

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

FALLON COMMUNITY HEALTH PLAN, INC.,  
FALLON HEALTH & LIFE ASSURANCE  
COMPANY, INC. and  
BEACON HEALTH STRATEGIES LLC,

Defendants.

RECEIVED

FEB 27 2020

SUPERIOR COURT-CIVIL  
MICHAEL JOSEPH DONOVAN  
CLERK/MAGISTRATE

**ASSURANCE OF DISCONTINUANCE  
PURSUANT TO G.L. CHAPTER 93A, § 5**

**I. INTRODUCTION**

1. The Commonwealth of Massachusetts, through the Office of the Attorney General (“AGO”), conducted an investigation into certain acts and practices of health plans doing business in Massachusetts, including Fallon Community Health Plan, Inc. and Fallon Health & Life Assurance Company, Inc. (collectively “Fallon”) and its managed behavioral healthcare organization (“MBHO”) vendor, Beacon Health Strategies LLC (“Beacon”), concerning Behavioral Health Care (the “Investigation”).

2. The Investigation included an assessment of the accuracy of Behavioral Health Care Provider Directories that are published, supported, and/or maintained by Beacon on behalf of Fallon and other health plans in Massachusetts.

3. In lieu of litigation, the AGO, Fallon, and Beacon agree to enter this Assurance of Discontinuance (“AOD”) on the terms and conditions contained herein.

4. Fallon and Beacon voluntarily enter into this AOD with the AGO.

## **II. DEFINITIONS**

1. “Adverse Benefit Determination” shall mean a determination to deny, reduce, modify, or terminate continued Routine Behavioral Health Care Services, or the availability or coverage of Routine Behavioral Health Care Services, for failure to meet the requirements for coverage based on medical necessity, appropriateness of health care setting and level of care, or effectiveness, including a determination that a requested or recommended health care service or treatment is experimental or investigational.
2. “Audit” shall mean the processes outlined in Section IV(B)(2)(c) of this AOD.
3. “Average Allowed Amount” shall mean the total amount paid to an In-Network Provider (before any member cost-sharing provisions are applied) for a specific Current Procedural Terminology (“CPT”) code divided by the total volume of those services based on the paid claim experience.
4. “Base Rates” shall mean the default rates, typically set forth in fee schedules, to be paid by Fallon or Beacon to In-Network Providers for covered health care services. Such rates may be subject to negotiations or adjustments that may result in payments to In-Network Providers that are different from the Base Rates.
5. “Beacon” shall mean Beacon Health Strategies LLC, d/b/a/ Beacon Health Options.
6. “Behavioral Health” or “Behavioral Health Care” shall mean the diagnosis, prevention, treatment, cure, or relief of a behavioral health, substance use disorder (“SUD”), or mental health condition, illness, injury, or disease.
7. “Behavioral Health Base Rates” shall mean the Base Rate paid by Fallon or Beacon to its In-Network Providers for covered outpatient Behavioral Health Care services.

8. “Behavioral Health Care Provider” shall mean a Health Care Professional licensed, accredited, or certified to provide Behavioral Health Care as the primary purpose of his or her practice in the case of a Health Care Professional or a Facility that regularly provides Behavioral Health Care.

9. “Behavioral Health Care Provider Directory” shall mean any Provider Directory identifying In-Network Providers of Behavioral Health Care.

10. “Chapter 258” shall mean Chapter 258 of the Acts of 2014: An Act to Increase Opportunities for Long-Term Substance Abuse Recovery.

11. “Clearly and Conspicuously” shall mean that the disclosure is of such size, color, or contrast as to be readily noticed and understood by a reasonable person to whom it is being disclosed.

12. “Contracted Entity” shall mean the legal entity or entities that contract directly with Fallon or Beacon on behalf of itself and its Providers.

13. “Designated Contact” shall mean the individual or department(s) designated by a Contracted Entity to receive standard notifications from Fallon or Beacon on behalf of all of its contracted Providers, including notices for enrollment and verification of Provider Directory information.

14. “Designated Recipient(s)” shall mean Fallon and Beacon’s member and provider customer service departments and provider network contracting department; HealthCare Administrative Solutions (“HCAS”); the Council for Affordable Quality Healthcare (“CAQH”); and any personnel dedicated to receiving e-mail communications concerning Provider Directory inaccuracies through the electronic link required in Section IV(B)(1)(b)(iii) or designated to receive information through the Provider Outreach described in Section IV(B)(1)(d).



15. "Directory Attestation" shall mean the confirmation provided by a Health Care Professional (or through his or her Designated Contact) that the information in his or her CAQH directory profile has been reviewed, updated as necessary, and confirmed as accurate.

16. "Effective Date" shall mean one hundred twenty days from the date this AOD is fully executed by the Parties.

17. "Facility" shall mean any health care setting located and licensed in Massachusetts, including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings.

18. "Fallon" shall mean Fallon Community Health Plan, Inc. and Fallon Health & Life Assurance Company, Inc., including their officers, employees, and agents, including any delegate, acting on Fallon's behalf. For purposes of this AOD, Beacon is identified separately and is not subsumed into the provisions directed at Fallon unless expressly stated otherwise.

19. "Fallon Member" or "Member" shall mean an individual who is a Massachusetts resident or member of a group located in Massachusetts enrolled in (i) a Massachusetts fully-insured commercial individual policy of accident and/or sickness insurance, (ii) a Massachusetts fully-insured commercial group or blanket policy of accident and/or sickness insurance, or (iii) a Massachusetts fully-insured commercial health maintenance contract pursuant to which Fallon provides health care coverage.

20. "Health Care Professional" shall mean any individual physician or other health care practitioner licensed, accredited, or certified in Massachusetts to perform services for the

diagnosis, prevention, treatment, cure, or relief of a physical health or Behavioral Health condition, illness, or injury and who provides such services in Massachusetts.

