

AGREEMENT FOR SERVICES #245-173-M-E2011

THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and California Psychiatric Transitions, Inc., a California Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 9226 Hinton Avenue (Mailing: P.O. Box 339), Delhi, CA 95315, (hereinafter referred to as "CONTRACTOR");

RECITALS

WHEREAS, COUNTY has determined that it is necessary to obtain a contractor to provide long-term 24 hour programs and facilities for seriously mentally ill adults (hereinafter referred to as "Clients") on an "as requested" basis for the County of El Dorado Health Services Department, Mental Health Division; and

WHEREAS, CONTRACTOR has represented to COUNTY that it is specially trained, experienced, expert and competent to perform the special services required hereunder and COUNTY has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State and local laws; and

WHEREAS, COUNTY has determined that the provision of these services provided by CONTRACTOR is in the public's best interest, and that these services are more economically and feasibly performed by outside independent contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, COUNTY and CONTRACTOR mutually agree as follows:

Article I. SCOPE OF SERVICES

Section 1.01 CONTRACTOR agrees to furnish licensed facilities and personnel necessary to provide the services set forth in Exhibit A, marked "Description of Program Services," incorporated herein and made by reference a part hereof. All services provided by CONTRACTOR shall have prior written authorization by the County Health Services Director or Director's designee.

Section 1.02 Notification of Occurrences - CONTRACTOR shall notify the COUNTY Contract Administrator, in writing, within forty-eight (48) hours of becoming aware of any occurrence of a serious nature, including, but not limited to: being absent without leave, medical emergencies, accidents, injuries, death, self-harm or a danger to others, or acts of negligence, related in any way to the provision of services pursuant to this Agreement.

Section 1.03 COUNTY and CONTRACTOR agree that their respective clinical staffs shall fully communicate and cooperate in the development of treatment planning and determining length of stay, including readiness for discharge and a planned transition back into the community. Toward this end, COUNTY and CONTRACTOR may freely exchange patient information.

Article II. TERM

This Agreement shall be effective April 1, 2011 and shall expire March 31, 2012, unless terminated earlier pursuant to provisions under Article XIV or Article XV herein.

Article III. COMPENSATION FOR SERVICES

Section 3.01 CONTRACTOR shall submit monthly invoices no later than thirty (30) days following the end of a "service month" except in those instances where CONTRACTOR obtains written approval from COUNTY Health Services Department Director or Director's designee granting an extension of the time to complete billing for services or expenses. For billing purposes, a "service month" shall be defined as a calendar month during which CONTRACTOR provides services in accordance with ARTICLE I, "Scope of Services."

Section 3.02 For services provided herein, COUNTY agrees to pay CONTRACTOR monthly in arrears and within forty-five (45) days following the COUNTY's receipt and approval of itemized invoice(s) identifying services rendered. COUNTY agrees to use reasonable efforts to pay sooner than forty-five (45) days if possible. For the purposes of this Agreement, the billing rates shall be in accordance with Exhibit B, marked "Rate Schedule," incorporated herein and made by reference a part hereof. Payment shall be made for actual services rendered and shall not be made for services the client did not attend or receive, except for bed hold days that may be authorized in writing by COUNTY. The bed hold rate is the same as the agreed daily rate. There will not be any bed holds for residents in the Diversion Program.

Section 3.03 It is expressly understood and agreed between the parties hereto that the COUNTY shall make no payment for COUNTY-responsible Clients and have no obligation to make payment to CONTRACTOR unless the services provided by CONTRACTOR hereunder received prior written authorization from the Health Services Director or Director's designee. It

is further agreed that COUNTY shall make no payments for services unless CONTRACTOR has provided COUNTY with evidence of insurance coverage as outlined in ARTICLE XVIII hereof. COUNTY may provide retroactive authorization when special circumstances exist, as determined by the Health Services Director or Director's designee, based upon CONTRACTOR'S written request.

Section 3.04 It is understood that any payments received from COUNTY for services rendered under this Agreement shall be considered as payment in full and CONTRACTOR cannot look to any other source for reimbursement for the services provided under this Agreement, except with specific authorization from the Health Services Director or Director's designee.

Section 3.05 Invoices are to be sent to the following address:

County of El Dorado
Health Services Department, Mental Health Division
Attn: Accounts Payable
929 Spring Street
Placerville, CA 95667

Section 3.06 Not-to-Exceed: \$125,000 over the term of this Agreement.

Article IV. NOTIFICATION OF ANCILLARY MEDICAL SERVICES

When Medi-Cal beneficiaries between the ages of 21 and 64 who are residing in a facility subject to the IMD exclusion (as defined below) require any health care (ancillary medical) services off-site in an acute care hospital for a medical condition, CONTRACTOR shall arrange for such services as required, and shall immediately notify County Contract Administrator in writing of such occurrence. For the purposes of this provision, facilities subject to the IMD exclusion are considered to include any facility that has more than 16 beds and is in the following categories: psychiatric health facilities (PHFs); skilled nursing facilities (SNFs) with a certified special treatment program for the mentally disordered (STPs); mental health rehabilitation centers (MHRCs); and other acute psychiatric hospitals primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.

Pursuant to Department of Mental Health Letter 10-02 (and attachments thereto) provided as Exhibit C to this Agreement, counties are financially responsible for the ancillary medical services performed off-site for persons residing in IMDs when they receive services in an acute care hospital for a medical condition. CONTRACTOR's timely notification to COUNTY is critical for COUNTY to prevent inappropriate claiming of State General Fund (SGF) and Federal Financial Participation (FFP) for ancillary medical services to Medi-Cal beneficiaries residing in facilities subject to the IMD exclusion.

Article V. LICENSURE

Maintaining the annual State licensure with California Department of Mental Health is the responsibility of CONTRACTOR. CONTRACTOR will immediately notify County Health Services Director or Director's designee if its license is suspended or revoked.

Article VI. HIPAA COMPLIANCE

As a condition of CONTRACTOR performing services for the County of El Dorado, CONTRACTOR shall comply with that Business Associate Agreement which is attached hereto as Exhibit D, incorporated herein and made by reference a part hereof.

Article VII. DEBARMENT AND SUSPENSION CERTIFICATION

Section 7.01 By signing this Agreement, the CONTRACTOR agrees to comply with applicable Federal suspension and debarment regulations including, but not limited to Title 45 Code of Federal Regulations (CFR) 76.

