthChoices Program.

(2) Administer and operate a comprehensive and integrated network of locally accountable, publicly-funded services for the purpose of promoting excellence and delivery of behavioral health care, including but not necessarily limited to, services pursuant to the HealthChoices Program, administered by DHS.

(3) Confirm the establishment, funding, and operation of the YAJB, on behalf of the Counties of York and Adams, in jointly managing the HealthChoices Program.

(4) Provide for the YAJB to serve as the Primary Contractor for the HealthChoices Program and to enter into contracts on its own with DHS and BH-MCOs and such other and necessary contracts and/or documents relating to the HealthChoices Program.

C. YAJB shall be empowered to enter into contracts for policies of group insurance and employee benefits, including social security, for its employees.

D. YAJB is further mandated to do any and all lawful acts and things which may be necessary, useful, suitable, or proper for the furtherance or accomplishment of the purposes set forth in the Agreement.

Section 5. YAJB Membership.

A. **Members.** The members of the YAJB shall be the Counties of York and Adams (“Members”) and they shall be represented by the Commissioners of each County (“Commissioners”). The Commissioners shall be considered eligible to vote on Member matters. Each County shall be a separate Member as to the respective rights and powers of the Members in the Agreement.

B. **Powers of the Members.** The following powers are reserved exclusively to the Members, and no attempted exercise of any such powers by anyone other than the Members shall be valid or of any force or effect whatsoever:

- (1) Require implementation of the HealthChoices Program consistent with the YAJB’s policies, administration, and operations;
- (2) Appoint Directors of the YAJB;
- (3) Remove and replace Directors of the YAJB;
- (4) Approve any amendments to the Agreement;
- (5) Request and receive audits, financial reports, and any other information from the YAJB, including, as necessary, access to the YAJB records; and
- (6) Determine the distribution of assets of the YAJB upon dissolution in conformity with 53 Pa. C.S.A. §§2301 *et seq.* or such other regulations adopted by DHS, the Office of Mental Health and Substance Abuse Services (“OMHSAS”), or federal agencies having authority over the HealthChoices Program which the YAJB implements under the Agreement.

C. **Appointment Powers.** The Members of the YAJB shall appoint the Directors of the YAJB in accordance with Section 7. The Members of the YAJB shall also fill any vacancies on the Board of Directors in accordance with Section 7.

Section 6. Meetings of the Members.

A. **Annual Meeting.** The annual meeting of the Members of the YAJB (“Annual Meeting”) shall be held in the month of June of each year or at such other time as may be determined by the Members at a duly convened meeting or by unanimous written consent, for the transaction of any such business as may come before the Members.

B. **Meetings.** Other than the Annual Meeting, the Members may hold meetings of the YAJB, for any purpose or purposes, as may be called for by a majority vote of the Members or at the request of the YAJB.

C. **Notice of Meeting.** Notices of any meetings shall be given as mutually agreed upon by and between the Members and the YAJB.

D. **Waiver.** A waiver in writing, signed by the Member entitled to notice, shall be deemed equivalent to notice of any meeting of the Members of the YAJB. Except for special meetings, the specific business to be transacted need not be stated in the waiver. Such a waiver may be made before or after the time of notice stated in this Section. Attendance of a Member at a meeting shall constitute a waiver of notice of such meeting, except when the Member attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

E. Voting. All business of the Members of the YAJB shall be transacted by the affirmative vote of a majority of the Commissioners representing the Members, except as set forth in Section 22.

F. Use of Conference Telephone and Similar Equipment. One or more of the Commissioners may participate in a meeting of the Members of the YAJB by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. All persons so participating shall be deemed present in person at the meeting.

Section 7. Board of Directors.

A. General Powers. The oversight of the YAJB shall be vested in a Board of Directors, subject only to those powers and functions reserved to the Members.

B. Number, Tenure, and Qualifications. The Board of Directors shall consist of six (6) Directors: Adams County will have three (3) representatives on the Board of Directors, all of whom shall be Commissioners of Adams County; York County shall have three (3) representatives on the Board of Directors, all of whom shall be Commissioners of York County.

C. Standard of Care and Justifiable Reliance. A Director shall stand in a fiduciary relation to the YAJB and shall perform his or her duties as a Director, in good faith, in a manner he or she reasonably believes to be in the best interests of the YAJB, and with such care, including reasonable inquiry, skill, and diligence, as a person of ordinary prudence would exercise under similar circumstances. In performing his or her duties, a Director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data prepared or presented by any of the following:

(1) One or more Officers, Executive Director, or employees of the YAJB whom the Directors reasonably believe to be reliable and competent in the matters presented; or

(2) Counsel, public accountants, or other persons as to matters which the Directors reasonably believe to be within the professional or expert competence of such person or persons.

