

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**FUNDING AGREEMENT FOR
UNC HEALTH CARE SYSTEM**

This Funding Agreement ("Agreement") is made and entered into on this the _____ day of _____, 2021 and effective for the Term stated herein, by and between the County of Wake, a political subdivision of the State of North Carolina ("Wake County"), Alliance Health, a multi-county Local Management Entity existing under N.C.G.S. Chapter 122C ("Alliance"), and University of North Carolina Health Care System, a State agency and an affiliated enterprise of the University of North Carolina, on behalf of UNC Hospitals and other affiliated entities ("UNCHCS").

WITNESSETH:

WHEREAS, Alliance is responsible for operating a Prepaid Inpatient Health Plan (PIHP) as that term is defined in 42 C.F.R. Part 438 pursuant to a 1915(b)/(c) waiver approved by the Centers for Medicare and Medicaid Services ("CMS") and a Contract with the Division of Medical Assistance covering Cumberland, Durham, Johnston and Wake Counties, and for managing non-Medicaid funded mental health, intellectual or developmental disability, and substance abuse ("MH/I-DD/SA" or "behavioral health") services in those Counties pursuant to a Contract with the Division of Mental Health, Developmental Disabilities and Substance Abuse Services; and;

WHEREAS, UNCHCS has established experience and success providing state of the art patient care in the area of behavioral health services encompassed by Mental Health, Substance Abuse, and Developmental Disability Services; and

WHEREAS, Wake County desires to direct funding to Alliance for the purpose of purchasing identified behavioral health services for eligible Wake County citizens from UNCHCS and funding operating costs of UNCHCS related to providing those services according to UNCHCS's FY 22 annual budget approved by Wake and Alliance ("Annual Budget"), upon the terms and conditions set forth in this Agreement; and

WHEREAS, based on the Annual Budget articulating expected expenditures and revenues, it is anticipated expenditures will exceed revenues by approximately \$9 million; and

WHEREAS, UNCHCS intends to cover losses in the Annual Budget up to \$5 million on a one-time basis; and

WHEREAS, the parties agree to work together in July 2021 to review potential expenditure reductions, alternative revenues, and other solutions to address the FY 22 Annual Budget shortfall with this review to be completed by August 1, 2021.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, Wake, Alliance, and UNCHCS agree as follows:

**ARTICLE I
TERM AND TERMINATION**

1.1 The term of this Funding Agreement shall be **July 1, 2021 through June 30, 2022**, unless terminated or modified by the written agreement of all parties hereto.

1.2 Provided that the conditions set forth in Article II herein continue to be met, the parties may

amend this Funding Agreement by mutual written agreement to provide additional funding based upon service utilization, fund balance, and the financial limitations of Wake County. Nothing herein shall be construed to guarantee additional funding.

1.3 Termination by Wake County. In the event that 1) Alliance's Contract with the State to operate the Medicaid PIHP or manage State-funded MH/DD/SA services is terminated or 2) the contract(s) between Alliance and UNCHCS for non-Medicaid Wake County services are terminated, Wake County shall have the right to terminate this Agreement by giving written notice to all parties, Effective Date to be the date of written notice.. In addition, if UNCHCS reduces services in accordance with Section 5.1 and in Wake's sole judgment the reduced services are not adequate to address resident needs, Wake County shall have the right to terminate this Agreement upon 90 days' written notice, Effective Date to be 90 days from the date of written notice .

A termination under this Section 1.3 shall not relieve Wake of the obligation for payments owed prior to termination. UNCHCS shall have no obligation to provide any services beyond the date of such termination, and Wake County shall have no obligation to provide quarterly funding beyond the Effective Date of termination.

1.4 Termination by UNCHCS. Wake County and Alliance understand and agree that any reduction in Wake County's funding commitment as set forth in Section 3.1 under this Agreement shall give UNCHCS the right, if it so chooses, to be released from any continuing obligation to provide any services under this Agreement and/or any Contract with Alliance to provide services funded by this Agreement. In the event that UNCHCS chooses to terminate services under any Contract with Alliance funded by this Agreement, in addition to any requirements under the Provider Agreement, UNCHCS shall provide 90 days' written notice of its intention to terminate such Provider Agreement to Wake County and Alliance. A termination under this Section shall not relieve UNCHCS of the duty to provide services until the effective date of termination, or relieve Wake County of the obligation to provide funding to Alliance for any services rendered by UNCHCS up until the effective date of the termination.