Section 7.02 By signing this Agreement, the CONTRACTOR certifies to the best of its knowledge and belief, that it and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- B. Have not within a three (3) year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification of records, making false statements, or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Paragraph b(2) herein;
- D. Have not within a three (3) year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default;
- E. Shall not knowingly enter in to any lower tier covered transaction with a person who is proposed for debarment under Federal regulations (i.e., 48 CFR part 9, subpart 9.400), debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the State; and
- F. Shall include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Section 7.03 If the CONTRACTOR is unable to certify to any of the statements in this certification, the CONTRACTOR shall submit an explanation to COUNTY.

Section 7.04 The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549 (1986) as amended by Federal Executive Order 12689 (1989).

Section 7.05 If the CONTRACTOR knowingly violates this certification, in addition to other remedies available to the Federal Government, COUNTY may terminate this Agreement for cause or default.

Article VIII. RECORDS RETENTION

CONTRACTOR shall keep books and records as prescribed by COUNTY for each Client of the CONTRACTOR for five (5) years together with complete and adequate financial records for all expenditures made by CONTRACTOR in connection with the administration of the program. Such records shall be open for inspection on request by the COUNTY program manager, or designee, at times mutually agreed upon by the parties hereto.

Article IX. MANDATED REPORTER

CONTRACTOR acknowledges and agrees to comply with mandated reporter requirements pursuant to the provisions of: 1) the California Penal Code Section 11164 et seq., also known as the Child Abuse and Neglect Reporting Act and/or 2) Welfare and Institutions Code 15630 et seq. related to elder and dependent adults.

Article X. CHANGES TO AGREEMENT

This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

Article XI. CONTRACTOR TO COUNTY

It is understood that the services provided under this Agreement shall be prepared in and with cooperation from COUNTY and its staff. It is further agreed that in all matters pertaining to this Agreement, CONTRACTOR shall act as Contractor only to COUNTY and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with CONTRACTOR's responsibilities to COUNTY during term hereof.

Article XII. ASSIGNMENT AND DELEGATION

CONTRACTOR is engaged by COUNTY for its unique qualifications and skills as well as those of its personnel. CONTRACTOR shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of COUNTY.

Article XIII. INDEPENDENT CONTRACTOR/LIABILITY

CONTRACTOR is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. CONTRACTOR exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

CONTRACTOR shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. COUNTY shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to CONTRACTOR or its employees.

Article XIV. FISCAL CONSIDERATIONS

The parties to this Agreement recognize and acknowledge that COUNTY is a political subdivision of the State of California. As such, County of El Dorado is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of COUNTY business, COUNTY will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, COUNTY shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and COUNTY released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any COUNTY department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the COUNTY, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

Article XV. DEFAULT, TERMINATION, AND CANCELLATION

Section 15.01 Default

Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, COUNTY reserves the right to take over and complete the work by contract or by any other means.

Section 15.02 Bankruptcy

This Agreement, at the option of the COUNTY, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONTRACTOR.

Section 15.03 Ceasing Performance

COUNTY may terminate this Agreement in the event CONTRACTOR ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

Section 15.04 Termination or Cancellation without Cause

COUNTY may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by COUNTY without cause. If such prior termination is effected, COUNTY will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to CONTRACTOR, and for such other services, which COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, CONTRACTOR shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

Article XVI. NOTICE TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notices to COUNTY shall be addressed as follows:

COUNTY OF EL DORADO
HEALTH SERVICES DEPARTMENT
931 SPRING STREET
PLACERVILLE, CA 95667
ATTN: NEDA WEST, DIRECTOR

or to such other location as the COUNTY directs.

Notices to CONTRACTOR shall be addressed as follows:

CALIFORNIA PSYCHIATRIC TRANSITIONS, INC.
P.O. BOX 339
DELHI, CA 95315
ATTN: JOHN T. HACKETT, MD, CEO

or to such other location as the CONTRACTOR directs.

Article XVII. INDEMNITY

The CONTRACTOR shall defend, indemnify, and hold the COUNTY harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and

description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, COUNTY employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the CONTRACTOR's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the COUNTY, the CONTRACTOR, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the COUNTY, its officers and employees, or as expressly prescribed by statute. This duty of CONTRACTOR to indemnify and save COUNTY harmless includes the duties to defend set forth in California Civil Code Section 2778.

Article XVIII. INSURANCE

Section 18.01 CONTRACTOR shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that CONTRACTOR maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of CONTRACTOR as required by law in the State of California; and
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage;
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by the CONTRACTOR in the performance of the Agreement.

Section 18.02 In the event CONTRACTOR is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000 per occurrence.

Section 18.03 CONTRACTOR shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.

Section 18.04 The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.

Section 18.05 CONTRACTOR agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, CONTRACTOR agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and CONTRACTOR agrees that no work or services shall be performed prior to the giving of such approval. In the event the CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, COUNTY may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

Section 18.06 The certificate of insurance must include the following provisions stating that:

- A. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to COUNTY, and;
- B. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

Section 18.07 The CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

Section 18.08 Any deductibles or self-insured retentions must be declared to and approved by the COUNTY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the COUNTY, its officers, officials, employees, and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Section 18.09 Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or volunteers.

Section 18.10 The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

Section 18.11 CONTRACTOR's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

Section 18.12 In the event CONTRACTOR cannot provide an occurrence policy, CONTRACTOR shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

Section 18.13 Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for the protection of the COUNTY.

Article XIX. INTEREST OF PUBLIC OFFICIAL

No official or employee of COUNTY who exercises any functions or responsibilities in review or approval of services to be provided by CONTRACTOR under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of COUNTY have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Article XX. INTEREST OF CONTRACTOR

CONTRACTOR covenants that CONTRACTOR presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. CONTRACTOR further covenants that in the performance of this Agreement no person having any such interest shall be employed by CONTRACTOR.