21. “Initial Encounter(s)” means a fixed number of therapy visits, or visits involving both therapy and psychopharmacology services, that otherwise meet medically necessary criteria and for which a Fallon Member does not need prior authorization.

22. “In-Network Provider” means a Provider that has entered into a contract with and has been credentialed for participation by Fallon or Beacon, as applicable, as an in-network provider for (i) a Massachusetts commercial fully-insured individual policy of accident and/or sickness insurance, (ii) a Massachusetts commercial fully-insured group or blanket policy of accident and/or sickness insurance, or (iii) a Massachusetts commercial fully-insured health maintenance contract.

23. “MHPAEA” shall mean the current or future implementing statutory provisions codified in the “Mental Health Parity and Addiction Equity Act” at 29 U.S.C. § 1185a; 42 U.S.C. § 300gg-26, and 26 U.S.C. § 9812, the current or future implementing regulations duly promulgated by the Internal Revenue Service (“IRS”), Department of Health & Human Services (“HHS”), and the Department of Labor (“DOL”), and any current or future sub-regulatory guidance on MHPAEA issued by the IRS, HHS, and DOL.

24. “Practice Location” means the physical address(es) where a Health Care Professional or his or her Designated Contact reports that the Health Care Professional provides health care services.

25. “Provider” shall mean a Health Care Professional or Facility.

26. “Provider Directory” or “Directory” shall mean any grouping, compilation, or listing identifying In-Network Providers that Fallon or Beacon provides or makes available

(directly or indirectly) to Fallon Members, Providers, or the public-at-large, electronically or in paper format.

27. “Routine Behavioral Health Care Services” shall mean outpatient office visits for Behavioral Health services billed with the codes listed below. The parties acknowledge that the term “Routine Behavioral Health Care Services” is meant to encompass outpatient office visits involving evaluation and management services and therapy, as reflected in the list. If Fallon and/or Beacon, as applicable, substitute the below listed billing codes with new codes, the parties agree to engage in good-faith discussions to update the list of codes to be considered Routine Behavioral Health Care Services under this AOD.

90791	Psychiatric Diagnostic Evaluation
90792	Psychiatric Diagnostic Evaluation with Medical Services
90832	Psychotherapy, 30 minutes
90833	Psychotherapy, 30 minutes, when performed with an evaluation and management service
90834	Psychotherapy, 45 minutes
90836	Psychotherapy, 45 minutes, when performed with an evaluation and management service
90837	Psychotherapy, 60 minutes
90838	Psychotherapy, 60 minutes, when performed with an evaluation and management service
90846	Family Psychotherapy without the patient present
90847	Family/Couple Therapy
90849	Multiple-Family Group Therapy
90853	Group psychotherapy (other than of a multiple-family group)
99201	Evaluation and Management for a new patient (10 min)
99202	Evaluation and Management for a new patient (20 min)
99203	Evaluation and Management for a new patient (30 minutes)
99204	Evaluation and Management for a new patient (45 minutes)
99205	Evaluation and Management for a new patient (60 min)
99211	Evaluation and Management for an established patient (5 min)
99212	Evaluation and Management for an established patient (10 min)
99213	Evaluation and Management for an established patient (15 min)
99214	Evaluation and Management for an established patient (25 min)
99215	Evaluation and Management for an established patient (40 min)



28. “Utilization Management” shall mean a set of formal techniques designed to monitor the use of or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures, or settings.

### **III. ALLEGED VIOLATIONS**

1. Based on the Investigation, the AGO alleges that Fallon and Beacon engaged in certain unlawful acts and practices, as described below.

2. Fallon and Beacon deny any wrongdoing, deny all allegations, and do not admit any violation of any law or regulation, also as described below. The AOD is not an admission of liability and it shall not be used by any person or entity in any proceeding or for any purpose, except by the AGO.

#### **A. Provider Directories**

1. The Commonwealth alleges that Beacon publishes and maintains online Behavioral Health Care Provider Directories using information obtained from Providers that give health care consumers, including Fallon Members, information to help them access health care services, including the phone numbers and addresses of Providers; whether the Providers are available to see new patients; and whether the Providers are “in network” for the consumer’s health plan.

2. The Commonwealth alleges that Fallon directs Members who want to search online for Behavioral Health Care Providers to Beacon’s online Behavioral Health Care Provider Directory, and that Fallon maintains and supports its own online Provider Directory for Members to use if they want to search online for physical health providers.

3. The Commonwealth alleges that prospective members rely on Provider Directories to review whether their current Providers are in Defendants’ networks before

enrolling in a health care plan. The Commonwealth alleges that plan members, including Fallon Members, rely on Provider Directories to select and/or contact Providers for themselves and their families when considering or seeking to obtain In-Network Provider services.

4. The Commonwealth alleges that Fallon and Beacon violated and continue to violate M.G.L. c. 93A ("Chapter 93A") by directing Fallon Members to Behavioral Health Care Provider Directories and/or publishing and supporting Behavioral Health Care Provider Directories that are materially inaccurate and deceptive in a variety of ways that cause harm to consumers. The Commonwealth alleges, for example, that these Behavioral Health Care Provider Directories in some instances:

- a. do not accurately reflect certain Health Care Professionals' availability to see new patients for outpatient services;
- b. contain inaccurate contact information for Providers, which may hinder the ability of health care consumers to access these Providers for services;
- c. do not allow health care consumers to accurately search for Health Care Professionals who see patients through their participation in group practices; and
- d. inaccurately represent the health insurance plans accepted by a Provider, which may lead a health care consumer to incorrectly understand that the Provider is "in network."

