

AGREEMENT FOR SERVICES #300-105-M-E2010

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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 Jana Todd, a sole proprietor dba JDT Consultants, duly qualified to conduct business in the State of California, whose principal place of business is 1424 West Holland Avenue, Fresno, CA 93705 (hereinafter referred to as "CONTRACTOR");

RECITALS

WHEREAS, COUNTY has determined that it is necessary to obtain a CONTRACTOR to provide Therapeutic Behavioral Services (TBS) for mentally ill minors on an "as requested" basis for the 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**

CONTRACTOR agrees to perform services necessary to provide TBS for mentally ill minors on an "as requested" basis for the Health Services Department, Mental Health Division, in accordance with Exhibit "A," marked "Program Description," 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 the Director's designee.

**Article II. TERM**

This Agreement shall become effective upon final execution by both parties hereto and shall cover the period of July 1, 2010 to June 30, 2011 unless earlier terminated pursuant to the provisions under Article XV or Article XVI 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 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. For the purposes of this Agreement, the billing rates shall be those listed below, and shall not exceed the Statewide Maximum Allowable (SMA) rates for authorized services, as determined by the State during the term of this Agreement. Should the State discontinue providing SMA rates, the rates charged by CONTRACTOR will not exceed the last available SMA rates, pending any amendment by the parties. Payment shall be made for actual services rendered and shall not be made for service units the client did not attend or receive. Each invoice shall describe: a) units of service by individual client served, and b) dates of service detail for each client.

Section 3.03 CONTRACTOR reserves the right to increase or decrease rates from those listed herein to reflect changes in cost by giving COUNTY thirty (30) days written notice of such proposed change, not to exceed the SMA rates for allowable services. Rate increases or decreases will only become effective upon written acceptance of the Health Services Director or his/her designee. The Health Services Director or his/her designee may designate an effective date of such increase or decrease.

Section 3.04 CONTRACTOR shall not charge any patients or third party payors any fee for service.

**Section 3.05** 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 Health Services Director or the 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 XIX hereof. COUNTY may provide retroactive authorization when special circumstances exist, as determined by the Health Services Director or the Director's designee, based upon CONTRACTOR'S written request.

**Section 3.06** In accordance with Title 9, CCR, Section 565.5, reimbursement for services under this Agreement shall be limited to persons who are unable to obtain private care. Such persons are those who are unable to pay for private care or for whom no private care is available within a reasonable distance from their residence.

**Section 3.07** 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 units of service provided under this Agreement, except with specific authorization from the Health Services Director.

**Section 3.08** RATES FOR FISCAL YEAR 2010/2011:

Therapeutic Behavioral Services (TBS)      \$2.00 per minute

**Section 3.09** The total amount of this Agreement shall not exceed \$58,500.

**Article IV. TERMS AND CONDITIONS**

CONTRACTOR shall meet all terms and conditions specified in the County's agreement with California Department of Mental Health, as stated in Exhibit "B," marked "State Required Terms and Conditions," incorporated herein and made by reference a part hereof.

**Article V. LIMITATION OF COUNTY LIABILITY FOR DISALLOWANCES**

Notwithstanding any other provision of the Agreement, COUNTY shall be held harmless from any Federal or State audit disallowance resulting from payments made to CONTRACTOR pursuant to this Agreement. To the extent that a Federal or State audit disallowance results from a claim or claims for which CONTRACTOR has received reimbursement for services provided, COUNTY shall recoup within 30 days from CONTRACTOR through offsets to pending and future claims or by direct billing, amounts equal to the amount of the disallowance in that fiscal year. All subsequent claims submitted to COUNTY applicable to any previously disallowed claim may be held in abeyance, with no payment made, until the federal or state disallowance issue is resolved.

CONTRACTOR shall reply in a timely manner to any request for information or to audit exceptions by County, State and Federal audit agencies that directly relate to the services to be performed under this Agreement.

**Article VI. CERTIFICATION OF PROGRAM INTEGRITY:**

Maintaining current Medi-Cal site certification is the responsibility of CONTRACTOR. Site certifications must be renewed every three years. Six months before the expiration of the site certification, CONTRACTOR will advise County Utilization Review Coordinator of the upcoming expiration.

CONTRACTOR shall comply with all State and Federal statutory and regulatory requirements for certification of claims including Title 42, Code of Federal Regulations (CFR) Part 438.

CONTRACTOR shall ensure that each Medi-Cal beneficiary (defined as a client who meets Medi-Cal eligibility) for whom the CONTRACTOR is submitting a claim for reimbursement has met the following criteria:

An assessment of the Medi-Cal beneficiary was conducted in compliance with the requirements established in the Mental Health Plan (MHP) contract between El Dorado County and the State Department of Mental Health (DMH).