Article XXI. CONFLICT OF INTEREST

The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. CONTRACTOR attests that it has no current business or financial relationship with any COUNTY employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. COUNTY represents that it is unaware of any financial or economic interest of any public officer or employee of CONTRACTOR relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

Article XXII. CALIFORNIA RESIDENCY (FORM 590)

All independent contractors providing services to the COUNTY must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The contractor will be required to submit a Form 590 prior to execution of an Agreement or COUNTY shall withhold seven (7) percent of each payment made to the contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

Article XXIII. TAXPAYER IDENTIFICATION NUMBER (FORM W-9)

All independent contractors or corporations providing services to the COUNTY must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

Article XXIV. COUNTY BUSINESS LICENSE

It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of County of El Dorado without possessing a County business license unless exempt under County Code Section 5.08.070.

Article XXV. ADMINISTRATOR

The County Officer or employee with responsibility for administering this Agreement is Barry Wasserman, Manger of Mental Health Programs, Health Services Department, Mental Health Division, or successor.

Article XXVI. AUTHORIZED SIGNATURES

The parties to this Agreement represent that the undersigned individuals executing this

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

--COUNTY OF EL DORADO--

By: _____

Raymond J. Nutting
Chair, Board of Supervisors
"COUNTY"

Dated: _____

Attest: Suzanne Allen de Sanchez
Clerk of the Board of Supervisors

By: _____

Deputy

Dated: _____

-- CONTRACTOR --

CALIFORNIA PSYCHIATRIC TRANSITIONS, INC.
A CALIFORNIA CORPORATION

By: _____

John T. Hackett, MD
CEO
"Contractor"

Dated: _____

By: _____

Corporate Secretary

Dated: _____

EXHIBIT A

DESCRIPTION OF PROGRAM SERVICES

CALIFORNIA PSYCHIATRIC TRANSITIONS, INC.

I. Background

California Psychiatric Transitions (CPT) is a fully licensed Mental Health Rehabilitation Center (MHRC). The facility offers psychiatric treatment and rehabilitation services to seriously mentally ill adults over the age of eighteen (18). With two on-site psychiatrists and a medical doctor along with a twenty-four (24) hour nursing staff, CPT has the unique ability to render constant and immediate attention.

The goal of the programs is to implement a treatment plan designed specifically for each resident, focusing on medication, behavioral and psychiatric needs. In addition, CPT offers a highly structured program that caters to a wide spectrum of the mental health community. A daily agenda assists residents with elementary functions including activities of daily living, interactive groups, both cognitive and rudimentary, as well as group outings and associated work programs. Its sole purpose is to allow clients to develop into self-reliant human beings and thus allow their return to a less restrictive setting in the community.

II. MHRC Main Program

CPT is dedicated to addressing specific psychiatric needs of the mental health community as well as developing self-reliant individuals with good communication and social skills. CPT employs a highly structured daily program that allows both developmental growth and self-reliance. The daily program assists residents with rudimentary skills including activities of daily living and interactive groups. Cognitive sessions focusing on such topics as; anger management, medication awareness and impulse control, provide necessary tools for each resident to realize their potential. The program examines the progress of each resident as it pertains to their needs and gauges their individual success. The program also provides a weekly schedule of group therapy sessions, conducted by the Staff Psychiatrist, the Director of Nursing, Team Leader(s) and staff. These sessions help identify and isolate resident concerns, progress and reoccurring issues and gauge the overall progress of the unit. In addition to group therapy, CPT acknowledges the vital importance of one-on-one sessions. These sessions, also referred to as "Resident Staffing," are designed to delve further into the root causes of behavior as well as the specific needs of the individual resident, addressing behavioral issues, medication changes and program compliance.

CPT adopts the philosophy of community integration by actively participating in the Community Integrated Work Program (CIWP) and Resident Community Integration Program (RCIP) programs. CIWP, a county specific sponsored work program, assists

residents in building skills that will benefit them in the future through local business contacts. RCIP introduces residents to the community through business beautification maintenance. These programs allow an increased community awareness and acceptance of the mentally ill, not to mention valuable skills that will enable each resident to excel.

III. Disruptive Behavioral Unit

The Disruptive Behavioral Unit program mission is to provide individuals an intensive therapeutic program that will focus directly on disruptive behaviors. These behaviors inhibit treatment and have the potential to affect other resident's progress. Placing individuals that are disruptive in one common area allows CPT to formulate and implement specific types of treatment plans designed to identify the stressors that may be causing the disruptive behaviors. This highly structured program creates an atmosphere that minimizes distraction and focuses on recovery.

A Board Certified Forensic Psychiatrist conducts weekly 1 on 1 staffing sessions addressing behavioral issues, medication changes and program compliance. The psychiatrist also provides weekly group therapy sessions that gauge the overall progress of the unit. The unit at full capacity has a 3 resident to 1 staff ratio. This ratio provides the attention and rehabilitative skills necessary for a quicker recovery. In addition to the 3:1 staffing ratio, a twenty-four (24) hour nursing staff provides medications necessary to reduce agitation levels as needed, as well as activity personnel to provide group and leisure activities. A Team Leader and Program Clerk are also assigned to the unit for treatment plan implementation, progress reviews, and quarterly reporting.

The behaviors that are deemed severely disruptive and counterproductive to treatment include but are not limited to the following;

- AWOL Risk
- Assaultive Behavior
- Property Damage
- Hyper-sexual
- Hygienically Inappropriate
- Treatment Plan non-compliance

Individuals whose symptoms have been stabilized maintain "continuity of care" by being admitted directly to the MHRC main program. A proven track record of success helps reinforce the individual treatment plan, reduce the reoccurrence of disruptive behavior and promote successful rehabilitation.

IV. Diversion Program

The Diversion Program is designed to serve court ordered diversion and Incompetent to Stand Trial – Penal Code 1370 (IST 1370) individuals. The individuals in this program have been incarcerated facing charges of either misdemeanor or felony and are unable to

stand trial due to a mental illness or a mental illness with a co-occurring developmental disability. The program goal is to use a structured daily program to allow for competency restoration and diversionary programs. By treating these individuals, CPT can assess whether or not an individual is competent to stand trial or is in need of further psychiatric evaluation and treatment. The daily program assists residents with rudimentary skills including activities of daily living and interactive/cognitive groups as well as comprehensive treatment plans designed to address their individual mental health needs. Specific training sessions addressing competency restoration focus on such topics as; an understanding of courtroom proceedings; penalties, charges and defenses; legal terminology, and various tests used to determine levels of competency. The program examines the progress of each resident as it pertains to their needs and gauges their varying levels of competency and individual successes. Once competency is determined, the individual may be remanded back to the county of jurisdiction for further proceedings, or, if applicable, further treatment may be ordered.