5. Fallon and Beacon deny the Commonwealth's allegations and deny that they have violated Chapter 93A or any other state or federal law. Fallon and Beacon further state that they did not engage in any unfair or deceptive act or practice. Fallon and Beacon state that they employ, and have employed, reasonably diligent processes and procedures to update and maintain their Provider Directories in reliance upon the information reported to them by their



various respective contracted providers. Fallon and Beacon state that Provider Directories may be a source, although not necessarily the primary source, of Behavioral Health Care Provider and physical health provider information that Fallon Members choose to use for obtaining Provider network information. Fallon and Beacon further state that they have maintained and continue to maintain adequate provider networks in accordance with regulatory requirements promulgated by the Commonwealth's Division of Insurance ("DOI"), and that, pursuant to DOI requirements, they submit to DOI network adequacy analyses, and DOI has accepted these analyses. Without admitting any wrongdoing, subject to and solely to avoid the delay, uncertainty, inconvenience, and expense of litigation on these Provider Directory issues, Fallon and Beacon agree to the provisions of Sections IV, V, and VI of this AOD.

**B. Provider Reimbursement Rates**

1. The Commonwealth alleges that Fallon, directly and through Beacon, uses processes, strategies, evidentiary standards, and other factors to establish Behavioral Health Base Rates that are not comparable to, and are applied more stringently than, the processes, strategies, evidentiary standards, and other factors used to establish Base Rates for medical/surgical ("M/S") services, including by using unfair processes that have resulted in lower Base Rates for Behavioral Health Care physician office visits compared to M/S physician office visits billed with the same evaluation and management codes.

2. The Commonwealth alleges that Fallon's and Beacon's conduct described above violates MHPAEA and is an unfair act or practice under Chapter 93A. Accordingly, the Commonwealth further alleges that Fallon, directly and through Beacon, must make changes to the processes, strategies, evidentiary standards, and/or factors used to establish Behavioral

Health Base Rates and that these changes will generally result in increases to Behavioral Health Base Rates.

3. Fallon and Beacon deny the Commonwealth's allegations. Fallon and Beacon state that the processes, strategies, evidentiary standards, and/or factors used to establish Behavioral Health Base Rates are comparable to, and applied no more stringently than, the processes, strategies, evidentiary standards and/or factors used to establish Base Rates for M/S services. Fallon and Beacon state that they fully comply with MHPAEA, did not engage in any unfair act or practice concerning provider reimbursement rates, did not engage in any other unfair or deceptive act or practice, did not engage in any wrongdoing, and did not violate Chapter 93A or any other state or federal law. Without admitting any wrongdoing, subject to and solely to avoid the delay, uncertainty, inconvenience, and expense of litigation on this provider reimbursement issue, Fallon and Beacon agree to the provisions of Sections IV, V, and VI of this AOD.

**C. Utilization Management**

1. The Commonwealth alleges that Fallon, directly and through Beacon, uses Utilization Management processes to manage Fallon Members' access to certain inpatient and outpatient Behavioral Health Care that are not comparable to, and are applied more stringently than, the processes Fallon uses to manage Members' access to comparable M/S care.

Specifically, the Commonwealth alleges that:

a. Fallon, through Beacon, requires members to obtain authorization for the continuation of certain Routine Behavioral Health Care Services beyond eight office visits while authorization requirements are not applied in a comparable way for M/S office visits.

b. Fallon, through Beacon, requires Members who have been stabilized after emergency treatment to obtain prior authorization before being admitted for certain inpatient mental health care while authorization requirements are not applied in a comparable way for Members being admitted to the hospital from the emergency room for M/S inpatient care.

2. The Commonwealth alleges that these Utilization Management practices violate MHPAEA and are unfair acts or practices under Chapter 93A.

3. Fallon and Beacon deny the Commonwealth's allegations and state that they fully comply with MHPAEA. Fallon and Beacon state that the processes, strategies, evidentiary standards, and/or factors used to establish and apply Utilization Management techniques for Behavioral Health Care are comparable to the processes, strategies, evidentiary standards, and/or factors used to establish and apply Utilization Management techniques for M/S services. Fallon and Beacon state that they did not engage in any unfair act or practice concerning Utilization Management or any other unfair or deceptive act or practice, did not violate Chapter 93A, did not engage in any wrongdoing, and did not violate any other state or federal law. Without admitting any wrongdoing, subject to and solely in order to avoid the delay, uncertainty, inconvenience, and expense of litigation on this Utilization Management issue, Fallon and Beacon agree to the provisions of Sections IV, V and VI of this AOD.

#### **IV. ASSURANCES**

##### **A. Generally**

1. Fallon and Beacon shall not engage in any unfair or deceptive acts or practices.



2. Fallon and Beacon shall comply with all applicable Federal and Massachusetts laws and regulations pertaining to Behavioral Health parity, including MHPAEA, now in effect or later enacted.

3. Notwithstanding any provision to the contrary, any obligations of Beacon with respect to Provider Reimbursement Rates in Section IV(C) and Utilization Management in Section IV(D) shall apply to Beacon only in its capacity as Fallon's vendor contracted to provide the applicable service to Fallon. For the avoidance of doubt, it is understood and agreed that, relative to Fallon, Beacon's services are limited to the administration and management of Fallon's Behavioral Health benefits (including Fallon's Behavioral Health Care Provider network) and that Beacon does not administer or control Fallon's M/S benefits and does not have general administration responsibility and/or oversight of Fallon's health plans. The Assurances in Section IV(B) ("Provider Directories and Networks"), however, apply to Beacon regardless of its role as Fallon's vendor.