A Director shall not be considered to be acting in good faith if the Director has knowledge concerning the matter in question that would cause his or her reliance to be unwarranted.

D. Officers of the Board. The Officers of the YAJB shall be a President, a Secretary, and a Treasurer. Only the President must be an active Director of the Board. The President and Secretary will be elected by a vote of the Members of the YAJB as soon as practical after the Effective Date of the Agreement; and thereafter, at the Annual Meeting, to serve for one (1) year, or until their successors have been duly elected. In the case of any vacancy occurring in any of said offices, a successor may be elected at any regular meeting of the Board to complete the unexpired term of the vacant office. The Treasurer shall be the Chief Fiscal Officer of the HealthChoices Program.

(1) **President.** The President shall conduct all meetings of the Board unless he or she delegates this authority, on a temporary basis, to another Director.

(2) **Secretary.** The Secretary shall keep a record of all proceedings of the Board of Directors and the Members.

(3) **Treasurer.** The Treasurer will perform the duties of the Chief Fiscal Officer of the HealthChoices Program.

E. Replacement. In the event of any vacancy on the Board of Directors, the Directors of the County affected by the vacancy shall appoint a new Director, who shall be a Commissioner of that County, as a replacement.

F. Quorum. The Board of Directors represented by at least five of its current Directors, either in person or by proxy, at any meeting shall constitute a quorum at such meeting.

G. Voting.

(1) Allocation of Votes. Adams County shall be allocated three (3) votes and York County shall be allocated three (3) votes. A majority of votes (that is, four (4) votes), shall be required to pass a resolution.

(2) Decisions Requiring Voting of the Directors. The following issues shall require action by majority vote of the Board of Directors:

- (i) Recommendations to the Members respecting amendments to the Agreement;
- (ii) Election and removal of the President and/or Secretary; and
- (iii) Approval of the annual operating and capital budget of the YAJB.

H. Assignment of Votes. Directors may assign their vote to any other Director of their County, who will be present at a Board Meeting in their absence, to serve as a proxy ("Proxy"). A Proxy must be in writing, signed by the absent Director and delivered to the Secretary prior to the start of any meeting.

I. Execution of Documents. All contracts and agreements authorized by the Board of Directors shall be signed by the appropriate representative of YAJB.

J. Voting by Mail or E-Mail. Directors may elect to conduct voting by mail or e-mail in such manner as the Board of Directors determines.

Section 8. Fiscal Year. The fiscal year of the YAJB shall commence July 1 and end on June 30 of each year.

A. Expenses and Operating Cash. To the extent contributions are needed to fund the expenses of the YAJB, or to meet operating cash requirements of the YAJB, a Member's cash contribution will be determined by multiplying the requirement by a percentage using the estimated member months attributable to enrollees within the Member County divided by the total estimated member months attributable to HealthChoices-eligible persons ("Enrollees") of the Counties. Grants or other revenue sources to individual Members, to the extent applied to the HealthChoices Program but not contributed to the YAJB, shall be considered by the Board of Directors and result in an adjustment in the Members' contributions, as reasonably determined by the Board.

B. Equity and Insolvency. Should the YAJB need Members' assistance in meeting equity and insolvency requirements, as determined by the Board of Directors, the Member's share will be determined by the same formula as set forth in Section 8.A. above, and the requirement may be funded with letters of credit or other instruments acceptable to DHS.

Section 9. Management of YAJB and the HealthChoices Program. The Agreement, together with any subsequent amendments and/or revisions to the Agreement, shall govern the management of the YAJB and the HealthChoices Program.

Section 10. Establishment and Function of Advisory Groups. The Board of Directors may establish such Advisory Groups as are mandated by statute or as recommended to the Board by the YAJB. Said Advisory Groups shall be comprised of individuals representing various

HealthChoices Program interest groups, especially consumers of services, consumer family members, and providers of services.

Section 11. Indemnification of Directors and Officers.

A. Third Party Actions. The YAJB shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceedings, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the YAJB) by reason of the fact that he or she is or was a representative of the YAJB, or is or was serving at the request of the YAJB as a representative of another partnership, joint venture, trust, or other enterprise, against expenses (including reasonable attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the YAJB, and with respect to any criminal conduct, was not unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the YAJB, and with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

B. Derivative Actions. The YAJB shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the YAJB to procure a judgment in its favor by reason of the fact that he or she is or was a representative of the YAJB, or is or was serving at the request of the YAJB as a representative of another partnership, joint venture, trust, or other enterprise, against expenses

(including reasonable attorneys' fees), actually or reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she believed to be in, or not opposed to, the best interests of the YAJB and except that no indemnification shall be made with respect to any claim, issue, or matter as to which such person shall have been adjudged to be liable for willful misconduct in the performance of his or her duty to the YAJB unless and only to the extent that the Court of Common Pleas of the County in which the registered office of the YAJB is located or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, is fairly and reasonably entitled to indemnity for such expenses which the Court of Common Pleas or such other court shall deem proper.