EXHIBIT B

California Psychiatric Transitions, Inc.

Rates

Mental Health Rehabilitation Center (MHRC)

I. Main Program - Rates	Level 2	\$300 per day
	Level 1	\$240 per day

In most cases residents will be admitted at a Level 2 unless otherwise agreed between COUNTY and CONTRACTOR. The level will be reevaluated at least every ninety (90) days, and a resident demonstrating improved behavior may be reduced to Level 1.

II. Diversion Program - Rates	Level 4	\$525 per day
	Level 3	\$475 per day
	Level 2	\$450 per day
	Level 1	\$425 per day
	Level 0	\$350 per day

Level 4: Entry to Incompetent to Stand Trial (IST) – Penal Code 1370

Level 3: Resident declared either trial competent or non-restorable to trial competency, or resident has been admitted from jail to this program unrelated to IST – Penal Code 1370

Level 2: Behavior has improved enough to gain additional in-residence privileges

Level 1: Behavior has improved enough to go on Supervised Outings

Level 0: Resident converted from IST – Penal Code 1370 to LPS Conservatorship and pending transfer to Main Program or discharge

III. Disruptive Behavioral Unit - Rate	\$699 per day
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IV. One on One Supervision - Rate	\$30 per hour
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One-on-one supervision is occasionally indicated. The purpose of this service is to maintain placement and reduce the possibility of injury to self or others. The COUNTY shall reimburse CONTRACTOR at a rate of thirty dollars (\$30) per hour for one-on-one supervision services on an “as needed” basis as determined by medical order of the CONTRACTOR’s staff psychiatrist and with approval within twenty-four (24) hours of the Health Services Director or Director’s designee. This rate shall not be charged for residents in the Disruptive Behavioral Unit.

EXHIBIT C



C A L I F O R N I A D E P A R T M E N T O F

Mental Health

1600 9th Street, Sacramento, CA 95814
(916) 654-2309

February 1, 2010

DMH LETTER: 10-02

TO: LOCAL MENTAL HEALTH DIRECTORS
LOCAL MENTAL HEALTH PROGRAM CHIEFS
LOCAL MENTAL HEALTH ADMINISTRATORS
COUNTY ADMINISTRATIVE OFFICERS
CHAIRPERSONS, LOCAL MENTAL HEALTH BOARDS

SUBJECT: MEDI-CAL COVERAGE AND CLAIMING FOR BENEFICIARIES IN
INSTITUTIONS FOR MENTAL DISEASES

REFERENCE: DMH LETTER NO.: 98-03, DMH LETTER NO.: 02-06, and
DMH LETTER NO.: 06-04

This Department of Mental Health (DMH) letter updates prior DMH communications related to the requirement that no State General Funds (SGF) nor Federal Financial Participation (FFP) be expended for services and treatment to Medi-Cal beneficiaries who are residents of institutions for mental diseases (IMDs) and who are 21 years of age and older and under 65 years of age (known as the "IMD exclusion"). This letter also reiterates that Welfare and Institutions (W&I) Code section 14053.3, in conjunction with section 14053(b)(3), requires DMH to recover SGF and FFP paid for ancillary services provided at the time that a Medi-Cal beneficiary is a resident of an IMD and subject to the IMD exclusion, in accordance with applicable state and federal statutes and regulations, as referenced below. In order to prevent claiming of SGF and FFP for Medi-Cal beneficiaries residing in an IMD per the IMD exclusion, the Department of Health Care Services (DHCS) has directed Medi-Cal providers to bill the county of responsibility for the beneficiary, as reflected in the Medi-Cal Eligibility Data System (MEDS). Attachment 1 is the Provider Bulletin titled Medical Ancillary Services Billing Procedures Update, which was sent by DHCS to all Medi-Cal providers on June 30, 2009.

Inappropriate Claiming of FFP for Services Provided in IMDs

In accordance with Title 42 United States Code section 1396d(a)(28)(B), Title 42, Code of Federal Regulations, sections 435.1009, 435.1010, 441.13 and 436.1005; W&I Code sections 14053(b)(3) and 14053.3, California Code of Regulations (CCR), title 22, section 50273, and CCR, title 9, sections 1840.210 and 1840.312, neither SGF nor FFP reimbursement is available for services for adults (individuals who are 21 years of age or older, and under 65 years of age) residing in IMDs. See Attachment 2 for the text of the cited statutes and regulations.

As guidance on this matter, the Federal Centers for Medicare and Medicaid Services (CMS) issued sections 4390 and 4390.1 of the State Medicaid Manual (Attachment 3). Each Mental Health Plan (MHP) should carefully review the applicable federal and state laws, regulations and guidelines and implement and enforce effective policies and procedures to prevent inappropriate claiming of SGF and FFP for services to Medi-Cal beneficiaries residing in IMDs

11-0352.B.17

subject to the IMD exclusion. IMDs in California generally include facilities in the following licensing categories, if the facility has more than 16 beds: acute psychiatric hospitals; psychiatric health facilities (PHFs); skilled nursing facilities (SNFs) with a certified special treatment program for the mentally disordered (STPs); and mental health rehabilitation centers (MHRCs).

MHPs must not submit claims to the State for specialty mental health services or other services provided to Medi-Cal beneficiaries subject to the IMD exclusion. Providers outside the MHPs must not submit claims for other mental health, medical or ancillary services provided to Medi-Cal beneficiaries subject to the IMD exclusion. Inappropriate claiming of SGF or FFP must not occur, whether through the Short-Doyle/Medi-Cal (SD/MC) claiming system or through the Medi-Cal fiscal intermediary (FI) claims processing system. Improper claiming and/or failure to establish adequate procedures to prevent inappropriate claiming of SGF or FFP will result in disallowances and/or compliance actions and other oversight activities, reviews, actions and proceedings available to the State (including but not limited to CCR, title 9, sections 1810.380 and 1810.385) and to the federal government.