**B. Provider Directories and Networks**

1. All Provider Directories

a. Generally. Fallon and Beacon shall comply with all applicable Federal and Massachusetts laws and regulations pertaining to Provider Directories and Provider network adequacy now in effect or later enacted. Additionally, Fallon and Beacon shall, as applicable, comply or continue to comply with the Assurances set forth in this Section.

b. Provider Directory Contents. Fallon's and Beacon's Provider Directories shall:

i. Clearly and Conspicuously disclose the date on which any electronic Directory was last updated, and the date of printing of any paper Directory.

ii. Clearly and Conspicuously state in the Provider Directories which Providers have indicated directly or through a Designated Contact that they are “accepting new patients.”

iii. Clearly and Conspicuously disclose the manner in which consumers should report Provider Directory inaccuracies, including a customer service telephone number and an electronic link that Members may use to notify Fallon and Beacon via e-mail of inaccurate Provider Directory information.

iv. Clearly and Conspicuously provide notice to consumers that they may file complaints relating to Provider Directory inaccuracies or provider network access issues to the DOI, including the contact information and method for filing such a complaint with DOI.

v. If applicable, Clearly and Conspicuously disclose (1) when information in an electronic Provider Directory has been designated “unverified” pursuant to Section IV(B)(1)(c)(iv) of this AOD, and (2) an explanation that such “unverified” information may not be current but updated information has not yet been obtained.

vi. Allow members to search for and identify each Health Care Professional in their networks individually (regardless of whether they see patients as solo practitioners or as part of a group practice); where applicable, identify each Health Care Professional in a listing that is separate from a listing for that Health Care Professional’s group practice; and, for each Health Care Professional, (1) list his or her Practice Location as indicated and supplied by the Health Care Professional (or, as applicable, the Designated Contact for such Health Care Professional), and (2) not list that Health Care Professional as practicing at other physical addresses of a group practice that have not been reported by the Health Care

Professional (or, as applicable, the Designated Contact for such Health Care Professional) as ones at which he or she provides health care services.

vii. Clearly and Conspicuously state whether a vendor is used to maintain a Behavioral Health Care Provider network and identify such vendor.

c. Provider Directory Updates and Corrections

i. Within thirty (30) days of the termination of a Provider's agreement with Fallon or Beacon, Fallon or Beacon, as applicable, shall remove any applicable listing for that Provider from the Provider Directory.

ii. Within thirty (30) days of receiving notice of potentially inaccurate information in their Provider Directories through a Designated Recipient or an Audit, Fallon or Beacon, as applicable, shall investigate the potential inaccuracy with appropriate diligence, seek any information necessary to correct an inaccuracy, and where obtained, update the Provider Directory accordingly.

iii. If, within thirty (30) days of receiving notice of the potentially inaccurate information in their Provider Directories through a Designated Recipient or through an Audit, Fallon or Beacon, as applicable, is unable to validate the accuracy of the Provider Directory listing that is the subject of the notice after diligent investigation and/or is unable to obtain information necessary to correct the Provider Directory, Fallon or Beacon, as applicable, shall edit the Provider Directory as provided in the following subsections iv-vi.

iv. If the potential inaccuracy relates to the physical address(es) of the Provider, the telephone number to reach the Provider and/or the plans accepted by the Provider, such information shall either be immediately removed from the online Provider Directory until updated information is obtained, or may be designated as "unverified" for a



period not to exceed ninety (90) days after receiving the notice of a potential inaccuracy, after which the information must be immediately removed until updated information is obtained.

v. If the potential inaccuracy relates to whether a Health Care Professional is “accepting new patients,” Fallon or Beacon, as applicable, shall remove from the online Provider Directory any designation that a Health Care Professional is “accepting new patients” until updated information is obtained.

vi. If the potential inaccuracy relates to whether a Provider is or continues to be an In-Network Provider, Fallon or Beacon, as applicable, shall remove the Provider listing from the online Provider Directory until updated information is obtained

d. Provider Outreach

i. By July 1, 2020, Fallon and Beacon shall review their online Provider Directories, and for any Health Care Professional listed at more than one location, they shall (i) identify the Health Care Professional’s Practice Location(s), and (ii) update Provider Directories, as necessary, in accordance with this AOD.

ii. At least quarterly, Fallon and Beacon shall contact each network Health Care Professional (or, as applicable, his or her Designated Contact) via a targeted communication that has the sole focus of verifying Provider Directory information (such as an e-mail), provided that Fallon and Beacon may make this communication through a newsletter if the information required below is Clear and Conspicuous and prominently displayed. In this communication, Fallon and Beacon shall (1) request that the Health Care Professional (or, as applicable, his or her Designated Contact) review the information listed in the Provider Directories for that individual (or, with respect to a Designated Contact, the information listed in the Provider Directory for multiple Health Care Professionals), including his or her availability

to see new patients, telephone number, physical addresses, and network status; and (2) request that the Health Care Professional (or, as applicable, his or her Designated Contact) verify the accuracy of the information (including whether the Health Care Professional actually provides services at each address listed in the Provider Directory), or provide any necessary updates to correct the listings; and (3) provide instructions as to how the Health Care Professional should verify Provider Directory information or communicate updates. With respect to the Provider outreach described in this Paragraph, it is insufficient for Fallon and Beacon to determine, for instance, whether a group practice is accepting new patients; Fallon and Beacon must instruct that updated information be given for each individual Health Care Professional identified in the Provider Directories.

iii. Fallon and Beacon shall require Provider group practices to provide prompt notification to them whenever a Health Care Professional leaves or joins a group practice or changes the office location where he or she practices. Upon receiving notification, Fallon and Beacon shall update their Provider Directories in accordance with the terms of this AOD.

e. Employee Training. Fallon and Beacon shall train their customer and provider service representatives regarding how to route issues concerning Provider Directories, including member complaints, to the appropriate personnel for monitoring and correction of Directory inaccuracies. Fallon and Beacon shall (i) train existing customer and provider service representatives by the Effective Date or confirm that these representatives have already received adequate training, (ii) train upon hire all relevant employees hired after the Effective Date, and (iii) keep a record of all employees that completed the training for four years.

f. Member Complaints

i. Fallon and Beacon shall track and monitor member complaints that they receive concerning the accuracy of their Provider Directories and/or members' difficulty in obtaining timely access to Behavioral Health Care. Such tracking and monitoring shall include the date such complaint was submitted, the date such complaint was closed, the substance of the complaint, and a record of actions taken, if necessary, in response to such complaint.

ii. Fallon and Beacon shall take appropriate and timely action to resolve Provider Directory and network access issues as they arise, including but not limited to investigating complaints of Provider Directory inaccuracies and updating the Provider Directories in accordance with the terms of this AOD.

iii. To the extent they involve Behavioral Health Care, Fallon's obligations in this subsection (f) may be satisfied by Fallon itself, through Beacon, or through Fallon's then current MBHO delegate if not Beacon.