ARTICLE II CONDITIONS PRECEDENT TO FUNDING COMMITMENT

2.1 As a condition precedent to Wake County's obligation to tender or negotiate funding under this Agreement, Alliance and UNCHCS shall enter a properly authorized and executed Service Provider Agreement. The Service Provider Agreement shall meet or exceed the applicable state requirements for state-funded MH/DD/SA services, shall identify an annual contract maximum and shall detail services to be provided, reimbursement rates, reporting, performance standards, and an appeals process. Alliance shall provide a copy of the executed Agreement to Wake County within three (3) business days of execution and shall for the Term of this Funding Commitment be required to provide a copy of any modifications, amendments, or renewals of the Agreement within three (3) business days of execution. For the purposes of this Funding Agreement, the term "Service Provider Agreement" or "Provider Agreement" shall refer to an agreement for services provided to Wake County residents, and shall not include any provider agreement which UNCHCS may now or in the future enter with Alliance for the purchase of services for non-Wake County residents.

ARTICLE III WAKE COUNTY RESPONSIBILITIES

3.1 July 1, 2021 - June 30, 2022: Wake County agrees to set aside funding for Alliance in the fixed amount of \$13,200,912 to be paid to Alliance for the sole use of purchasing UNCHCS provided crisis and assessment, residential based, and inpatient services under contract(s) between Alliance and UNCHCS for non-Medicaid services in effect from July 1, 2021 - June 30, 2022, consistent with the terms of the approved FY 22 Annual Budget. In addition to billing for the provision of actual services

with a billing code for one of these categories, UNCHCS may bill Alliance for the actual cost of any item set forth in the agreed upon FY 22 Annual Budget for the fiscal period upon providing sufficient documentation (as determined by Alliance) of such expenditure to Alliance. UNCHCS will invoice or bill Alliance pursuant to the Service Provider Agreement.

3.2 Wake County shall pay Alliance all amounts in section 3.1 in quarterly increments due and payable at the beginning of each fiscal quarter upon receipt of 1) an invoice for that fiscal quarter and 2) the report required by Section 4.7 hereunder. Alliance may invoice Wake County no earlier than July 1, October 1, January 1, and April 1 of the Fiscal Year. Quarterly invoices shall not be paid without receipt of the required report(s); except that the July 1 invoice can be paid prior to the receipt of the first report. The first quarterly report shall be submitted with the second report and quarterly invoice.

3.3 If the conditions precedent to the funding commitment are not met, then and in that event, Wake shall have no further responsibilities for funding to Alliance except as may be outlined in other funding agreements.

3.4 The funding provided by Wake pursuant to 3.1 represents a \$2,500,000 increase by Wake from FY 21 funding, based upon recognition of UNCHCS's anticipated budget shortfall. The parties acknowledge that Wake has not approved or appropriated further additional funding for the purchase of UNCHCS services under this Agreement in FY 22.

ARTICLE IV ALLIANCE RESPONSIBILITIES

4.1 Alliance agrees to use the funding provided by Wake County exclusively to fund UNCHCS's costs for providing 1) crisis and assessment and inpatient services, and 2) residential based services for eligible Wake residents as defined in the Provider Agreement(s). Alliance agrees to use best efforts, including but not limited to audits, provider education, training, technical assistance and authorization criteria, to ensure that the funding provided by Wake County is used exclusively for the purchase of Wake County Services for eligible Wake County residents subject to the terms of Section 4.5 and 4.13 below. For the purpose of this Agreement, a person is considered an eligible Wake County resident if he or she resides in Wake County at the time of admission (even if the individual owns or rents a home in a different county or state) subject to the following qualifications:

- a. An individual in a hospital, mental institution, nursing facility (SNF, ICF-MR), Adult Care Home (rest homes/domiciliary care facility/assisted living), State prison, County jail or other institution/facility is a resident of the county in which he or she lived immediately prior to entering the facility. Residence in an adult care home does not establish county residence, even when the individual was a private paying adult care home resident.
- b. If an individual moves from another state directly into an institutional living arrangement, the individual is a resident of the county in which the facility is located. If the individual moves to more than one institution/facility, the county of residence is the county where the first institution/facility is located.
- c. Temporary absence from Wake County, with subsequent return or intent to return, does not change the residence, unless it is determined that the individual is no longer receiving mail or paying utilities in Wake County.
- d. A person with no fixed or permanent address (i.e. homeless) is a resident of the county where the individual states his or her intent to remain. If the individual is incapable of stating an intent to remain, he is a resident in the county in which he is found. Under no circumstances shall a person with no fixed or permanent address be found to be a resident of Wake County if the individual states an intent to return to another county.