C. Procedure for Effecting Indemnification. Any indemnification shall be made by the YAJB only as authorized in the specific case upon a determination that indemnification of the representative is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Agreement. Such determination shall be made:

(1) By the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding; and

(2) If such a quorum is not available, or even if obtainable and where a majority vote of a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

D. Advancing Expenses. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be advanced by the YAJB prior to the final disposition of the action, suit, or proceeding as authorized by the Board of Directors in specific cases upon receipt of

an undertaking by or on behalf of the representative to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the YAJB as authorized in the Agreement.

E. Scope of Indemnification. The indemnification provided by this Section shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any agreement, vote of disinterested Directors, or otherwise, including any rights to which a person may be entitled under the Volunteer Protection Act of 1997, Pub.L.No. 105-19, 11 Stat. 218 (1997), both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a representative, and shall inure to the benefit of the heirs and personal representatives of such a person.

F. Right of Indemnification Continuous. The right to indemnification and the advancement of expenses shall continue as to a person who has ceased to be a Director of the Board or an Officer of the YAJB or to serve in any of the other capacities described herein, and shall inure to the benefit of the heirs, executors, and administrators of such person.

G. Right Against the YAJB. If a claim for indemnification under this Section is not paid in full by the YAJB within thirty (30) days after a written claim therefore has been received by the YAJB, the claimant may, at any time thereafter, bring suit against the YAJB to recover the unpaid amount of the claim and, if successful in whole or in part on the merits or otherwise in establishing his or her right to indemnification or to the advancement of expenses, the claimant shall be entitled to be reimbursed for the expense of prosecuting such claim.

H. Indemnification Fund. The YAJB may create a fund, which may, but need not be, under the control of a trustee, or otherwise secure to ensure its indemnification obligations, including its obligation to advance expenses, whether arising under this Section or otherwise.

I. Modification. Neither the modification, amendment, alteration, or repeal of the Agreement or any of its provisions nor the adoption of any provision inconsistent with this Section or any of its provisions shall adversely affect the rights of any person to indemnification and advancement of expenses existing at the time of such modification, amendment, alteration, or repeal or the adoption of such inconsistent provision.

Section 12. Fidelity Bonds and Insurance.

A. Fidelity Bonds. To the extent deemed necessary, the Officers, shall be covered by bonds of fidelity, secured from a guaranty company, in amounts determined and approved by the Board of Directors. The YAJB shall defray the cost of any fidelity bond.

B. General Liability Insurance. Liability insurance shall be secured covering the Board of Directors and the Officers, in amounts determined and approved by the Board of Directors, but not less than \$1,000,000 per occurrence.

Section 13. Confidentiality. Given the cooperative nature that exists, and which shall continue to exist, between the Directors and the YAJB, coupled with the need to share sensitive data amongst themselves, each Director shall respect the confidentiality of any and all sensitive information which he or she may receive from the other Directors and shall not use such information to the competitive detriment of any other Director or County of a Director.

Section 14. Property. All assets and property of the HealthChoices Program and services thereunder, including but not limited to all tangible assets, intellectual property,

intangible assets, documents, computer programs and other data, in whatever format maintained, are owned by the YAJB unless otherwise specified herein or in documents and contracts related to the programs and services.

Section 15. YAJB Employees. York County shall serve as the employer of all the YAJB employees, and all the YAJB employees shall be subject to the overall personnel policies and procedures of York County and shall be participants in York County pensions and other benefit plans.

Section 16. Dissolution of the YAJB. The term for which the YAJB is to exist is perpetual unless dissolved as provided herein. The YAJB may dissolve by resolution of the Members, which resolution must be concurred in by a majority vote of the allotted Member votes of the YAJB. The manner of dissolution also shall be as required by the laws of the United States, the Commonwealth of Pennsylvania, DHS, OMHSAS, and the requirements of law shall prevail if there is any conflict herewith. Upon the dissolution of the YAJB, each County, after paying or making provision for the payment of all of the liabilities of the YAJB, shall offer and, if accepted, transfer all net assets to the respective Counties on an allocated basis as defined herein or any other organization designated by such County and which is organized and operated exclusively for the provision of medical, mental health, mental retardation, chemical dependency treatment, and social services. If the assets are not accepted or designated to another organization by each County, then the Members shall dispose of all of the assets of the YAJB exclusively for the purposes of the YAJB in such manner, or to such organization or organizations organized and operated exclusively for the provision of medical, mental health, mental retardation, chemical dependency treatment, and social services, as the Members shall determine.