MHP Obligations for Client and Services Information (CSI) Reporting When Clients Enter and Exit IMDs

MHPs must submit updated Client, Service, and Periodic record information through the CSI System to DMH for clients in IMDs when the MHP pays the room and board. DMH Letter No. 06-04 issued on May 18, 2006, eliminated the New Institutions for Mental Disease (NIM) reporting system and informed MHPs to report through CSI. DMH Letter No. 98-03 issued on April 29, 1998, provided MHPs with the directive to submit a Client record at first contact with the county and a Service record as services are provided. Periodic records, which contain data elements that change, such as living arrangements, must be submitted at the time of admission to an IMD, at discharge from an IMD, and at the time of the annual client plan update.

If you have any questions, please contact your County Programs Technical Assistance contact person identified on the following internet site:
[http://www.dmh.ca.gov/Services_and_Programs/Local_Program_Support/County_Technical Assistance.asp](http://www.dmh.ca.gov/Services_and_Programs/Local_Program_Support/County_Technical_Assistance.asp)

Sincerely,

Original Signed by

STEPHEN W. MAYBERG, Ph.D.
Director

Enclosures

cc: California Mental Health Planning Council
California Mental Health Directors Association

ATTACHMENT 1

Medical Ancillary Services Billing Procedure Update

Effective immediately, Medi-Cal should not be billed for any health care (medical ancillary) services such as laboratory, X-ray or other medical services performed off-site for persons residing as inpatients in Institutions for Mental Diseases (IMDs) when they receive services in an acute care hospital for a medical condition.

Medi-Cal does not cover medical ancillary services for individuals (21 through 64 years of age) residing as inpatients in IMDs. Health care providers who perform medical ancillary services must directly bill the county of responsibility as identified on the Medi-Cal Eligibility Data System (MEDS).

In accordance with the *Code of Federal Regulations*, Title 42, Sections 435.1010(b)(2), 441.13 and 435.1009, *California Welfare and Institutions Code*, Section 14053.3, and *California Code of Regulations (CCR)*, Title 22, Sections 50273, 1840.210 and 1840312, Federal Financial Participation (FFP) reimbursement is not allowed for medical ancillary services provided to persons residing in IMDs. Counties are financially responsible for the medical ancillary services performed off-site for persons residing in IMDs when they receive services in an acute care hospital for a medical condition.

Providers must take necessary steps to immediately comply with the above information, including informing all off-site health care providers of this billing requirement.

If providers have any questions about this notice, they should contact the Benefits Analysis Section of the Medi-Cal Benefits, Waiver Analysis and Rates Division at (916) 552-9400.

[Hardcopy version only]

This information is reflected on manual replacement pages [Part 1] elig rstrict 2 (Part 1) and [IP, 13th] inp ment 13 (Part 2).

DCN/IDCN 10660

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[Editor's Note: With this DCN/IDCN, this article will added to the Newsroom area on the Medi-Cal Web site for a period of 30 days. The following title will link to the article:]

Medical Ancillary Services Billing Procedure Update

Date/Time: 6/30/2009 3:41 PM (DHCS approved as edited 6-25-09)
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DHCS Contact:

Policy Originator: Janice Spitzer, Chief, Benefits Analysis Section, Medi-Cal Benefits, Waiver Analysis and Rates Division, 552-9633

Effective Date: Immediately, per source doc

EDS Contact: Monica Sellers

ATTACHMENT 2

SELECTED STATE & FEDERAL STATUTES & REGULATIONS RELATED TO IMDs

Title 42, United States Code, Section 1396d(a)(28)(B), Definitions.

(Note: the text of this statute is too lengthy to reproduce here, but is available on the U.S. Code website search web page at <http://uscode.house.gov/search/criteria.shtml>.)

Title 42, CFR, § 435.1009, Institutionalized individuals.

- “(a) FFP is not available in expenditures for services provided to –
- (1) Individuals who are inmates of a public institution as defined in Sec. 435.1010.
 - (2) Individuals under age 65 who are patients in an institution for mental diseases unless they are under age 22 and are receiving inpatient psychiatric services under Sec. 440.160 of this subchapter.
- b) The exclusion of FFP described in paragraph (a) of this section does not apply during that part of the month in which the individual is not an inmate of a public institution or a patient in an institution for tuberculosis or mental diseases.
- (c) An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in that institution. However, such an individual who is under age 22 and has been receiving inpatient psychiatric services under Sec. 440.160 of this subchapter is considered to be a patient in the institution until he is unconditionally released or, if earlier, the date he reaches age 22.”

Title 42, Code of Federal Regulations (CFR), § 435.1010, Definitions relating to institutionalized status. (The following excerpts define Institution for Mental Disease [IMD], inmate of a public institution [referenced above in § 435.1009], institution and public institution:)

“Institution for Mental Disease means a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such.”

“Inmate of a public institution means a person who is living in a public institution.

An individual is not considered an inmate if—

- (a) He is in a public educational or vocational training institution for purposes of securing education or vocational training; or
- (b) He is in a public institution for a temporary period pending other arrangements appropriate to his needs.”

“Institution means an establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor.”

“Public institution means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. The term “public institution” does not include—

- (a) A medical institution as defined in this section;

ATTACHMENT 2

- (b) An intermediate care facility as defined in §§ 440.140 and 440.150 of this chapter;
- (c) A publicly operated community residence that serves no more than 16 residents, as defined in this section; or
- (d) A child-care institution as defined in this section with respect to—
 - (1) Children for whom foster care maintenance payments are made under title IV-E of the Act; and
 - (2) Children receiving AFDC—foster care under title IV-A of the Act.”

§ 441.13, Prohibitions on FFP: Institutionalized individuals.

- “(a) FFP is not available in expenditures for services for—
- (1) Any individual who is in a public institution, as defined in § 435.1010 of this chapter; or
 - (2) Any individual who is under age 65 and is in an institution for mental diseases, except an individual who is under age 22 and receiving inpatient psychiatric services under subpart D of this part.
- (b) With the exception of active treatment services (as defined in § 483.440(a) of this chapter for residents of ICFs/MR and in § 441.154 for individuals under age 21 receiving inpatient psychiatric services), payments to institutions for the mentally retarded or persons with related conditions and to psychiatric facilities or programs providing inpatient psychiatric services to individuals under age 21 may not include reimbursement for formal educational services or for vocational services. Formal educational services relate to training in traditional academic subjects. Subject matter rather than setting, time of day, or class size determines whether a service is educational. Traditional academic subjects include, but are not limited to, science, history, literature, foreign languages, and mathematics. Vocational services relate to organized programs that are directly related to the preparation of individuals for paid or unpaid employment. An example of vocational services is time-limited vocational training provided as a part of a regularly scheduled class available to the general public.
- (c) FFP is not available in expenditures for services furnished by an organ procurement organization on or after April 1, 1988, that does not meet the requirements of part 486 subpart G of this chapter.”

