

EMPLOYEE ASSISTANCE PROGRAM AGREEMENT

This **EMPLOYEE ASSISTANCE PROGRAM AGREEMENT** (“**Agreement**”) is entered into effective January 1, 2013 (the “**Effective Date**”) by and between **Presence Hospitals PRV, an Illinois not for profit corporation, d/b/a Presence Saint Joseph Hospital - Elgin** (“**Hospital**”) and the **City of Aurora** (“**Employer**”) (each a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, Hospital, as part of its mission to promote the health of the community, arranges for the provision of a variety of health care services, including, but not limited to, the assessment, counseling, treatment and referral of patients; and

WHEREAS, Hospital has developed an employee assistance program (“**EAP**”) designed to assist employers in handling the social, behavioral and other life problems of employees that may, or may not, affect their job performance (“**EAP Services**”); and

WHEREAS, Hospital desires to provide EAP Services to Employer and Employer desires to implement the EAP Services for the benefit of its full and part-time employees (“**Employees**”).

NOW, THEREFORE, for and in consideration of the foregoing, and the promises and covenants contained herein, the Parties hereby agree as follows:

1. Obligations of Hospital.

- a. Hospital shall provide those EAP Services as described on **Exhibit A** of this Agreement. Those terms not otherwise defined in the body of the Agreement shall have the same meaning as set forth in **Exhibit A**. The basic elements of implementing an EAP include: (i) assigning an Employee assistance liaison; (ii) assisting the Employer in finding industry samples of written EAP policies and promotional plans; (iii) Employer supervisor training; (iv) notification to and orientation of Employees and other Covered Persons; and (v) establishing a reporting mechanism with Employer regarding utilization of the EAP, provided, however that no PHI (as defined in **Section 6**) or other identifiable patient information shall be reported to Employer. Employer understands and agrees that Hospital is in no way providing legal advice with respect to EAP policies and promotional plans and makes no guarantee, assurance or warranty with respect to the legality of any EAP policy samples found or provided to Employer by Hospital.
- b. Notwithstanding anything stated herein to the contrary, Hospital's obligations under this Agreement do not include rendering long-term counseling services to Covered Persons (i.e. greater than counseling sessions) or treatment of Covered Persons on an inpatient basis.

- c. The EAP Services shall be delivered in accordance with the Hospital's policies and procedures, as may be amended from time to time (each individually referred to herein as a "**Hospital Policy**" and collectively as "**Hospital Policies**"), and professional standards applicable to EAP Services.

2. Obligations of Employer. Employer shall print and distribute to Employees letters and other information concerning the availability and purposes of the EAP Services. Employer shall not distribute or otherwise convey these materials to any individual or entity except as provided in this Agreement nor distribute any written materials which refer to Hospital, unless prepared by Hospital, or prepared by Employer with the written approval of Hospital. In addition to the foregoing:

- a. Employer will provide Hospital with current information regarding the Employer's medical and disability plans and keep Hospital apprised of any changes to said plans.
- b. Employer will use its best efforts to require its management and supervisory personnel to attend the appropriate EAP education seminars.
- c. In accordance with Employer's policy statement and supervisor's manual, Employer shall encourage Employees to utilize the EAP Services.
- d. Employer shall implement the EAP in conjunction with its own personnel policies and procedures ("**Employer Personnel Policies**"), offering EAP Services to its Employees on a voluntary basis and as part of its personnel processes, but not as substitute for, Employer's disciplinary procedures. Employer shall provide to Hospital the Employer Personnel Policies relevant to providing EAP Services.
- e. Employer agrees to uphold Hospital's commitment to compliance with all federal, state and local laws and regulations, and shall itself comply with all federal, state and local laws, rules and regulations applicable to the EAP.
- f. Employer shall utilize Hospital as its sole provider of EAP Services during the Term of this Agreement.
- g. Employer certifies that neither it, nor any of its Employees have been excluded from participation in Medicare, Medicaid or any other federal or state funded health care program.

3. Disputes or Controversies. All complaints related to EAP Services shall be handled in accordance with Hospital Policies.

4. Compensation for EAP Services. For all EAP Services rendered by Hospital, Employer agrees to pay Hospital the fees set forth in the Schedule of Fees attached hereto as **Exhibit B**. Invoices for amounts due Hospital more than thirty (30) days past due shall bear interest at the rate of twelve percent (12%) per annum until paid. EAP Services may be suspended for past due

invoices which exceed ninety (90) days. It is expressly understood and agreed that the compensation stated herein is exclusively for the EAP Services provided pursuant to this Agreement. Fees and charges for other services provided by a Service Provider, including Hospital as a Service Provider, will be as established between the Covered Person and the Service Provider.