2. Behavioral Health Care Provider Directories and Network Adequacy

a. Generally. Fallon and Beacon shall comply with all DOI regulations currently in effect or promulgated in the future concerning Provider network adequacy and Behavioral Health Care access standards. Additionally, Fallon and Beacon shall, as applicable, comply or continue to comply, with the Assurances set forth in this Section.

b. Contents of Behavioral Health Care Provider Directory. Except where they are required to remove information in accordance with the provisions of this AOD, Fallon and Beacon shall Clearly and Conspicuously list the following in their Behavioral Health Care Provider Directories:



- i. For each Health Care Professional,
  - 1. Name;
  - 2. Gender (to the extent provided by the Behavioral Health Care Provider);
  - 3. Practice Location(s);
  - 4. Provider type;
  - 5. Specialty, if applicable;
  - 6. Whether he or she is accepting new patients;
  - 7. Group practice affiliation(s), if applicable;
  - 8. Facility affiliations, if applicable;
  - 9. Languages spoken other than English, if applicable;
  - 10. Services provided;
  - 11. Population served;
  - 12. Telephone contact information; and
  - 13. Board certification(s).
- ii. For hospitals:
  - 1. Hospital name;
  - 2. Hospital type;
  - 3. Participating hospital location;
  - 4. Hospital accreditation status; and
  - 5. Telephone contact information.
- iii. For Facilities other than hospitals:
  - 1. Facility name;

2. Facility type;
3. Participating Facility location(s); and
4. Telephone contact information.

iv. For electronic Directories, items in (b)(i)(1)-(9); (b)(ii)(1)-(4); and (b)(iii)(1)-(3) must be made available in a searchable format.

c. Audits

i. Beginning with the first full quarter following the Effective Date, Fallon (itself or through an agent, including Beacon) and Beacon shall conduct a quarterly Audit of their Behavioral Health Care Provider Directories. The Audit shall include (1) all Health Care Professionals in the Behavioral Health Care Provider Directories who have not submitted a claim to Fallon or Beacon within twelve months of the Audit and who have not otherwise been Audited or for whom Fallon or Beacon has not received a Directory Attestation at any time in the twelve months prior to the Audit; and (2) a representative sample of at least 15% of all other Behavioral Health Care Providers and group practices listed in the Behavioral Health Care Provider Directories drawn from an overall pool that excludes Behavioral Health Care Providers and group practices who have been Audited at any time in the twelve months prior to the Audit or for whom Fallon or Beacon has received a Directory Attestation in the 120 days prior to the Audit. Fallon and Beacon shall contact each Provider (or, as applicable, the Provider's Designated Contact) in the audit group and seek to (1) verify with a Provider (directly or through a Designated Contact) the accuracy of his or her Provider Directory information (including all the information set forth in Section IV(B)(2)(b)) and/or (2) obtain from the Provider (directly or through a Designated Contact) any updates necessary to make information in the Behavioral Health Care Provider Directories accurate. If, during the Audit, a Health Care

Professional's information cannot be verified, or updated information cannot be obtained after reasonable attempts to do so, Fallon and Beacon shall edit the Directories in accordance with Section IV(B)(1)(c). If the quarterly Audit process described in this Paragraph finds that at least 85% of the Provider listings examined in the Audit were completely accurate for three consecutive quarters, Fallon and Beacon may perform the Audit process on a semi-annual basis thereafter for the term of this AOD provided, however, if the results of the semi-annual Audit process at any time find that less than 85% of the Provider listings examined are completely accurate, quarterly Audits shall be reinstated immediately.

ii. Fallon and Beacon shall develop and implement robust policies and procedures for verifying that all data elements in a Provider's CAQH profile are properly fed and loaded into, as applicable, Fallon's and Beacon's online Behavioral Health Care Provider Directories. These policies and procedures shall include reviewing on a quarterly basis, beginning with the first full quarter following the Effective Date and for a period of three years, the Behavioral Health Care Provider Directory listings of at least 2% of Health Care Professionals who have submitted a Directory Attestation in the previous 120 days to determine whether the data elements that have been confirmed in an Health Care Professional's Directory Attestation match the data elements displayed in the Behavioral Health Care Provider Directories. If the results of this review, or any other process undertaken to verify CAQH functionality with Fallon's (as applicable) and Beacon's Behavioral Health Care Provider Directories, indicate that the Behavioral Health Care Provider Directories are not being updated so as to be consistent with the Directory Attestations, or that the CAQH feed is otherwise not functioning properly with the Directories, Fallon and Beacon, as applicable, shall undertake any necessary remedial action to facilitate Directory accuracy through the use of the CAQH feed.



iii. For a period of three years after each Audit, Fallon and Beacon shall maintain documentation that identifies the Behavioral Health Care Providers who were selected for the Audit and the results of each Audit. Additionally, for a period of three years after the Effective Date, Fallon and Beacon shall retain documentation sufficient to identify the policies, procedures, and reviews referenced in, and any remedial efforts required by, subparagraph ii.

iv. Fallon's obligations in this Audit section may be satisfied by Fallon itself, through Beacon, or through Fallon's then current MBHO delegate if not Beacon.

