

Community Services Department
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Davenport, Iowa 52801



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May 28, 2020

TO: Mahesh Sharma, County Administrator

FROM: Lori A. Elam, CEO Eastern Iowa MHDS Region

RE: Amended 28E Agreement for Eastern Iowa MH/DS Region

The Governing Board of the Eastern Iowa MH/DS Region approved the amended 28E Agreement on 5/18/2020. The amended agreement was required in part by the Department of Human Services as the Children's Behavioral Health service language from HF690 needed to be added.

In addition, the Governing Board approved a few other changes: having an "alternate" Governing Board member appointed from each county, adding dispute resolution language and adding "Transfer" dollars in the Finance section.

The amended agreement does require an appointment of an "alternate" Governing Board member to attend meetings if the appointed Board member is unable.

The amended 28E Agreement will be filed with the state once all five counties have approved it.

EASTERN IOWA MH REGION 28E AGREEMENT

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INTERGOVERNMENTAL (28E) AGREEMENT

FOR

EASTERN IOWA MENTAL HEALTH-DISABILITY SERVICES REGION

The article of agreement is entered into this ____ day of _____, 2020, by Cedar County, Clinton County, Jackson County, Muscatine County and Scott County; collectively hereinafter referred to as “member counties”; as indicated by the actions of each having adopted this Agreement by resolution of their respective governing bodies, and hereby join together to create the Eastern Iowa Mental Health-Disability Services Region, hereinafter “Region”, to serve as a separate legal entity pursuant to Iowa Code Chapter 28E and Iowa Code Section 331.388 et seq., and any amendments thereto.

In consideration of the mutual covenants and agreements hereinafter set forth, the member parties agree as follows:

SECTION 1: IDENTITY OF THE PARTIES

The undersigned counties are political subdivisions and constitute “public agencies” as defined in Iowa Code section 28E.2. The member counties are Cedar County, Clinton County, Jackson County, Muscatine County and Scott County. County membership may, however, change from time to time as provided in this Agreement and the current member counties at any time shall be referred to as the “member counties” in this Agreement.

SECTION 2: PURPOSE AND GOALS

The member counties entered into this 28E Agreement to create a mental health and disability service regional administrative entity as described in the Iowa Code §331.388 et seq. to provide local access to mental health and disability services for adults and behavioral health services for children and to engage in any other related activity in which an Iowa 28E organization may lawfully be engaged.

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SECTION 3: TERM AND TERMINATION

3.0 Term

This Agreement shall be effective upon the ratification of all member counties and this Agreement is filed with the Iowa Secretary of State.

3.1 Termination

The term of this Agreement shall be perpetual, unless terminated by:

- a) a repeal or amendment of the Iowa Code sections that result in the elimination of a statutory requirement for mental health services to be provided through a regional format; **or**
- b) a majority of the member counties after providing notice no later than November 15th that the county's governing body has passed a resolution indicating its intent to withdraw from the Region.

Dissolution of Region

In the event the Agreement is terminated as provided in Section 3.1, the Governing Board shall begin dissolving the Region effective for the succeeding June 30th.

Distribution of Assets

In the event this Agreement is terminated and the Region is dissolved, all property of the Region shall be delivered, assigned and conveyed to the member counties pro rata based on the population of each member county. If member counties provide notice of their intent to withdraw from the Region any asset division will be made pursuant to Section 5.4 of this agreement.

SECTION 4: GOVERNANCE

4.0 Governing Board of Directors The Governing Board of Directors shall contain the following Directors, County-Appointed and Committee-Appointed:

- a) Each member county shall appoint one of its supervisors to serve as a Director on the Governing Board as well as an "alternate" who would fill in during an absence. The Director shall serve at the pleasure of the County Board Chair appointing the Director. The Directors appointed in this section will be referred to as "County-Appointed" Directors.