4.2 Alliance shall not apply direct funding under this agreement to the cost of services for consumers who are eligible and approved for Medicaid as determined by any State or County Department of Social Services, unless UNCHCS requests and receives approval from Alliance in accordance with the terms and conditions of the contract for non-Medicaid services between UNCHCS and Alliance.

4.3 For the purpose of this Funding Agreement, Wake County residents with private insurance may be considered eligible for services funded by this Agreement if the consumer has exhausted his/her benefits, the relevant behavioral health services are not covered under his/her plan, or a consumer did not have creditable coverage at the time of his/her admission or at any time during his/her stay.

4.4 Alliance has reviewed and approved the FY 22 Annual Budget for the provision of services as described in 3.1 and agrees to commit to an annual state funding allocation if such funding is available to Alliance during FY 22.

4.5 For all services funded by Wake County under this Agreement, UNCHCS agrees to assist in the coordination of each individual's health care benefits so as to avoid undue delay in the provision of service and to ensure that County funding under this Agreement shall be used only if and when other sources of first and third party payment, including Medicaid or State funding, and private insurance have been exhausted. UNCHCS shall make reasonable efforts to verify all insurance and other third-party benefit plan details during first contact. In the event that a consumer has private insurance, UNCHCS is required to bill that consumer's private insurance for services and receive determination of benefits prior to submitting any remaining eligible charges for services to Alliance for payment out of Wake County funding under this agreement. (UNCHCS is not required to bill another payor source that does not cover the provided service.) UNCHCS shall include on its monthly invoices to Alliance the aggregate amounts of funds collected from Medicaid, Medicare, and private insurers.

The parties agree and acknowledge that there may be isolated instances where Wake County funding is applied to the cost of services for patients who are not Wake County residents due to inaccurate information received from the provider or patient that is outside the control of UNCHCS and Alliance, in spite of reasonable efforts by UNCHCS and Alliance to verify residency status. In such isolated cases, submitting charges for payment from Wake County funding shall not be deemed a breach of the terms of this contract, provided that Alliance agrees to correct and report any payments for non-Wake County residents out of Wake County funding upon discovery by crediting Wake County for amounts erroneously paid within a reasonable time of discovery.

4.6 Funds not used within any single fiscal year for the purchase of the services set forth in section 4.1 shall be held by Wake County at the end of the fiscal year and applied to the next year's Wake County annual allocation for UNCHCS Services up to the amounts approved by the Wake County Board of Commissioners for allocation to this purpose in the subsequent fiscal year.

4.7 Alliance is responsible for providing a report as described in Section 4.8 to Wake County. This report shall contain a separate accounting for each category of Wake County services provided and billed by UNCHCS for a funded program as of September 30, December 31, March 31, and July 31, due by the last business day of the subsequent month. This report shall be referred to as the Performance Measures Report. It will include numbers served for each program and service. An additional document detailing the full analysis of Wake County programs and services will be provided within 30 days of the end of the above referenced quarters. This shall be referred to as the Wake County Outcome and Analysis Report. In addition, Alliance shall provide an adjusted year-end report to Wake County due October 15 of the following fiscal year. Reporting obligations under this section survive the termination of this Agreement.

4.8 Form of Report. Wake County and Alliance will collaborate to mutually agree upon the information to be included in the quarterly reports, which shall at a minimum contain the same as the requirements as the other Wake County funding agreements with Alliance. The reports are intended to provide appropriate and

adequate documentation to evidence services provided by service category and area. The report will be summarized by service category and include, but not be limited to: expenditures to date of County funds; number of clients served categorized by children and adults, type of disability; and third party revenues as applicable.

4.9 Audit Rights. For all Wake County Services being funded hereunder, Wake County or its authorized representative shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records, third party, Medicaid or Medicare billings, and other writings related to the funding of the Wake County Services pursuant to this Agreement.