Title 9, California Code of Regulations (CCR), § 1840.210. Non-Reimbursable Psychiatric Inpatient Hospital Services.

- “(a) The MHP may claim FFP for psychiatric inpatient hospital services in a psychiatric health facility that is larger than 16 beds and is certified by the State Department of Health Services as a Medi-Cal provider of inpatient hospital services or an acute psychiatric hospital that is larger than 16 beds only under the following conditions:
- (1) The beneficiary is 65 years of age or older, or
 - (2) The beneficiary is under 21 years of age, or
 - (3) The beneficiary was receiving such services prior to his/her twenty-first birthday and the services are rendered without interruption until no longer required or his/her twenty-second birthday, whichever is earlier.
- (b) The restrictions in Subsection (a) regarding claiming FFP for services in acute psychiatric hospitals and psychiatric health facilities shall cease to have effect if federal law changes or a federal waiver is obtained and reimbursement is subsequently approved.

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(c) The MHP may not claim FFP for psychiatric inpatient hospital services until the beneficiary has met the beneficiary's share of cost obligations under Title 22, Sections 50657 through 50659.”

Title 9, CCR, § 1840.312. Non-Reimbursable Services -General. (Excerpt related to the IMD exclusion:)

“The following services are not eligible for FFP:

(g) Specialty mental health services covered by this Article provided during the time a beneficiary 21 years of age through 64 years of age resides in any institution for mental diseases, unless:

(1) The beneficiary was receiving, prior to his/her twenty-first birthday, services in an institution for mental diseases and the services are rendered without interruption until no longer required or his/her twenty-second birthday, whichever is earlier; and

(2) The facility has been accredited in accordance with Title 42, Code of Federal Regulations, Section 440.160, and complies with Title 42, Code of Federal Regulations, 441.150 through 441.156. Facilities at which FFP may be available include but are not limited to acute psychiatric hospitals and psychiatric health facilities certified by the State Department of Health Services as a Medi-Cal provider of inpatient hospital services.”

Title 22, CCR, § 50273, Medi-Cal Ineligibility Due to Institutional Status.

(a) Individuals who are inmates of public institutions are not eligible for Medi-Cal: The following individuals are considered inmates of a public institution:

(1) An individual in a prison, or a county, city, or tribal jail.

(2) An individual in a prison or jail: Prior to arraignment, prior to conviction, or prior to sentencing.

(3) An individual who is incarcerated, but can leave prison or jail on work release or work furlough and must return at specific intervals.

(4) Individuals released from prison or jail due to a medical emergency who would otherwise be incarcerated but for the medical emergency. Institutional status of such persons is not affected by transfer to a public or private medical facility.

(5) A minor in a juvenile detention center prior to disposition (judgement) due to criminal activity of the minor.

(6) A minor, after disposition, placed in a detention or correctional facility, including a youth ranch, forestry camp, or home which is part of the criminal justice system.

(7) A minor placed on probation by a juvenile court on juvenile intensive probation with specific conditions of release, including residence in a juvenile detention center.

(8) A minor placed on probation by a juvenile court on juvenile intensive probation to a secure treatment facility contracted with the juvenile detention center if the secure treatment facility is part of the criminal justice system.

(9) Individuals between the ages of 21-65 who are in an institution for mental diseases shall be considered inmates of a public institution until they are unconditionally released.

(b) Ineligibility for individuals classified as inmates in (a) begins on the day institutional status commences and ends on the day institutional status ends.

(c) The following individuals are not considered inmates of a public institution and shall be eligible for Medi-Cal provided that all other requirements for eligibility set out in this chapter are satisfied:

(1) An individual released from prison or jail on permanent release, bail, own recognizance (OR), probation, or parole with a condition of:

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- (A) Home arrest;
 - (B) Work release;
 - (C) Community service;
 - (D) Outpatient treatment;
 - (E) Inpatient treatment.
- (2) An individual who, after arrest but before booking, is escorted by police to a hospital for medical treatment and held under guard.
- (3) An individual in prison or jail who transfers temporarily to a halfway house or residential treatment facility prior to a formal probation release order.
- (4) An individual released from prison or jail under a court probation order due to a medical emergency.
- (5) A minor in a juvenile detention center prior to disposition (judgment) due to care, protection or in the best interest of the child (e.g., Child Protective Services) if there is a specific plan for that person that makes the stay at the detention center temporary. This would include those juveniles awaiting placement but still physically present in juvenile hall.
- (6) A minor placed on probation by a juvenile court on juvenile intensive probation with home arrest restrictions.
- (7) A minor placed on probation by a juvenile court on juvenile intensive probation to a secure treatment facility contracted with the juvenile detention center if the secure treatment facility is not part of the criminal justice system.
- (8) A minor placed on probation by a juvenile court on juvenile intensive probation with treatment as a condition of probation:
- (A) In a psychiatric hospital;
 - (B) In a residential treatment center;
 - (C) As an outpatient.
- (9) Individuals released from an institution for mental diseases or transferred from such an institution to a public or private medical facility.
- (10) Individuals on conditional release or convalescent leave from an institution for mental diseases.
- (11) Individuals under age 22 who are patients in an institution for mental diseases, were institutionalized prior to their 21st birthday, and continue to receive inpatient psychiatric care.

Welfare and Institutions Code (WIC), Division 5, Part 5, Section 5900 (added by Chapter 89, Statutes of 1991):

“This part is intended to organize and finance mental health services in skilled nursing facilities designated as institutions for mental disease, in a way that will promote the well-being of the residents. It is furthermore intended to effectively utilize existing resources in the delivery of mental health services to severely and persistently mentally disabled persons; to ensure continued receipt of federal funds; to minimize the fiscal exposure of counties; to maintain state responsibility for licensing and certification; to maintain services to individual county consumers at the 1990 -91 fiscal year levels; and to provide a mechanism for the orderly transition of programmatic and fiscal responsibility from the state to the counties, in a way that will maintain the stability and viability of the industry.”

WIC, Section 5902(c)(1).