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- b) At least one adult person who utilizes mental health and disability services, or is an actively involved relative of such a person, shall serve as a “Committee-Appointed” Director. The person shall be appointed by the Region’s Adult Advisory Committee described in Section 4.6, with such appointment to become effective upon confirmation by the Governing Board. This Director shall serve a two (2) year term, if interested re-appointed, serving a maximum of three (3) terms.
- c) At least one individual representing adult service providers in the Region shall serve as a Committee-Appointed Director. The person shall be appointed by the Region’s Adult Advisory Committee described in Section 4.6, with such appointment to become effective upon confirmation by the Governing Board. This Director shall serve as an ex-officio, non-voting Director. This Director shall serve a two (2) year term, if interested re-appointed, serving a maximum of three (3) terms.
- d) At least one individual representing children’s behavioral health service providers in the Region shall serve as a Committee-Appointed Director, as he/she shall be designated by the Region’s Children’s Advisory Committee described in Section 4.6. This appointment will be effective upon confirmation by the Governing Board. This Director shall serve as an ex-officio, non-voting Director. This Director shall serve a two (2) year term, if interested re-appointed, serving a maximum of three (3) terms.
- e) One individual representing the education system in the Region shall serve as a Committee-Appointed Director. This Director shall be designated by the Region’s Children’s Advisory Committee described in Section 4.6, with such appointment effective upon confirmation by the Governing Board. This Director shall serve a two (2) year term, if interested re-appointed, serving a maximum of three (3) terms.
- f) One person, who is a parent of a child who utilizes children’s behavioral health services or an actively involved relative of such child in the Region, shall serve as a Committee-Appointed Director. This Director shall be designated by the Region’s Children’s Advisory Committee described in Section 4.6, with such appointment effective upon confirmation by the Governing Board. This Director shall serve a two (2) year term, and if interested re-appointed, serving a maximum of three (3) terms.

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4.1 Director Vacancies

- a) County-Appointed Directors: If a vacancy occurs during the term of a County-Appointed Director, the vacancy shall be filled within thirty (30) days of its occurrence by the county board chair having the right of appointment.
- b) Advisory Committees-Appointed Directors: If a vacancy occurs during the term of a Committee-Appointed Director due to death, change in status warranting appointment, or resignation, the vacancy shall be filled within thirty (30) days of its occurrence by the committee having the right of appointment. Such appointment to fill a vacancy shall become effective upon the confirmation of the Governing Board and shall be for the remaining term of the Director being replaced.

4.2 Voting Procedures for Governing Board Members A quorum must be present in order for the Governing Board to take action. A quorum shall be two thirds of all Directors. The Governing Board shall take action by approval from the majority of the Directors present. The Regional Governing Board will use a “weighted” vote process at the board meetings. The County Appointed Directors (Board of Supervisors) will have (3) three votes each and the Committee Appointed Directors will have (1) one vote each on all matters that come before the Governing Board. Voting shall be done by roll call vote. Proxy voting is prohibited, however, a Governing Board Director or designated Alternate (described in section 4.0 (a)) may attend via electronic means and be considered present for purposes of quorum and voting.

Electronic meetings must follow Iowa Code Chapter 21.8:

- 1. A Governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all of the following:
 - a. The governmental body provides public access to the conversation of the meeting to the extent reasonably possible.
 - b. The governmental body complies with section 21.4 of Iowa Code. For the purposes of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation.
 - c. Minutes are kept of the meeting. The minutes shall include a statement explaining why a meeting in person was impossible or impractical.

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2. A meeting conducted in compliance with this section shall not be considered in violation of this chapter.
3. A meeting by electronic means may be conducted without complying with paragraph “a” of subsection 1 if conducted in accordance with all of the requirements for a closed session contained in Iowa Code section 21.5.

4.3 Board Officers. At the first meeting of each calendar year, the Governing Board shall elect a Chair, Vice-Chair and Secretary to serve in the new calendar year. Board Officers shall only be County-Appointed Directors.