5. Proprietary Information Confidentiality. In providing EAP Services under this Agreement, Employer acknowledges that certain information that it shall acquire about Hospital is of a confidential and proprietary nature ("**Confidential Information**"). Employer shall exercise care and protection with respect to Hospital's Confidential Information and not directly or indirectly disclose, copy, distribute, republish or allow any third party to have access to any Confidential Information. Employer may disclose Confidential Information if so required by law (including court order or subpoena), provided that the Hospital may require the Employer to request the appropriate court or governmental body to seal the record that contains such Confidential Information. Employer shall promptly notify Hospital of any requirement that it disclose the Hospital's Confidential Information by operation of law, regulation or other legal process, and shall cooperate fully to protect the Confidential Information. The Parties acknowledge and agree that any breach of the terms of this Section will result in irreparable harm to Hospital, such that Hospital cannot be reasonably or adequately compensated in damages for such breach and shall therefore be entitled, in addition to any other remedies that may be available to it, to seek any and all equitable remedies including, without limitation, injunctive relief to prevent such breach and to secure the enforcement thereof. The provisions of this Section 5 shall survive termination of this Agreement.

6. Patient Information Confidentiality. All information obtained and records created as a result of any communication between Covered Persons and Hospital shall remain confidential and the sole property of Hospital. Each Party shall protect the confidentiality of all patient information, and shall comply with all applicable state and federal laws and regulations regarding the privacy of protected health information ("**PHI**"), including the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), the Health Information Technology for Economic and Clinical Health Act ("**HITECH Act**"), and the regulations promulgated pursuant to each, as may be amended from time to time. Employer understands and agrees that Hospital will not disclose any Employee/Covered Person PHI to Employer unless pursuant to a valid written authorization to release PHI executed by such Employee or Covered Person and delivered to Hospital, or as otherwise authorized by law. The provisions of this Section 6 shall survive termination of this Agreement.

7. Term and Termination.

- a. **Term.** This Agreement shall commence on the Effective Date and continue in effect for a term of two (2) years ("**Initial Term**") unless earlier terminated pursuant to this Section 7. **Thereafter, this Agreement shall automatically renew for an additional two (2) year term ("**Renewal Term**")**, unless terminated sooner as provided below. The Initial Term and any Renewal Term shall collectively be referred to herein as the "**Term**". Compensation will be set for the Initial Term as set forth in Exhibit B and then assessed and re-negotiated

by the Parties for the Renewal Term, with any applicable increase to be in effect on the first day of the Renewal Term.

- b. **Termination without Cause.** After the expiration of the first three (3) months of this Agreement, either Party may terminate this Agreement, with or without cause, upon providing sixty (60) days prior written notice to the other Party.
- c. **Termination for Breach.** Either Party may terminate this Agreement in the event of a material breach of this Agreement by the other Party. In such event, the non-breaching Party shall notify the breaching Party in writing of the specific nature of the breach and shall request that it be cured. If the breaching Party does not cure the breach within fifteen (15) days, the non-breaching Party may terminate this Agreement at any time thereafter. Such termination shall not preclude the non-breaching Party from pursuing any and all additional remedies it may have in law or equity.
- d. **Termination Due to Change in or Violation of Law.** Hospital shall have the unilateral right to terminate or amend this Agreement without liability, to the extent necessary to comply with any legal order issued to Hospital by a federal or state department, agency or commission, or The Joint Commission or any such accreditation organization by which Hospital is then accredited or may change in law or interpretation of law, or it if is reasonably determined that continued participation in this Agreement would jeopardize Hospital's status as a Medicare or Medicaid participant or would be inconsistent with its status as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Prior to termination of this Agreement pursuant to this Section, Hospital may first reasonably attempt to amend this Agreement in a manner that will achieve the business purposes hereof. If Hospital proposes an amendment to this Agreement pursuant to an order to comply with applicable law or accreditation standards, and such amendment is unacceptable to Employer, either Party may choose to terminate this Agreement immediately upon notice at any time thereafter.
- e. **Effect of Termination.** Termination of this Agreement shall not release or discharge the Parties from any obligation, debt or liability under this Agreement which shall have previously accrued and remain to be performed upon the date of termination.

8. Liability Insurance.

- a. Hospital shall maintain professional liability insurance, covering it and its employees' provision of EAP Services hereunder with minimum amounts of liability of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate.
- b. Employer shall, at its own cost and expense, obtain and maintain during the Term of this Agreement, appropriate levels of general liability insurance with minimum

amounts of liability of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate. Said insurance shall be obtained from a company or companies and under contracts deemed reasonably acceptable by Hospital. Employer shall also maintain appropriate levels of workers compensation insurance coverage for its Employees in amounts as required by law.