The Medi-Cal beneficiary was eligible to receive Medi-Cal services at the time the services were provided to the beneficiary.

The services included in the claim were actually provided to the beneficiary.

Medical necessity was established for the beneficiary as defined in statute for the service or services provided, for the timeframe in which the services were provided.

A treatment plan was developed and maintained for the beneficiary that met all plan requirements established in the MHP contract between COUNTY and DMH.

For each beneficiary with day rehabilitation, day treatment intensive, or EPSDT supplemental specialty mental health services included in the invoice, all requirements for MHP payment authorization in the MHP contract for day rehabilitation, day treatment intensive, and EPSDT supplemental specialty mental health services were met, and any reviews for such service or services were conducted prior to the initial authorization and any re-authorization periods as established in the MHP contract between COUNTY and DMH.

NOTE: Authority: Sections 5775, 14043.75 and 14680 Welfare and Institutions Code.

**Article VII. HIPAA COMPLIANCE**

All data, together with any knowledge otherwise acquired by CONTRACTOR during the performance of services provided pursuant to this Agreement, shall be treated by CONTRACTOR and CONTRACTOR'S staff as confidential information. CONTRACTOR shall not disclose or use, directly or indirectly, at any time, any such confidential information. If the CONTRACTOR receives any individually identifiable health information ("Protected Health Information" or "PHI"), the CONTRACTOR shall maintain the security and confidentiality of such PHI as required by applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder.

**Article VIII. DEBARMENT AND SUSPENSION CERTIFICATION**

By signing this agreement, the CONTRACTOR agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 45 CFR 76.

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 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 9.4), 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.

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

The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.

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 IX. MANDATED REPORTER REQUIREMENTS**

CONTRACTOR acknowledges and agrees to comply with mandated reporter requirements pursuant to the provisions of Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the California Penal Code, also known as The Child Abuse and Neglect Reporting Act.

**Article X. 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 XI. 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 XII. 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 XIII. 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 XIV. 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 XV. FISCAL CONSIDERATIONS**

The parties to this Agreement recognize and acknowledge that COUNTY is a political subdivision of the State of California. As such, El Dorado County 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 XVI. DEFAULT, TERMINATION, AND CANCELLATION**

**Section 16.01 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 16.02 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 16.03 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 16.04 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 XVII. 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:

JDT CONSULTANTS  
1424 WEST HOLLAND AVENUE  
FRESNO, CA 93705  
ATTN: JANA TODD

or to such other location as the CONTRACTOR directs.

**Article XVIII. 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 XIX. INSURANCE**

Section 19.01 CONTRACTOR shall provide proof of a policy of insurance satisfactory to the El Dorado County 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 19.02 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 19.03 CONTRACTOR shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.

Section 19.04 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 19.05 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 19.06 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 19.07 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 19.08 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 19.09 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 19.10 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 19.11 CONTRACTOR'S obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

Section 19.12 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 19.13 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 XX. 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 XXI. 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 XXII. 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 XXIII. 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 XXIV. 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 XXV. 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 El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

**Article XXVI. ADMINISTRATOR**

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

**Article XXVII. AUTHORIZED SIGNATURES**

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

**Article XXVIII. PARTIAL INVALIDITY**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

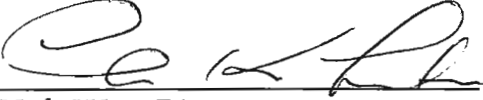
**Article XXIX. VENUE**

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

**Article XXX. ENTIRE AGREEMENT**

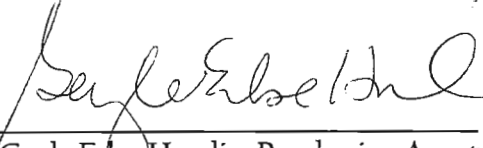
This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**REQUESTING DEPARTMENT HEAD CONCURRENCE:**

By:  Dated: 7/9/10  
Neda West, Director  
Health Services Department

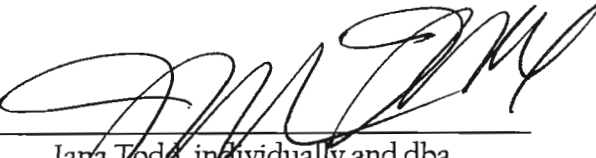
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below

--COUNTY OF EL DORADO--

By:  Dated: 8/18/10  
Gayle Erbe-Hamlin, Purchasing Agent  
Chief Administrative Office  
'COUNTY'

--CONTRACTOR--

**JDT CONSULTANTS**

By:  Dated: 7/20/10  
Jana Todd, individually and dba  
JDT Consultants  
'CONTRACTOR'

# EXHIBIT A

## Program Description

Contractor: JDT Consultants  
Contractor Services: Therapeutic Behavioral Services (TBS)  
Owner's Name: Jana Todd  
Address: 1424 West Holland Avenue, Fresno, CA 93705  
Telephone: 559-790-2662

### ITEMS APPLICABLE TO ALL SERVICES:

Hours for Services: Seven days a week, 24 hours a day.  
Geographic Area: Northern California  
Target Group: El Dorado County seriously emotionally disturbed children and their families.