- a) The Chair shall preside at the Board’s meetings, preserve order and enforce this Agreement. The Chair shall perform such other duties as are usually exercised by the Chair of a Governing Board or as specifically authorized by this 28E Agreement, any bylaws or the Management Plan.
- b) The Vice-Chair shall preside and act in the capacity of the Chair in the absence of the Chair.
- c) The Secretary shall ensure that a complete and accurate record of the Governing Board’s actions (minutes of all Governing Board meetings) and proceedings are kept. In the absence of the Chair and Vice-Chair, the Secretary shall act in their capacity.

4.5 Powers of the Governing Board. Except as otherwise provided in this Agreement, the Region shall be under the direction and control of the Governing Board and the Chief Executive Officer (CEO). The Governing Board shall serve as the Regional Administrative Entity, as defined in Iowa Code Section 331.388(4). The Governing Board shall have all of the following powers:

- a) Any powers and authority granted to the Region by Iowa Code Chapter 28E or Iowa Code §331.388 et seq. to do and perform any acts authorized by the Code of Iowa, under, through or by means of its officers, agents and employees, or by contracts with any person or entity;
- b) To appoint, supervise and remove the Chief Executive Officer (CEO) upon the vote of the super majority of Governing Board Directors;
- c) To contract with any public or private entity to provide all necessary services;
- d) To authorize the acquisition, holding, disposal of, and leasing such real and personal property it deems necessary to fulfill the purposes of this Agreement;
- e) To receive and allocate funds from each member county as set forth in this Agreement;

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- f) To accept, receive and administer grants or other funds or gifts for the purposes of carrying out the functions of this agreement; and to review and approve the expenditures of all funds budgeted;
- g) To approve the Annual Service and Budget Plan for the following fiscal year beginning July 1 as well as the Annual Report (summary of previous fiscal year) and any other reports required by the Department of Human Services (DHS);
- h) To establish a system of accounting and budgeting, and a system for receiving payments;
- i) To retain legal counsel, accountants and other professional individuals needed in order to fulfill the purposes of this Agreement;
- j) To sue and be sued;
- k) To make and enforce bylaws or rules and regulations for the management and operation of the Region's business and affairs;
- l) To consult with representatives of Federal, State and local agencies and departments, and their officers and employees, and to contract with such agencies and departments;
- m) Act as oversight and hear any appeals of decisions made by the Region's Management Team;
- n) To establish the times and places for business meetings pursuant to Iowa Code Chapter 21 the agenda shall be posted in the building of the location of the meeting. Other counties may post in the same way they post agendas for their board meetings for informational purposes. All meetings will be governed by Roberts Rules of Order, Revised unless otherwise provided; and
- o) To exercise any other power or do any other legal act necessary to discharge its obligations and fulfill the purposes of this Agreement.

The Governing Board may delegate any of these powers to staff of the Region or staff of member counties serving the region as the board deems necessary. The board may adopt such policies, rules, regulations and actions consistent with law or this Agreement.

4.6 Committees Members of any committee of the Region shall be appointed by the Region's Governing Board. Committee members shall serve at the pleasure of the Governing Board.

- a) The Adult Advisory Committee shall be appointed by the Eastern Iowa MHDS Governing Board, shall have a minimum of five (5) members, one person from each county. A Director from the Governing Board shall also serve on the committee. The committee members shall include individuals who utilize services or actively involved relatives of such individuals and service providers. The committee shall include the Management Team as ex officio non-

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voting members. The advisory committee shall advise the Governing Board as requested and shall also make designations to the Governing Board as described above.

b) The Children's Advisory Committee, as confirmed by the Governing Board, shall have up to nine (9) members. The committee members shall be: parents of children who utilize services or actively involved relatives of such children, a member of the education system, an early childhood advocate, a child welfare advocate, a children's behavioral health service provider, a member of juvenile court, a pediatrician, a child care provider, a local law enforcement representative and regional Governing Board members. The committee shall include the Management Team as ex officio non-voting members. The Child Advisory committee shall advise the Governing Board as requested and shall also make designations to the Governing Board as described above. A quorum shall be five (5) voting members.

c) The Governing Board may take action to create additional committees for various other purposes it deems appropriate and to determine the extent and purpose of said committees.

d) All meetings shall comply with Iowa Code Chapter 21 and Section 4.5(n) of this agreement.