- c. Verification of insurance coverage shall be in the possession of each Party at all times while this Agreement is in effect and shall be promptly provided to the other Party upon request. Each Party shall notify the other Party at least thirty (30) days prior to termination, lapse or loss of adequate insurance coverage as provided herein.

9. Indemnification. Each Party shall indemnify, defend, and hold harmless the other Party and its affiliates and their officers, directors, employees, agents, successors and assigns from and against any and all liability, loss, claim, lawsuit, injury, cost, damage, or expense whatever, including reasonable attorneys' fees and court costs, to the extent arising out of, incident to, or in any manner occasioned by the performance or nonperformance of any duty or responsibility under this Agreement by such indemnifying Party, or any of its employees, agents, or officers. It is hereby stipulated and agreed between Hospital and Employer that, with respect to any claim or action arising out of the activities described in this Agreement, each Party shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements, or judgments resulting from the negligence, actions, or omissions of its own agents, officers, and employees.

10. Relationship of the Parties. Hospital and Employer shall remain independent contractors and Hospital's responsibilities to Employer are expressly limited to those set forth in this Agreement. This Agreement shall not be deemed to establish any relationship of employment between Hospital and Covered Persons. No Service Provider to whom Hospital refers a Covered Person shall be deemed to be an agent or employee of Hospital by reason of this Agreement. Each Service Provider shall establish its own independent relationship with Employer or Covered Person.

11. Entire Agreement. This Agreement together with all attachments and exhibits hereto contains the entire understanding of the Parties and supersedes all prior written or oral representations, negotiations, communications, understandings or agreements concerning the subject matter hereof.

12. Amendment. The terms of this Agreement may be amended or modified only through written instrument signed by both Parties.

13. Governing Law. This Agreement shall be governed and interpreted under the laws of the State of Illinois without regard to the conflict of law provisions therein.

14. Use of Name. Except in the performance of this Agreement, Employer shall not use the name or logo of Hospital or its affiliates in any way. Any such use of Hospital's name or logo,

including but not limited to use in Employer's marketing of EAP Services at Hospital, shall require the prior written approval of Hospital.

15. Access to Books and Records. Upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, Hospital shall make available to the Secretary or to the Comptroller General those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing EAP Services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such EAP Service. This Section is included pursuant to and is governed by the requirements of Public Law 96-499 and Regulations promulgated thereunder. The Parties agree that any attorney-client, accountant-client or other legal privileges shall not be deemed waived by virtue of this Agreement.

16. Notices. All notices that may be given under this Agreement shall be in writing, addressed to the receiving Party's address set forth below or to such other address as the receiving Party may designate by notice hereunder, and shall be delivered by hand or traceable courier service (such as Federal Express) or sent by certified or registered mail, return receipt requested:

If to Hospital:
Presence Saint Joseph Hospital
77 N. Airlite Street
Elgin, IL 60123

If to Employer:
The City of Aurora
44 E. Downer Place
Aurora, IL 60507

With a copy to:
Presence Health
7435 W. Talcott Ave., Suite 461
Chicago, IL 60631
Attn: Senior Vice President Legal Affairs and General Counsel

All notices shall be deemed to have been given, if by hand or traceable courier service, at the time of delivery to the receiving Party at the address set forth above or to such other address as the receiving Party may designate by notice hereunder, or if sent by certified or registered mail, on the 2nd business day after such mailing.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their authorized officers to be effective as of the Effective Date.

**PRESENCE HOSPITALS PRV,
d/b/a Presence Saint Joseph Hospital - Elgin**


Signature: 

Eugene J. McMahon, M.D, MBA, FCAP

President and CEO

Date: 3-19-13

The City of Aurora

Signature: 

Printed Name: Alissa Lewis

Title: ~~Only~~ Director of Human Resources

Date: 3/11/13

EXHIBIT A
DEFINITIONS AND DESCRIPTION OF SERVICES

1. DEFINITIONS

A. **EAP.** EAP is a program whereby Employer makes available to Covered Persons professional and confidential assessment and referral of social, behavioral and other life problems.

B. **Employee.** Employees include all full-time and part-time employees of the Employer.

C. **Covered Persons.** Covered Persons include all Employees and any member of the Employee's immediate family, the Employee's partner if not a spouse, and members of the Employee's extended family (e.g., mother-in-law, stepfather, etc.) if residing in the Employee's household.

D. **EAP Director.** The EAP Director shall be an employee of Hospital, designated to carry out the administrative and account management responsibility of Hospital, pursuant to this Agreement.

E. **EAP Counselor.** The EAP Counselor shall be an employee of Hospital, designated to carry out the assessment, consultation and referral responsibility of Hospital, pursuant to this Agreement. The EAP Counselor shall be experienced in employee assistance counseling and have medical and psychiatric consultation available.