**C. Provider Reimbursement Rates**

1. Generally. Fallon, itself and through any applicable agent, including Beacon, shall use a methodology and processes for establishing Behavioral Health Care Provider reimbursement rates for all levels of Provider licensure that is, as written and in operation, comparable to, and applied no more stringently than, the methodology and processes used for establishing M/S Provider reimbursement rates and that complies with MHPAEA.

2. Methodology and Processes for Setting Behavioral Health Base Rates.

a. Fallon, itself and through any applicable agent, including Beacon, shall use a methodology (inclusive of any and all of the inputs used by the methodology) and processes to set Behavioral Health Base Rates that are, as written and in operation, comparable to, and applied no more stringently than, the methodology and processes used to set M/S Base Rates and that comply with MHPAEA. To comply with this provision, Fallon, through Beacon, will, by July 1, 2020, change the methodology and processes that are currently used to establish Behavioral Health Base Rates and implement such changes (which will generally result in increases to Behavioral Health Base Rates). Fallon will provide notice when the changes have

been implemented and the then-current Behavioral Health Base Rates to the AGO when these changes have become effective.

b. To the extent Fallon, itself and through any applicable agent, including Beacon, uses data or any other information published by the Centers for Medicare and Medicaid Services in any way to analyze, update, or set its Base Rates, the use of any such data or information in the methodology and processes used to determine Behavioral Health Base Rates must be comparable to, and applied no more stringently than, the use of such data in the methodology and processes used to determine M/S Base Rates. Changes consistent with this Paragraph must be made by July 1, 2020.

3. Reporting

a. Fallon shall, with the assistance of any applicable agent, including Beacon, as necessary, report to the AGO, annually for a 3-year period beginning in 2021, (i) all substantive changes to the methodology and processes used to determine Base Rates; and (ii) its then current Behavioral Health Base Rate and M/S Base Rate fee schedules. Each annual report shall be provided on or before April 1 of the reporting year for which the report is due (e.g., the annual report for the January 1, 2021 – December 31, 2021 reporting year shall be due on or before April 1, 2021) and reflect the then-current Base Rates. The last report shall be due on or before April 1, 2023.

b. Fallon shall, with the assistance of any applicable agent, including Beacon, as necessary, report to the AGO annually for a 3-year period, the Average Allowed Amounts for Behavioral Health and M/S Providers paid on a fee-for-service basis for services rendered in the office setting (place of service code 11) for (i) all CPT codes used by both Behavioral Health and M/S Providers; (ii) all other CPT codes used by Behavioral Health Care

Providers; and (iii) the top 35 additional CPT codes as determined by the total amount paid to an In-Network Provider (before any member cost-sharing provisions are applied and excluding codes related to anesthesia, lab procedures, and J-codes) used by M/S Providers. Average Allowed Amounts shall be reported by Fallon for M/S physicians and separately by Beacon (or any other applicable agent of Fallon) for Behavioral Health physicians, PhDs, master level clinicians, and nurse practitioners for each CPT code. Each annual report shall be provided on or before April 1 of the year following the reporting year for which the report is due (e.g., the annual report for the January 1, 2020 – December 31, 2020 reporting year shall be due on or before April 1, 2021). The last report shall be due on or before April 1, 2023.

c. Fallon and any applicable agent, including Beacon, shall make good faith efforts to answer any reasonable inquiries from the AGO concerning the reports provided under Sections IV(C)(3)(a)-(b). The AGO may make reasonable requests for additional information as necessary to clarify information provided under Sections IV(C)(3)(a)-(b).

#### **D. Utilization Management**

1. Generally. Fallon and Beacon shall comply, or continue to comply, with all applicable laws and regulations now in effect or later enacted concerning the Utilization Management of Fallon Members' health care.

2. Transparency.

a. Fallon and Beacon shall Clearly and Conspicuously disclose their Utilization Management policies and procedures, including requirements relating to prior authorization and notice, in Member documents, Provider manuals, internal policies, and on websites. These disclosures shall include the following:



i. Notification that Members do not ever need prior authorization to be admitted as an inpatient to a Facility from a licensed emergency department to receive Behavioral Health Care.

ii. Notification that Routine Behavioral Health Care Services do not require prior authorization.

iii. Identification of prior authorization processes and requirements applicable to all Behavioral Health outpatient services that are not Routine Behavioral Health Care Services.

iv. For Fallon plans and Members covered by Chapter 258, notification that Members' coverage for SUD is subject to the provisions of Chapter 258; that initial authorization for SUD treatment is not required; and that Acute Treatment Services and Clinical Stabilization Services treatment will be covered for up to a total of fourteen days without authorization or medical necessity review.

b. Fallon and Beacon shall maintain and have the ability to produce data sufficient to monitor compliance with MHPAEA and its regulations, including, without limitation: denials and modifications of initial requests for authorization; outcomes resulting from concurrent reviews (i.e., utilization review of ongoing services), including denials and modifications of requests for continued treatment; days and/or visits authorized at each review; and frequency of concurrent reviews conducted.

3. Inpatient Services. Fallon and Beacon shall not require Members to obtain prior authorization to be admitted to a Facility to receive mental health inpatient treatment after treatment in an emergency department, even if temporarily placed in an interim medical bed, regardless of whether the Member has been stabilized. Nothing contained herein prevents Fallon

and/or Beacon from requiring notice of an admission, performing concurrent review following an admission, or denying payment on post-service basis if criteria for payment (including but not limited to medical necessity criteria) is not met, provided that the existence and application of such practices for Behavioral Health inpatient admissions is comparable to and no more stringent than the practices utilized for M/S inpatient admissions.