4.7 Methods for Dispute Resolution

In the event an internal dispute arises amongst or between the Governing Board, the Chief Executive Officer or any of the member counties, which cannot be resolved, the following dispute resolution shall be used:

- a) A Peer Dispute process will be undertaken in the event of an internal dispute.
- b) If after the Peer Dispute resolution process, the dispute remains unresolved, Mediation shall be conducted pursuant to Chapter 679C of the Iowa Code. If the dispute still remains unresolved, arbitration shall be conducted pursuant to Chapter 679A of the Iowa Code.

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5. MEMBERS

5.0 Specification, Requirements, Obligations, Expectations of Member Counties

The member counties agree to the following:

- a) To respond to reasonable requests to make local records available to the Region for the purposes of this Agreement;
- b) To attend an annual “All Member County Boards of Supervisors” meeting, preferably to be held during the second quarter of the fiscal year;
- c) To provide sufficient office space for the performance of regional duties;
- d) To support the effective collaboration of other county functions related to the provision of contracted services;
- e) To provide county staff as agreed to between the member county and the Governing Board for the effective provision of regional services; and
- f) To budget for and contribute “Transfer” funds as required in the Region’s budget and by this Agreement.
- g) To contribute funds as required by this Agreement at the time of entry into the Eastern Iowa MHDS Region.
- h) Each member county will levy what is recommended by the Governing Board or as directed by the Department of Management/Department of Human Services. Failure to levy what is recommended would be considered a voluntary withdrawal from the Region.

5.1 Decisions that Require an Individual Member Votes

The Governing Board shall not have authority to, and they covenant and agree that they shall not do, or cause the Region to do, any of the following acts without the prior consent of the Boards of Supervisors of a majority of the member counties:

- a) Permit any new member counties;
- b) Remove any member county (other than a voluntary withdrawal of a county as provided below);
- c) Terminate or amend this Agreement; or
- d) Dissolve the Eastern Iowa MHDS Region.

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5.2 Member Voting Procedure

Any question related to the issues listed in Section 5.1 may be presented to the member counties by resolution of the Governing Board by first adopting a recommendation on the issue and then submitting it to the individual member counties. A separate explanation of the reasons for the recommendation may be included. Each member county desiring to vote upon the proposal shall do so by resolution of its Board of Supervisors and return of the same to the Region's Governing Board Chair a certified copy of the resolution stating the county's vote within thirty (30) days of the date that the county received a copy of the proposal. Any member county not voting upon the proposal within this time frame shall be considered to have approved the proposal. If the proposal receives approval by majority of the member votes, it shall become effective immediately unless otherwise specified by resolution.

5.3 Additional Member Counties

If a county wishes to become a member county of the Region after the effective date, the county must make a written request to the Region's Governing Board. Such request will then be addressed through the Member Voting Procedure set forth in Section 5.2. If a new county's request is approved through such procedure, such new membership will not become effective until:

- a) the county provides a signature page to this Agreement and a resolution from its Board of Supervisors that it agrees to abide by the terms of this Agreement as set out herein and possess legal power and authority to do so; and
- b) if the new written county's request has been properly approved and it has submitted the documentation in Section 5.3(a) prior to November 15th, then such membership shall become effective on the first day of the next fiscal year. If all of these requirements are not met until after November 15, the membership shall become effective one year from the first day of the next fiscal year. The timing requirements in this subsection may be waived by the Governing Board for cause, including in the event the Region is required by law or by the Iowa Department of Human Services to accept a new member county.