“By October 1, 1991, the department, in consultation with the California Conference of Local Mental Health Directors and the California Association of Health Facilities, shall develop and

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publish a county-specific allocation of institutions for mental disease funds which will take effect on July 1, 1992.”

WIC, Section 5902(c)(3) (Excerpt related to contracts for realigned IMD services:)

“By April 1, 1992, counties shall have entered into contracts for basic institutions for mental disease services...”

WIC Section 14053.

“(a) The term "health care services" means the benefits set forth in Article 4 (commencing with Section 14131) of this chapter and in Section 14021. The term includes inpatient hospital services for any individual under 21 years of age in an institution for mental diseases. Any individual under 21 years of age receiving inpatient psychiatric hospital services immediately preceding the date on which he or she attains age 21 may continue to receive these services until he or she attains age 22. The term also includes early and periodic screening, diagnosis, and treatment for any individual under 21 years of age.

(b) The term "health care services" does not include, except to the extent permitted by federal law, any of the following:

(1) Care or services for any individual who is an inmate of an institution (except as a patient in a medical institution).

(2) Care or services for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis.

(3) Care or services for any individual who is 21 years of age or over, except as provided in the first paragraph of this section, and has not attained 65 years of age and who is a patient in an institution for mental disease.

(4) Inpatient services provided to individuals 21 to 64 years of age, inclusive, in an institution for mental diseases operating under a consolidated license with a general acute care hospital pursuant to Section 1250.8 of the Health and Safety Code, unless federal financial participation is available for such inpatient services.”

WIC Section 14053.3.

“As federal financial participation reimbursement is not allowed for ancillary services provided to persons residing in facilities that have been found to be institutions for mental disease (IMD), and since, consistent with Part 2 (commencing with Section 5600) of Division 5 and Chapter 6 (commencing with Section 17600) of Part 5, counties are financially responsible for mental health services and related ancillary services provided to persons through county mental health programs when Medi-Cal reimbursement is not available, when it is determined that Medi-Cal reimbursement has been paid for ancillary services for residents of IMDs, both the federal financial participation reimbursement and any state funds paid for the ancillary services provided to residents of IMDs shall be recovered from counties by the State Department of Mental Health in accordance with applicable state and federal statutes and regulations.”

ATTACHMENT 3

to identify the institution to be assessed. Components that are certified as different types of providers, such as NFs and hospitals, are considered independent from each other.

1. Are all components controlled by one owner or one governing body?
2. Is one chief medical officer responsible for the medical staff activities in all components?
3. Does one chief executive officer control all administrative activities in all components?
4. Are any of the components separately licensed?
5. Are the components so organizationally and geographically separate that it is not feasible to operate as a single entity?
6. If two or more of the components are participating under the same provider category (such as NFs), can each component meet the conditions of participation independently?

The RO may also use other guidelines that it finds relevant in a specific situation. If the answer to items 1, 2, or 3 is "no," or the answer to items 4, 5, or 6 is "yes," for example, there may be a separate facility/component. If it is determined that a component is independent, the IMD criteria in subsection C are applied to that component unless the component has 16 or fewer beds.

C. Guidelines for Determining Whether Institution Is an IMD.--HCFA uses the following guidelines to evaluate whether the overall character of a facility is that of an IMD. If any of these criteria are met, a thorough IMD assessment must be made. Other relevant factors may also be considered. For example, if a NF is being reviewed, reviewers may wish to consider whether the average age of the patients in the NF is significantly lower than that of a typical NF. A final determination of a facility's IMD status depends on whether an evaluation of the information pertaining to the facility establishes that its overall character is that of a facility established and/or maintained primarily for the care and treatment of individuals with mental diseases.

1. The facility is licensed as a psychiatric facility;
2. The facility is accredited as a psychiatric facility;
3. The facility is under the jurisdiction of the State's mental health authority. (This criterion does not apply to facilities under mental health authority that are not providing services to mentally ill persons.);
4. The facility specializes in providing psychiatric/psychological care and treatment. This may be ascertained through review of patients' records. It may also be indicated by the fact that an unusually large proportion of the staff has specialized psychiatric/psychological training or that a large proportion of the patients are receiving psychopharmacological drugs; and
5. The current need for institutionalization for more than 50 percent of all the patients in the facility results from mental diseases.

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D. Assessing Patient Population.--The review team applying the guidelines must include at least one physician or other skilled medical professional who is familiar with the care of mentally ill individuals. No team member may be employed by or have a significant financial interest in the facility under review.

In applying the 50 percent guideline (see §4390.C.2), determine whether each patient's current need for institutionalization results from a mental disease. It is not necessary to determine whether any mental health care is being provided in applying this guideline.

For purposes of determining whether a facility is subject to the IMD exclusion, the term "mental disease" includes diseases listed as mental disorders in the International Classification of Diseases, 9th Edition, modified for clinical applications (ICD-9-CM), with the exception of mental retardation, senility, and organic brain syndrome. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is a subspecification of the mental disorder chapter of the ICD and may also be used to determine whether a disorder is a mental disease.

If it is not possible to make the determination solely on the basis of an individual's current diagnosis, classify the patient according to the diagnosis at the time of admission if the patient was admitted within the past year. Do not include a patient in the mentally ill category when no clear cut distinction is possible.

To classify private patients when review of their records is not possible, rely on other factors such as the surveyor's professional observation, discussion with staff of the overall character and nature of the patient's problems, and the specialty of the attending physician.

When the 50 percent guideline is being applied in a NF, the guideline is met if more than 50 percent of the NF residents require specialized services for treatment of serious mental illnesses, as defined in 42 CFR 483.102(b). Facilities providing non-intensive care for chronically ill individuals may also be IMDs. All NFs must provide mental health services which are of a lesser intensity than specialized services to all residents who need such services. Therefore, in applying the 50 percent guidelines, it is important to focus on the basis of the patient's current need for NF care, rather than the nature of the services being provided.

E. Chemical Dependency Treatment Facilities.--The ICD-9-CM system classifies alcoholism and other chemical dependency syndromes as mental disorders.

There is a continuum of care for chemical dependency. At one end of the spectrum of care, treatment follows a psychiatric model and is performed by medically trained and licensed personnel. If services are psychological in nature, the services are considered medical treatment of a mental disease. Chemically dependent patients admitted for such treatment are counted as mentally ill under the 50 percent guideline. Facilities with more than 16 beds that are providing this type of treatment to the majority of their patients are IMDs.