### Selection for Admission to Service:

Upon referral only from El Dorado County Health Services Department, Mental Health Division (MHD). A child may be approved for services from the County via email or other written communication.

### Goals of Program:

1. To assist children to maintain in their current placements, avoid placement in a more restrictive setting, and return to a more normal and less restrictive setting within the shortest amount of time possible.
2. To assist emotionally disturbed children to gain the social and functional skills necessary for age-appropriate development and social integration.
3. To assist parents and other primary caregivers to gain an understanding of the social and psychological needs of their children and develop the skills necessary to support their children's development and eventual return to the family home and community.

**Objectives:**

1. To provide the most effective treatment plan for children, tailored to meet each child's abilities and needs, and geared toward improving their capacity for success in their home and school environments.
2. To reduce the frequency and severity of maladaptive behaviors that interfere with home, school and community adjustment and replace these behaviors with positive productive skills.
3. To develop each child's capacity to function as an independent individual commensurate with developmental age. Skills in this area include decision-making, problem-solving, and the use of good judgment and reasoning.
4. To increase each child's ability to assume responsibility for participation in the treatment process. This includes the ability to identify and understand one's current problems, as well as the recognition of one's own role in the self-management of emotional disorders.
5. To prepare and support family member/primary caregivers for healthy involvement in their children's treatment, improve parenting skills, and enhance the level of functioning within the family system.

**Services Provided:**

**Therapeutic Behavioral Services (TBS):** Contractor agrees to furnish all space, facilities, equipment, personnel and supplies necessary to provide TBS to County-authorized minors with serious emotional problems who are experiencing a stressful transition of life crisis and who need additional short term support to prevent placement in a higher level of residential care or to enable placement in a less restrictive level of care. Contractor's staff shall provide individualized one-on-one behavioral assistance and one-on-one interventions to accomplish outcomes specified in the written Treatment Plan approved by the County. Contractor shall provide services in accordance with applicable letters, regulations, and policies issued by the State Department of Mental Health (DMH) including, but not limited to, Exhibit "C," marked "DMH Information Notice #08-38-subject: "Therapeutic Behavioral Services" dated December 22, 2008," incorporated herein and made by reference a part hereof.

Contractor shall obtain prior written authorization from the County Health Services Director or designee before admitting any County-responsible client to its TBS program. County shall appoint a County Liaison who shall provide Contractor with a completed authorization form prior to each client admission to the TBS program.

Contractor agrees to furnish professional personnel in accordance with the regulations, including any future changes or amendments thereto, issued by DMH or the County Health Services Director. Contractor shall operate continuously throughout the term of

this Agreement with at least the minimum staff required by Code for provision of services hereunder. Such personnel shall be qualified in accordance with all applicable requirements of Code and any amendments thereto. Contractor agrees to make available to County on request a list of persons by name, title, professional degree, State license number (if applicable), and experience who are to provide such services.

Contractor shall ensure that services are available at times and locations that are convenient for parents/care providers and acceptable to the child/youth. Services may be provided at any community location not otherwise prohibited by regulations. These may include homes, foster homes, group homes, after school programs, and other community settings.

**Reports:**

1. Contractor shall submit to County's Health Services Director or designee, weekly written progress reports, data collection reports and expenditure reports in the time, form and manner required by County.
2. Contractor shall submit 45 days following the termination of this Agreement, to County's Health Services Director or designee, a written Final Activity Report which shall include, but not be limited to, an evaluation of the quantity, quality, and impact of the work undertaken in conducting services provided under this Agreement.

**Cultural Competency:**

Contractor shall be responsible for using applicable staff resources to provide bilingual/bicultural services. The Contractor shall be responsible for providing services to non-English speaking clients in their own language. The Contractor shall be responsible for providing services that incorporate the cultural background of the client. This requirement takes into consideration the language, family structure, religion, and belief system of the client.

**Records of Service:**

Records of services provided by the various professional disciplines shall also contain all of the data necessary in reporting to DMH and, in addition, such other records as may be required by the County Health Services Director on forms the Director may prescribe. All clinical records will conform to Medi-Cal requirements and standards.

Confidentiality of client records shall be assured in accordance with the provisions of Welfare and Institutions Code Section 5328.