5.4 Member County Withdrawal / Removal

- a) Member County Withdrawal

Any member county, by resolution of its Board of Supervisors, may withdraw from the Region by giving written notice to the Governing Board of the Region no later than November 15 prior to

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the end of the fiscal year the withdrawal will be effective. Withdrawal shall not relieve the withdrawing member county of the obligation to pay its share of the expenses of the Region incurred during the fiscal year in which the withdrawal occurs and any other past due amounts. Services shall continue to be provided to the withdrawing member county until the date of withdrawal. Upon withdrawal, member counties shall not be entitled to any repayment for funds, services or property provided to the Region.

b) Member County Removal

If the Governing Board feels it is in the best interest of the Region for a member county to be removed from the Region, the Governing Board will pass a resolution to that effect and proceed under the Member Voting Procedure set forth in Section 5.2. Upon removal, a member county shall not be entitled to any repayment for funds, including "Transfer" funds, services or property provided to the Region.

6. STAFF

6.0 Selection Process for Chief Executive Officer

The Governing Board shall appoint an individual to serve "at will" as the region's mental health and disability services administrator, known as the Chief Executive Officer (CEO). The CEO shall serve at the pleasure of the Governing Board. The CEO shall be considered a shared employee of the Region/County, for employment purposes the CEO shall be considered an employee of the county employer of record. The CEO shall be the primary point of contact for the region. The CEO may perform duties for the member county as outlined in an agreement between the region and the county employer of record. Compensation will be determined based on a split between regional duties and county duties.

6.1 Performance Evaluation of Chief Executive Officer

The Governing Board shall conduct annual evaluations of the Chief Executive Officer (CEO). The Governing Board may conduct additional evaluations of the Chief Executive Officer at any time, if it is deemed necessary. All evaluations shall be summarized in writing. In the event the CEO resigns, retires or otherwise has his or her employment terminated, the Governing Board shall, in consultation with the county employer of record and CEO Shared Duties Agreement, appoint an acting CEO which may be a member county Disability Coordinator.

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6.2 General Functions and Responsibilities of Staff

- a) The Chief Executive Officer will be responsible for duties including but not limited to the primary contact for the region to the Department of Human Services (DHS), submit required reports to DHS, sign various reports and plans after Governing Board approval, oversee contracts entered into by the Governing Board, prepare agendas and minutes of the Governing Board and the Regional Adult and Children's Advisory Committees, as well as other duties as directed by the Governing Board.
- b) The Chief Executive Officer may employ or contract with persons or entities (including contracting with member counties for member county employees to provide services to the Region) to perform services to meet the needs of the Region. However, the terms of all employment or contracts shall be approved by the Governing Board.
- c) The Management Team shall consist of Coordinators of Disability Services (as defined in Iowa Code Section 331.390(3)b) of each member county whose duties shall include activities such as assisting the Chief Executive Officer, reviewing exceptions to policies, ensuring that timely data is collected and submitted to the CEO for inclusion in reports, reporting accurate financial data, developing and submitting annual county budgets, coordinating and recommending the regional budget, monitoring of revenues and expenditures, assuring evidence based practices are used, and making recommendations for agenda items before the Governing Board and Regional Advisory Committees. The Management Team shall also consist of one or more Coordinators of Children's Behavioral Health Services.
- d) The Region may contract for services for functions and responsibilities including but not limited to:
 - 1) Communications;
 - 2) Strategic Plan Development;
 - 3) Risk Management;
 - 4) Annual audit;
 - 5) Provider Network- development, contracting, quality and performance;
 - 6) Quality Assurance; and
 - 7) Information Technology
 - 8) HIPAA

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7. REGION FINANCES

7.0 Management & Expenditure of Funding

- a) The Governing Board through its budget adoption authorizes expenditures of funds at the county and regional level. The regional funds are used to fund crisis services, administrative services, new service programs, revenue shortfalls anticipated through the budget process by a member county and any other expenditure deemed appropriate by the Governing Board. Each member county will prepare individual county budgets to determine their county's projected service, required fund balance and revenue levels. The individual county budgets should reflect "transfer" dollars to the fiscal agent fund in order to fund crisis services and administrative services. The Governing Board has the discretion to transfer funds to where they are needed. A member county identifying a revenue shortfall, shall request additional funding from the fiscal agent fund. The Management Team will review the individual county budgets and identify any additional funding reallocations, shortfalls and fund balance levels. If the State of Iowa allocates additional funding to the Regions, the monies will go into the fiscal agent fund for regional services, unless the Department of Human Services (DHS) has previously directed the use for a specific service/need.