To the extent that any Records may constitute "protected health information" as that term is defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), it is the intent of this Section to allow Wake County to receive the minimum necessary information in de-identified and/or aggregated form only for the purpose of evaluating financial and reporting requirements under this Agreement. Costs of any administrative fees for redaction of copies provided by UNCHCS, audit or review conducted under the authority of this Section are the responsibility of Wake County unless a material breach by Alliance is detected, in which case Alliance shall be responsible for the reasonable costs of the audit or review.

4.10 Alliance is responsible for oversight of all funding stipulations set forth herein.

4.11 Alliance is responsible for using best efforts to ensure that UNCHCS consistently meets the requirements of any Provider agreements to ensure service to eligible Wake County residents consistent with the terms of those agreements.

4.12 In the event that Alliance becomes responsible for repaying any amount to a funding source as a result of overpayment of non-Medicaid monies to UNCHCS, Alliance shall be responsible for repayment of such amount out of the funding commitment for UNCHCS for that fiscal year, provided that UNCHCS has the opportunity to contest any overpayment findings as permitted under the Alliance Provider Operations Manual and State law, rule or regulation, and provided that such funds may be used to pay for other UNCHCS services and/or invoices during that fiscal year, consistent with the terms of this Agreement.

4.13 Notwithstanding any other provisions to the contrary, Alliance and Wake County understand and agree that UNCHCS may be reimbursed for charges and expenses from County funds under the terms of the Service Provider Agreement for services covering: 1) any patient in the crisis and assessment unit, without regard to residency; 2) any resident of North Carolina in the inpatient unit, in compliance with state requirements for the allocation of three way bed funding; and 3) any patient in the residential unit who is a resident of Wake County or whose charges comply with Section 4.5.

ARTICLE V UNCHCS RESPONSIBILITIES

5.1 UNCHCS agrees to operate in compliance with its Service Provider Agreement with Alliance consistent with the Terms of Article II for the provision of behavioral health services related to and consistent with the maintenance of two 16 bed residential units, 28 inpatient psychiatric beds, and crisis and assessment unit, contingent upon UNCHCS maintaining any required licenses, approvals, and/or Certificate of Need, as appropriate, to operate those services; *provided, however*, that should UNCHCS anticipate a reduction of services during the Term due to lack of funding, UNCHCS agrees to submit an amended FY22 Annual Budget and proposed reduction of services to Alliance and Wake for review pursuant to 5.3 prior to any reduction of services. UNCHCS, Wake, and Alliance shall work together for a minimum of thirty (30) calendar days to identify the most vital UNCHCS services, identify alternate

services for clients, and identify fund balance or other alternate funding prior to reducing services. If the parties are unable to reach agreement on the reduction of services at the end thirty (30) days, UNCHCS has the right to schedule a reduction of services consistent with the lack of available funding. and UNCHCS is required to comply with this section as a condition of exercising the right of termination upon 90 days' written notice as set forth in Section 1.4.

5.2 UNCHCS agrees to provide funding of up to \$5,000,000 for the behavioral health services described in Article 5.1 between July 1, 2021 and June 30, 2022, as needed to fund any shortfall between expenses and funding available from Wake County, Alliance, payors, or other sources. This funding is committed as a backstop only, on an as needed and one-time basis, and does not constitute a commitment by UNCHCS to provide any funding in future years.

5.3 UNCHCS has provided a copy of the FY 2022 services Annual Budget to Alliance and Wake County, and Alliance and Wake County have approved the FY 2022 services Annual Budget.

5.4 UNCHCS shall have no continuing obligation to provide services under this Agreement if the funding provided herein is reduced, subject to the Provisions of Article II and the requirement of 90 days' notice to Wake County and Alliance.

5.5 To the extent permitted by applicable laws and regulations, and subject to the terms of Section 4.12, UNCHCS's provision of services funded by this agreement shall be to Wake County residents without alternative payor sources.

5.6 UNCHCS shall be required at all times to use diligent and reasonable efforts to accurately determine residency of patients consistent with the business practices in place at the execution of this Funding Agreement. UNCHCS shall be deemed in compliance with this requirement by maintaining its current practice of requiring patients to sign an attestation of Wake County residency, as required for the placement in the WakeBrook residential units.

5.7 UNCHCS shall provide Alliance in a timely manner with any information required to be included in the quarterly report to Wake County pursuant to 4.7 and 4.8 herein.