4. Outpatient Services.

a. Fallon and Beacon shall not require Members or Providers to obtain prior authorization for the initiation or continuation of Routine Behavioral Health Care Services. Accordingly, Fallon and Beacon shall discontinue the existing practice of requiring prior authorization for a Fallon Member's further treatment with a Health Care Professional after eight Initial Encounters for Routine Behavioral Health Care Services.

b. The processes, strategies, evidentiary standards, or any other factors Fallon and Beacon consider in developing, implementing, and applying Utilization Management techniques with respect to outpatient Behavioral Health Care, including whether and to what extent such techniques will be used, shall be comparable to, and applied no more stringently than, those applied with respect to M/S outpatient services. Further, Fallon and Beacon shall document the processes, evidentiary standards and other factors used to develop and apply Utilization Management techniques for outpatient Behavioral Health Care and how such processes, evidentiary standards, and other factors were applied comparably with respect to Utilization Management techniques used for outpatient M/S care.

5. Reporting

a. Within three months of the Effective Date, Fallon shall provide the AGO with copies of the Utilization Management policies and such other Member or Provider facing materials that have been updated for purposes of complying with this AOD.

b. For a period of three years after the Effective Date, Fallon shall report to the AGO any material changes made to Utilization Management policies and practices relating to Behavioral Health Care, including any changes to the Utilization Management of Routine Behavioral Health Care Services, at the time of implementation.

c. On an annual basis for a three-year period ending on April 1, 2023, Fallon shall provide to the AGO a summary report setting forth (i) all Utilization Management reviews conducted for Routine Behavioral Health Care Services with a Provider, broken down by CPT code and type of review (e.g., retrospective review) and (ii) the total number of Adverse Benefit Determinations issued for Routine Behavioral Health Care Services, broken down by CPT code and type of review. The first report under this section shall include all Utilization Management reviews conducted from the Effective Date through December 31, 2020 and shall be due on or before April 1, 2021. Subsequent reports (due on or before April 1) shall cover the previous calendar year and include all Utilization Management reviews conducted since the previous report was submitted to the AGO. Upon the AGO's request, Fallon shall provide the applicable notices of adverse determination.

d. The AGO may make reasonable requests for additional information as necessary to clarify information provided under this subsection (5).



## **V. PAYMENT TO THE COMMONWEALTH**

Within thirty days after the filing of this AOD with the Superior Court of Suffolk County, Fallon and/or Beacon shall pay \$125,000 to the Commonwealth by electronic funds transfer to an account identified by the AGO. This amount shall be deposited into a trust fund for the purpose of assisting the AGO to discharge its duties, in accordance with G.L. c. 12 § 4A, and to be used in the sole discretion of the AGO to promote initiatives designed to prevent or treat substance use disorders, increase access to Behavioral Health Care services, or otherwise assist Massachusetts Behavioral Health Care consumers.

In addition to any monies paid above, and to resolve allegations the AGO has against Beacon that are not related to its acts and conduct as Fallon's MBHO, Beacon shall pay an additional \$60,000 to the Commonwealth by electronic funds transfer to an account identified by the AGO. This amount shall be deposited into a trust fund for the purpose of assisting the AGO to discharge its duties, in accordance with G.L. c. 12 § 4A, and to be used in the sole discretion of the AGO to promote initiatives designed to prevent or treat substance use disorders, increase access to Behavioral Health Care services, or otherwise assist Massachusetts Behavioral Health Care consumers.

## **VI. GENERAL PROVISIONS**

1. This AOD represents the entire agreement between the AGO, Fallon, and Beacon concerning the matters addressed herein. It supersedes any prior agreement, understandings, or stipulations between the parties regarding the subject matter hereof.

2. This AOD shall be binding on Fallon and Beacon, as well as their agents, servants, employees, successors, and assigns.

3. This AOD shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This AOD confers no standing or other legal rights upon any party other than the AGO, Fallon, and Beacon.

4. Except for purposes of enforcing compliance with this AOD by the AGO, no part of this AOD shall be construed or admitted into evidence as an admission of liability by Fallon or Beacon or any of their respective parents, corporations, subsidiaries, affiliates, officers, directors, employees, predecessors, successors, insurers, or assigns in any other proceeding. Any such liability is expressly denied by Fallon and Beacon. This document and its contents are not intended for use by any third party for any purpose, including submission to any court for any purpose.

5. If the AGO believes Fallon or Beacon to be in violation of the AOD, the AGO shall give Fallon and/or Beacon written notice of that alleged violation(s) and a reasonable opportunity to cure the alleged violation(s). Before commencing an action for breach of this AOD, the AGO will notify Fallon and/or Beacon in writing of such breach, provided, however, that the AGO, in its sole discretion, may take immediate action at any time if it determines that there is a threat to the health or safety of the citizens of Massachusetts. Upon receiving said notice, Fallon and/or Beacon shall then have twenty-one (21) days from receipt of such written notice to provide a good faith written response to the AGO's determination, during which time the AGO will not commence any action for breach of this AOD. This response shall contain, at a minimum, either:

- a. A statement explaining why Fallon and/or Beacon believe that they are in full compliance with this AOD; or
- b. A detailed explanation of how the alleged breach(es) occurred; and

- i. A statement that the alleged breach has been addressed and a description of the action taken by Fallon and/or Beacon to address the breach; or
- ii. A statement that the alleged breach cannot be reasonably addressed within twenty-one (21) days from receipt of the notice but Fallon and/or Beacon have begun to take corrective action to address the alleged breach and are pursuing such corrective action with reasonable and due diligence, and a detailed and reasonable timetable for addressing the alleged breach.

6. Nothing in this AOD shall prohibit Fallon or Beacon from challenging any future laws or regulations related to issues addressed in this AOD. Further, nothing in this AOD shall be construed as a waiver by Fallon or Beacon of any right to raise any arguments or defenses in the future related to the issues included in this AOD.

7. This AOD shall be filed in the Superior Court of Suffolk County. The Superior Court of Suffolk County has and shall retain jurisdiction over this AOD.