b) Administrative Funding and Resources:

Administrative costs and crisis services shall be a component of the Region's budget. Such costs shall be paid through the process described in Section 7.0(a) and any funds or resources for administrative costs of the Region shall be collected through this same process.

c) Use of Savings for Reinvestment

The Region shall comply with Chapters 12B and 12C of the Iowa Code for deposit and investment of Region funds. Through the Region's budgeting process, it shall strive to use surplus funds for the development of additional services.

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7.1 Process for Annual Independent Audit

Accounts of the Region shall be audited annually by a certified public accountant certified in the state of Iowa, as selected by the Governing Board.

8. SCOPE & AMENDMENTS

8.0 Amendments

The Governing Board is authorized to make non-substantive amendments to this Agreement with a two-thirds vote of board members present. All other amendments to this Agreement shall be conducted through the member approval process described in Section 5.3 and in compliance with Iowa Code Chapter 28E, which includes filing all amendments with the Iowa Secretary of State.

8.1 Entire Agreement

This Agreement represents the entire 28E Agreement of the Region.

8.2 Invalidity

If any one or more provisions of this Agreement are declared unconstitutional or contrary to law, the validity of the remainder hereof shall not be affected.

8.3 No Waiver

The waiver by any party of a breach or violation of any provisions of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach.

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SIGNATURE PAGE

IN WITNESS WHEREOF, _____ COUNTY EXECUTES THIS 28E AGREEMENT, CREATING
EASTERN IOWA MENTAL HEALTH-DISABILITY SERVICES REGION

EFFECTIVE _____:

BY: _____
(print name)
_____ Board of Supervisors, Chairperson

ATTEST: _____
(print name)
_____ County Auditor

ACKNOWLEDGMENT BY NOTARY

STATE OF IOWA)
)ss.
_____ COUNTY)

On this _____ day of _____, 2020, before me the undersigned, a Notary Public in and for said County and State, personally appeared _____ and _____, to me personally known, who, being duly sworn, did say that they are the Chairperson of the Board of Supervisors and County Auditor of _____ County, Iowa respectively; that the seal affixed hereto is the seal of said County; that said instrument was signed and sealed on behalf of the said _____ County, Iowa, by authority of its Board of Supervisors and that said _____ and _____ as such officers, acknowledge the execution of said instrument to be the voluntary act and deed of said County, it and by them voluntarily executed.

Notary Public In and For Said County
And State of Iowa

THE COUNTY AUDITOR'S SIGNATURE CERTIFIES
THAT THIS RESOLUTION HAS BEEN FORMALLY
APPROVED BY THE BOARD OF SUPERVISORS ON

DATE

SCOTT COUNTY AUDITOR

R E S O L U T I O N

SCOTT COUNTY BOARD OF SUPERVISORS

MAY 28, 2020

APPROVING THE AMENDED 28E AGREEMENT REGARDING EASTERN IOWA MENTAL HEALTH/DISABILITY SERVICES REGION

BE IT RESOLVED BY the Scott County Board of Supervisors as follows:

Section 1. That the amended 28E agreement between Scott County, Cedar County, Clinton County, Jackson County, and Muscatine County now has the Children's Behavioral Health Service language: adding voting members to the Governing Board and creation of a Children's Advisory Committee, as well as allowing an "alternate" Board member,

Section 2. And that the voting procedures have been updated, "Transfer" funds are addressed under Region Finances, and dispute resolution language is added,

Section 3. And that the changes in the amended 28E Agreement is hereby accepted and approved.

Section 4. This resolution shall take effect immediately.