At the other end of the spectrum of care are facilities that are limited to services based on the Alcoholics Anonymous model, i.e., they rely on peer counseling and meetings to promote group support and encouragement, and they primarily use lay persons as counselors. Lay counseling does not constitute medical or remedial treatment. (See 42 CFR 440.2(b).) Do not count patients

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4390.1 REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

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admitted to a facility only for lay counseling or services based on the Alcoholics Anonymous model as mentally ill under the 50 percent guideline. If psychosocial support provided by peers or staff without specialized training is the primary care being provided in the facility, the facility is not an IMD. The major factor differentiating these facilities from other chemical dependency treatment facilities is the primary reliance on lay staff.

Federal matching funds may not be claimed for institutional services when lay/social treatment is the primary reason for the inpatient stay. Facilities may not claim Medicaid payment for providing covered medical or remedial services in a nursing facility or hospital to patients admitted for treatment of chemical dependency and simultaneously claim that they are providing only lay or social services to those same patients when the 50 percent guideline is being applied. Facilities also may not avoid having their chemically dependent patients counted as mentally ill under the 50 percent guideline by withholding appropriate treatment from those patients. Facilities failing to provide appropriate treatment to patients risk termination from the program.

In determining whether a facility has fewer than 17 beds, it is not necessary to include beds used solely to accommodate the children of the individuals who are being treated. Children in beds that are not certified or used as treatment beds are not considered to be patients in the IMD and therefore are not subject to the IMD exclusion if they receive covered services while outside the facility.

4390.1 Periods of Absence From IMDs--42 CFR 435.1008(c) states that an individual on conditional release or convalescent leave from an IMD is not considered to be a patient in that institution. These periods of absence relate to the course of treatment of the individual's mental disorder. If a patient is sent home for a trial visit, this is convalescent leave. If a patient is released from the institution on the condition that the patient receive outpatient treatment or on other comparable conditions, the patient is on conditional release.

If an emergency or other need to obtain medical treatment arises during the course of convalescent leave or conditional release, these services may be covered under Medicaid because the individual is not considered to be an IMD patient during these periods. If a patient is temporarily transferred from an IMD for the purpose of obtaining medical treatment, however, this is not considered a conditional release, and the patient is still considered an IMD patient.

The regulations contain a separate provision for individuals under age 22 who have been receiving the inpatient psychiatric services benefit defined in 42 CFR 440.160. This category of patient is considered to remain a patient in the institution until he/she is unconditionally released or, if earlier, the date he/she reaches age 22.

Exhibit D HIPAA Business Associate Agreement

This Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

RECITALS

WHEREAS, COUNTY and CONTRACTOR (hereinafter referred to as Business Associate (“BA”) entered into the Underlying Agreement pursuant to which BA provides services to COUNTY, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

WHEREAS, the COUNTY and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH” Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws as may be amended from time to time; and

WHEREAS, COUNTY is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103 ; and

WHEREAS, BA, when a recipient of PHI from COUNTY, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

WHEREAS, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g);

WHEREAS, “Breach” shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

WHEREAS, “Unsecured PHI” shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

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

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.

2. Scope of Use and Disclosure by BA of County Disclosed PHI

- A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the COUNTY, Privacy Rule, Security Rule, or the HITECH Act.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
- (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
 - (2) disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
 - (3) disclose PHI as necessary for BA's operations only if:
 - (a) prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
 - (i) to hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
 - (ii) the third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
 - (4) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing COUNTY with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by COUNTY.
 - (5) not disclose PHI disclosed to BA by COUNTY not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by COUNTY.
 - (6) de-identify any and all PHI of COUNTY received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
- C. BA agrees that it will neither use nor disclose PHI it receives from COUNTY, or from another business associate of COUNTY, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.

3. Obligations of BA. In connection with its use of PHI disclosed by COUNTY to BA, BA agrees to:
 - A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308,164.310,164.312, and 164.504(e)(2). BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule.
 - B. Report to COUNTY within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
 - C. Report to COUNTY in writing of any access, use or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the COUNTY, BA may be required to reimburse the COUNTY for notifications required under 45 CFR 164.404 and CFR 164.406.
 - D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the COUNTY and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by COUNTY to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:
 - A. Provide access, at the request of COUNTY, within five (5) days, to PHI in a Designated Record Set, to the COUNTY, or to an Individual as directed by the COUNTY. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable COUNTY to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
 - B. Within ten (10) days of receipt of a request from COUNTY, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule

in the event that the PHI in BA's possession constitutes a Designated Record Set.

- C. To assist the COUNTY in meeting its disclosure accounting under HIPAA:
- (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
 - (2) Within in 30 days of notice by the COUNTY, BA agrees to provide to COUNTY information collected in accordance with this section to permit the COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI.
- D. Make available to the COUNTY, or to the Secretary of Health and Human Services (the "Secretary"), BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide COUNTY a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of COUNTY.

- A. COUNTY agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by COUNTY that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- B. COUNTY agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- C. COUNTY agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.

- D. COUNTY shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by COUNTY, except as may be expressly permitted by the Privacy Rule.
- E. COUNTY will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the COUNTY to BA, or created or received by BA on behalf of the COUNTY, is destroyed or returned to the COUNTY, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the COUNTY's knowledge of a material breach by the BA, the COUNTY shall either:
 - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the COUNTY.
 - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
 - (3) If neither termination nor cures are feasible, the COUNTY shall report the violation to the Secretary.
- C. Effect of Termination.
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of COUNTY, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
 - (2) In the event that the COUNTY determines that returning or destroying the PHI is infeasible, BA shall provide to the COUNTY notification of the conditions that make return or destruction infeasible, and . BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If COUNTY elects destruction of the PHI, BA shall certify in writing to COUNTY that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the COUNTY, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "COUNTY") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the COUNTY in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of COUNTY, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of COUNTY as set forth herein. BA's obligation to defend, indemnify and hold harmless COUNTY shall be subject to COUNTY having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the COUNTY herein from third party claims arising from the issues of this Business Associate Agreement.
- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the COUNTY to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

8. Amendment The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for COUNTY to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit COUNTY to comply with the Privacy Rule, 45 CFR, and HIPAA generally.