ARTICLE VI OTHER PROVISIONS

6.1 RELATIONSHIP OF PARTIES

Wake County, UNCHCS, and Alliance agree that each is an independent contractor and shall not represent itself or be deemed as an officer, agent or employee of either or both of the other parties for any purpose. Alliance and UNCHCS each represent for itself that it has or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with Wake County. Alliance and UNCHCS each agree for itself that all personnel engaged in work under this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform such services. Alliance and UNCHCS each further agree for itself that it shall obey all State and Federal statutes, rules and regulations which are applicable to provisions of the services called for herein.

6.2 NON-ASSIGNMENT

Alliance shall not assign any portion of this Agreement, including the right to receive payment hereunder, to any party without the prior written consent of Wake County.

6.3 NO THIRD PARTY BENEFICIARIES

This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the parties hereto, and shall not confer any rights or remedies upon any person or entity other than the parties hereto.

6.4 GOVERNING LAW

The parties acknowledge that this Agreement shall be governed by the laws of the State of North Carolina and the appropriate forum for dispute resolution lies in the federal or state courts of North Carolina.

6.5 TERMINATION AND WAIVER

Each party has the right to terminate this Agreement for a material breach of its terms after reasonable notice to the breaching party and an opportunity to cure that breach within a reasonable period, not to exceed 30 (thirty) days. The parties agree that a decision by any party not to terminate the Agreement for a material breach shall not operate as a waiver for future breaches of that or other provisions of the Agreement.

6.6 ENTIRE AGREEMENT

The terms and provisions herein contained constitute the entire agreement by and between Wake County, UNCHCS, and Alliance and shall supersede all previous communications, representations or agreements, either oral or written between the parties hereto with respect to the subject matter hereof.

6.7 NOTICES

All notices, reports, records, or other communications which are required or permitted to be given to the parties under the terms of this Agreement shall be sufficient in all respects if given in writing and delivered in person, by confirmed facsimile transmission, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following addresses:

If to Wake County:

Mr. David Ellis
Wake County Manager
Wake County Justice Center, 4th Floor 301 S. McDowell Street
Raleigh, N.C. 27601

With a copy to:

Mr. Scott W. Warren
Wake County Attorney
Wake County Justice Center, 4th Floor 301 S. McDowell Street
Raleigh, N.C. 27601

Ms. Denise Foreman
Wake County Manager's Office
Wake County Justice Center, 4th floor 301 S. McDowell Street
Raleigh, N.C. 27601

If to Alliance:

Mr. Rob Robinson
Chief Executive Officer
Alliance Health
5200 West Paramount Parkway Suite 200
Morrisville, North Carolina 27560

With a copy to:

Ms. Carol Hammett
General Counsel
Alliance Health
5200 West Paramount Parkway Suite 200
Morrisville, North Carolina 27560

If to UNCHCS:

Dr. Wesley Burks, CEO
UNC Health Care System
The University of North Carolina at Chapel Hill
4030 Bondurant Hall
Chapel Hill, NC 27599-7000

With a copy to:

Ms. Glenn George
Chief Legal Officer
101 Manning Drive
Bondurant, Room 4068
Chapel Hill, NC 27514

6.8 SEVERABILITY

If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

6.9 COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original.

6.10 EFFECTIVE DATE OF AGREEMENT

The effective date of this Agreement shall be the date upon which the authorized agent of Wake County executes this agreement. This date shall be reflected in the first paragraph of this Agreement.

ARTICLE VII Authorization and Binding Obligation

The parties hereto each have the authority to enter the Agreement set forth herein, and that execution of this Agreement has been duly approved and authorized by resolution or any other necessary action, and this Agreement constitutes a legal, binding, and valid obligation.

Executed as of the day and year first above written.

COUNTY OF WAKE. NORTH CAROLINA

By: _____
Manager

Date: _____

Approved as to form:

Scott W. Warren
Wake County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Wake County Finance Director, or designee

ALLIANCE HEALTH

By: _____
Rob Robinson, Chief Executive Officer

Date : _____

Carol Hammett
General Counsel for Alliance

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Sara Pacholke, Alliance Health Finance Director

UNIVERSITY OF NORTH CAROLINA HEALTH CARE SYSTEM, on behalf of UNC Hospitals

By: _____
Wesley Burks, M.D. CEO

Date: _____

Approved as to form:

Glenn George
Attorney for UNCHCS