F. **Service Provider.** A Service Provider shall be any physician, or other individual, health care provider, agency, institution, or organization to whom the EAP Director or Counselor refers a Covered Person for further diagnosis and treatment.

2. DESCRIPTION OF SERVICES

Subject to the approval of Employer, Hospital will provide the following EAP Services:

A. EAP Policy Samples

Hospital will assist Employer in finding industry sample EAP policies, which may describe the EAP, Covered Person eligibility and procedures for utilization of the EAP.

B. EAP Promotion

- 1) **Employee Letters:** Hospital will provide a sample letter for distribution by Employer to Employees, introducing and describing the EAP.
- 2) **Printed EAP Materials:** As mutually agreed between the Parties, Hospital will provide Employer with EAP brochures, posters and wallet

cards. The Employer will be responsible for distribution of these materials.

C. Education

- 1) **Management/supervisor training:** At the time of start up of the EAP, Hospital will provide Four (4), one (1) hour session(s) or the equivalent, for Employer managers and supervisors that include utilizing the EAP as a management tool.
- 2) **Employee orientations:** Hospital will provide five (5), thirty (30) minute sessions to educate all Employees regarding EAP Services. Additional required training can be negotiated with the EAP Director.
- 3) **Wellness training/ programs:** Two (2) hours of wellness programs are included the first contract year.

D. EAP Services included in the annual EAP cost:

- 1) **Assessment and referral or short term counseling** for up to three (3) sessions per case/per year for all Covered Persons. The EAP Director or Counselor will identify and coordinate referrals for situations that require longer term counseling or additional intervention.
- 2) **Individual, marital and family sessions.** Many issues can be addressed within the context of the EAP thus reducing the number of cases referred to outside resources that would require accessing insurance benefits.
- 3) **Coordination** of referrals with insurance administrators, community service providers, and/or private practitioners provided as necessary.
- 4) **Employee Orientations** to acquaint the Employees with the EAP and how to access services. New Employee orientations will be offered up to three (3) times per year at no additional cost.
- 5) **Management and supervisory consultations** available to respond to concerns about Employee job performance and/or general well being.
- 6) **Crisis counseling and crisis intervention** is available twenty-four (24) hours a day, seven (7) days a week.
- 7) **Critical Incident Response** offered as part of the EAP services. All EAP counselors are trained in critical incident stress management.
- 8) **Management reports provided annually** which include information on utilization of the EAP with no PHI or other identifiable patient information included.

- 9) **Twelve (12) month follow-up on all substance abuse cases** including coordination with the designated treatment programs for support services.
- 10) **Satisfaction surveys** offered to every Covered Person utilizing the EAP services.
- 11) **Monthly newsletter/ other informational item** provided for Employer to distribute.
- 12) **Promotional materials** provided as needed, include posters, pocket cards, and brochures printed in English and Spanish.
- 13) **Bilingual EAP Counselor** (English/Spanish) available to Covered Persons.
- 14) **Five (5) office locations** include Elgin, Aurora, Carpentersville, Yorkville, and Naperville.

E. EAP Services that may be offered for *additional* cost:

- 1) **Supervisor Training:** Includes instruction for Employer managers/supervisors in identifying and intervening with a troubled Employee, utilizing the EAP as a management tool, and procedure for making referrals to the EAP, etc. This training may be provided at the Hospital's prevailing hourly rate for professional training and consultation services.
- 2) **Health Education and Wellness Seminars:** Seminars may be provided at Employer's request at the Hospital's prevailing hourly rate for professional training and consultation services.
- 3) **Organizational Development, Consultation, Assessment, Intervention Design and Project Management:** These services may be provided at Employer's request at the Hospital's prevailing hourly rate for such services.

EXHIBIT B

COMPENSATION

Employer shall pay Hospital Twenty-Three Dollars and Forty Cents (\$23.40) per Employee, per each twelve (12) month term of this Agreement. An initial payment shall be made upon completion of management/supervisor training, and quarterly payments made thereafter. Employer hereby warrants that as of the Effective Date, the number of covered Employees is one thousand and eighty (1080) and Employer shall furnish Hospital with satisfactory written evidence of the total number of covered Employees upon the signing of this Agreement.

Employer shall provide Hospital with a quarterly report listing the number of Employees covered by this Agreement. In addition, Employer warrants that it will provide Hospital with written notification and evidence, should the number of Employees increase or decrease by ten percent (10%) within the Term of the Agreement. Employer agrees that the Fee will be adjusted quarterly based on the corrected Employee count. Any adjustment made to compensation within the year, will be reflected in the next subsequent quarterly payments. Employer shall cooperate in good faith in response to any reasonable request from Hospital to perform periodic audits of Employer's records to evaluate Employer's compliance with this Agreement.