Section 17. Retained Revenue. Each Member agrees that any retained revenue at the end of the fiscal year will be divided proportionally to MA lives in each County and each County will plan for the development of additional services in its region in such amounts and to the extent permitted as part of the reinvestment plans as defined in the HealthChoices Program's governing documents and as approved by DHS.

Section 18. Risk Arrangements. Each County shall allocate risk and equity requirements as established by DHS/OMHSAS based upon annual capitation revenue.

Section 19. Withdrawal. A County may withdraw from the YAJB in accordance with the process set forth in this Section.

A. A withdrawing County shall provide written notice to the other County.

B. "Early Withdrawal," is a withdrawal for which written notice is given to the other County on or prior to the date which is forty-five (45) days after the withdrawing County's receipt of final proposed DHS rates for implementation of the Counties' HealthChoices Program. An Early Withdrawal then shall become effective one hundred eighty (180) days after the required written notice of withdrawal is given, and the withdrawing County shall forfeit its prior contributions paid to the YAJB, shall pay any contributions due and owing to the effective date of withdrawal, and shall reimburse the YAJB for expenses of the YAJB in effectuating the Early Withdrawal.

C. For a withdrawal after the Early Withdrawal (a "General Withdrawal"), the effective date of such withdrawal shall be nine (9) months from the date on which the written notice is given to the other County or the end of the then fiscal year of the Counties' HealthChoices Program, whichever is later. The withdrawing County shall forfeit its prior contributions paid to the YAJB, shall pay any contributions due and owing to the effective date

of the withdrawal, and shall reimburse the YAJB for expenses of the YAJB in effectuating the General Withdrawal.

D. For either an Early Withdrawal or General Withdrawal:

(1) A withdrawing County's required contributions and any other investment of funds made by or due from the withdrawing County prior to its withdrawal, shall be paid to and/or forfeited to the YAJB.

(2) Any HealthChoices Program planning, financial, product development, or other confidential data shall belong to the YAJB and shall not be used by the withdrawing County without the written consent of the remaining County.

(3) The withdrawing County shall adhere to all DHS requirements respecting withdrawal and continuation of services to its MA recipients, among other requirements.

Section 20. Implementing Actions. The Counties shall in good faith take all actions as may be necessary or appropriate to fulfill the purposes of the YAJB.

Section 21. Assignment. No County signatory hereto may assign its rights and obligations in the YAJB, except to another governmental entity and with the prior written consent of the non-assigning County, which shall not be unreasonably withheld.

Section 22. Amendment. The Agreement shall not be modified or amended except by written instrument duly executed on behalf of each Member, which shall require the affirmative vote of at least two (2) of the Commissioners representing each Member.

Section 23. Repealer. This Ordinance shall supersede and repeal all ordinances, resolutions and parts thereof inconsistent or conflicting herewith.

Section 24. Effective Date. This Ordinance shall become effective on April 19, 2017.

Section 25. Severability Clause. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair the remaining provisions, sentences, clauses, section or parts of this Ordinance. It is hereby declared to be the intent of the York County Board of Commissioners that this Ordinance would have been adopted and would be enforceable had such unconstitutional, illegal, or invalid sentence, clause, section or part thereof not been included herein.

Duly enacted and ordained this 26th day of April, 2017, by the Board of Commissioners of York County, Pennsylvania in lawful session duly assembled.

ATTEST:

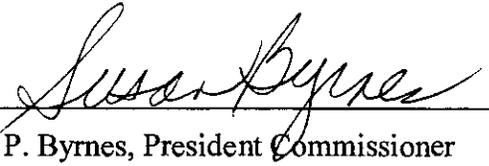
COUNTY OF YORK



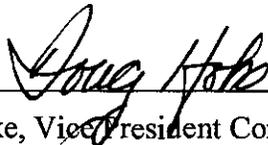
Sherry Baer

Chief Clerk/Office Manager

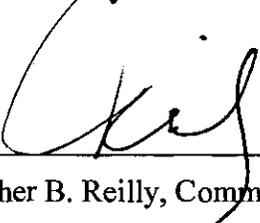
(SEAL)



Susan P. Byrnes, President Commissioner



Doug Hoke, Vice President Commissioner



Christopher B. Reilly, Commissioner

The above Ordinance was ordained, enacted, and adopted this 26th day of April 2017, at a regular meeting of the Board of Commissioners of the County of York duly advertised and assembled upon motion of Commissioner Hoke, seconded by Commissioner Byrnes and passed with a vote of 2 yes and 0 no.