8. This AOD shall not relieve Fallon or Beacon of any obligation to comply with applicable federal and state laws and regulations. Nothing in this AOD shall require Fallon or Beacon to take any action that is in violation of applicable federal or state laws and regulations. If Fallon or Beacon believes that there is a conflict between this AOD and applicable federal or state laws and regulations that prevents them from complying with this AOD, Fallon or Beacon shall notify the AGO of their perceived inability to comply with the AOD and the parties will attempt to resolve any such conflict in good faith. If there is a direct conflict between this AOD and federal or state law, Fallon's and Beacon's compliance with such federal or state law shall not cause them to be in breach of this AOD.



9. As relates to Sections IV(C) (“Provider Reimbursement Rates”) and Section IV(D) (“Utilization Management”), if the U.S. HHS, DOL, and/or IRS issue interpretative guidance concerning the standards under MHPAEA, including without limitation, the “comparable to” and “applied no more stringently than” standards set forth under MHPAEA, the interpretations stated in the applicable guidance from these federal agencies shall control the meaning of those standards as used in this AOD.

10. This AOD shall terminate on the tenth anniversary of the Effective Date if not otherwise terminated in whole or in part, except that Sections IV(B)(1)(b)-(d) (“Provider Directory Contents,” “Provider Directory Updates and Corrections,” and “Provider Outreach”) and IV(B)(2)(b)-(c) (“Contents of Behavioral Health Care Provider Directory” and “Audits”) shall terminate on the fifth anniversary of the Effective Date.

11. Compliance with this AOD resolves and settles all civil claims alleged by the AGO herein, or which the AGO alleged or could have alleged pursuant to Chapter 93A, MHPAEA, or Chapter 258 up to the date this AOD is fully executed, whether known or unknown, against Fallon or Beacon, their parent corporations, affiliates, agents, subsidiaries, subdivisions, officers, employees, successors, and assigns, relating in any way to the Investigation of Provider Directories, provider network adequacy, Utilization Management practices, mental health parity, and provider reimbursement rates. Notwithstanding any terms of this AOD, specifically reserved and excluded from this release is any civil or administrative liability that any person and/or any entity, including Fallon and Beacon, has or may have to the Commonwealth not expressly covered by the release in this Paragraph, including but not limited to (a) Medicaid claims, (b) state false claims violations, and (c) DOI administrative claims and proceedings.

12. Nothing in this AOD is to be construed as a waiver by Fallon or Beacon of any rights they may have to assert that information that they provide or provided pursuant to this AOD or the Investigation is not subject to public disclosure under applicable law. Fallon and/or Beacon may assert at any time that any submission to the AGO, whether by Fallon or Beacon, in connection with this AOD, is subject to exemption from disclosure under applicable public records law, including but not limited to M.G.L. c. 66 and its implementing regulations.

13. Fallon and Beacon shall comply with all reasonable inquiries and requests from the AGO regarding the implementation of the terms contained within this AOD.

14. Subject to the terms and conditions of this AOD, Fallon and Beacon waive any right to challenge the AOD in any action or proceeding.

15. This AOD, including any time period within which a party must perform or begin to perform, or complete an obligation of this AOD, may be amended upon written agreement of all parties for good cause shown; extensions of time to perform shall not be unreasonably withheld. The AGO agrees to consider in good faith any request by Fallon and/or Beacon to amend this AOD to conform with any material provision or language that is included in any subsequent Assurance of Discontinuance, Consent Judgment, Letter of Agreement, or similar instrument between the AGO and any other health plan or agent thereof, relating to any matters set forth herein.

16. Any notices or communications required to be transmitted between the AGO and Fallon or Beacon pursuant to this AOD shall be provided in writing by first-class mail, postage prepaid, and by electronic mail to the parties as follows, unless otherwise agreed in writing.

If to the Office of the Attorney General:

Health Care Division  
c/o Lisa Gaulin, Assistant Attorney General  
[lisa.gaulin@mass.gov](mailto:lisa.gaulin@mass.gov)  
Office of the Attorney General  
One Ashburton Place, 18<sup>th</sup> Floor  
Boston, MA 02108

If to Fallon:

Richard Burke  
[richard.burke@fallonhealth.org](mailto:richard.burke@fallonhealth.org)  
President and Chief Executive Officer  
Fallon Community Health Plan, Inc.  
10 Chestnut Street  
Worcester, MA 01608

And

Pamela E. Berman  
[pberman@robinskaplan.com](mailto:pberman@robinskaplan.com)  
Robins Kaplan LLP  
800 Boylston Street, Suite 2500  
Boston, MA 02199

If to Beacon:

Daniel M. Risku  
Executive Vice President & General Counsel  
[daniel.risku@beaconhealthoptions.com](mailto:daniel.risku@beaconhealthoptions.com)  
Beacon Health Options  
200 State Street  
Boston, MA 02109



FALLON COMMUNITY HEALTH PLAN, INC. and  
FALLON HEALTH & LIFE ASSURANCE COMPANY, INC.

The undersigned, Richard P. Burke, represents that he is duly authorized to execute this AOD on behalf of and to bind Fallon Community Health Plan, Inc. and Fallon Health & Life Assurance Company, Inc. ("Fallon") to all applicable provisions of the AOD, and that on behalf of Fallon, he voluntarily enters into this AOD.

By 

Richard P. Burke  
President and Chief Executive Officer

Date: February 7, 2020

BEACON HEALTH STRATEGIES LLC

The undersigned, Daniel M. Risku, represents that he is duly authorized to execute this AOD on behalf of and to bind Beacon Health Strategies LLC ("Beacon") to all applicable provisions of the AOD, and that on behalf of Beacon, he voluntarily enters into this AOD.

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

Daniel M. Risku

Executive Vice President and General Counsel

Date: 1/31/2020

COMMONWEALTH OF MASSACHUSETTS  
ATTORNEY GENERAL MAURA HEALEY

By: 

Stephen Vogel, Assistant Attorney General (BBO# 568735)

Lisa Gaulin, Assistant Attorney General (BBO# 654655)

Date: January 31, 2020