**Discharge Planning:**

Discharge planning is the joint responsibility of Contractor staff and the appropriate County staff responsible for placement in the program. Discharge planning is initiated at



the time of admission and continues throughout the child's stay. Contractor staff will coordinate work with the family/primary caregiver, County staff, and other appropriate parties. Discharge plans and goals will be documented in the child's record at admission and updated at least quarterly. Program records shall provide documentation supporting the rationale for discharge and details of the disposition. Discharge summaries will routinely be provided by the Contractor to the County Contract Officer and placement staff within thirty (30) days.

In the event of unanticipated discharge, Contractor shall give notice to the child's family and County placement staff prior to the actual discharge. Facility shall attempt to assist the County and family/primary caregiver in an orderly transfer, providing notice of impending discharge in advance if possible.

**Coordination of Services with County:**

The County designated Contract Administrator will be the primary liaison between the County and Contractor for the purpose of administering this Agreement. Programmatic, child-specific coordination will occur between County placement staff and Contractor.

**Quality Assurance and Utilization Review:**

Contractor shall comply with policies established by the County Quality Management Plan, including utilization controls, and DMH Letters and Notices, as well as Sections 5777(g) and 5778(n) of the Welfare and Institutions Code and regulations adopted pursuant thereto.

**Evaluation:**

Contractor shall provide County with a complete description of the methodology and procedure used to evaluate its programs. Contractor shall participate in DMH mandated Children's Performance Outcomes System, the County Children's System of Care evaluation program and other County evaluation activities deemed necessary by the County Health Services Director.

## EXHIBIT B

### STATE REQUIRED TERMS AND CONDITIONS

#### **1. Utilization Review/Quality Assurance**

Contractor shall establish and maintain systems to review the quality and appropriateness of services in accordance with applicable Federal and State statutes and regulations and guidelines operative during the term of this Agreement.

The California Department of Mental Health (DMH) may review the existence and effectiveness of any utilization review systems of the Contractor as necessary.

#### **2. Assurances**

Contractor shall provide services in accordance with all applicable Federal and State statutes and regulations.

#### **3. Cost Report**

The Contractor shall submit a fiscal year-end cost report, due to DMH no later than December 31 following the close of the fiscal year, in accordance with W&I Section 5651(a)(4), 5664(a) and (b), 5705(b)(3), 5718(c) and guidelines established by DMH.

#### **4. DMH -Special Terms and Conditions**

California Department of Mental Health Exhibit D, Special Terms and Conditions, is hereby incorporated by reference as if fully set forth herein. By signing this Agreement, Contractor agrees to comply with all these provisions incorporated hereto.

California Department of Mental Health Exhibit E, Confidentiality and Information Security Provisions, is hereby incorporated by reference as if fully set forth herein. By signing this Agreement, Contractor agrees to comply with all these provisions incorporated hereto.

#### **5. NON-DISCRIMINATION CLAUSE**

a. During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

b. Consistent with the requirements of applicable federal or state law, the Contractor shall not engage in any unlawful discriminatory practices in the admission of beneficiaries, assignments of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age, sexual preference or mental or physical handicap.

c. The Contractor shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Human Services, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.

d. Notwithstanding other provisions of this section, the Contractor may require a determination of medical necessity pursuant to Title 9, CCR, Section 1820.205, Section 1830.205 or Section 1830.210, prior to providing covered services to a beneficiary.

e. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

## **6. AUDIT**

Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, the Auditor General, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

## **7. Transfer of Care**

Prior to the termination or expiration of this contract and upon request by the DMH, the Contractor shall assist the State in the orderly transfer of beneficiaries' mental health care. In doing this, the Contractor shall make available to the DMH copies of medical records, patient files, and any other pertinent information, including information maintained by any subcontractor, necessary for efficient case management of beneficiaries, as determined by the DMH. Costs of reproduction shall be borne by the DMH. In no circumstances shall a beneficiary be billed for this service.

## **8. Inspection Rights**

a. The Contractor shall allow the DMH, California Department of Health Care Services (DHS), California Health and Human Services Agency (HSS), the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this contract, and to inspect, evaluate, and audit any and all books, records, and facilities maintained by the Contractor and subcontractors, pertaining to such services at any time during normal business hours. Books and records include, but are not limited to, all physical records originated or prepared pursuant to the performance under this contract including working papers, reports, financial records and books of account, beneficiary records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for beneficiaries. Upon request, at any time during the period of this contract, the Contractor shall furnish any such record, or copy thereof, to the DMH, DHS, or HHS. Authorized agencies shall maintain the confidentiality of such books and records in accordance with applicable laws and regulations.

b. The Contractor agrees to make all of its books and records, pertaining to the goods and services furnished under the terms of the Agreement, available for inspection, examination or copying by the DMH, DHS, HHS, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, at all reasonable times at the Contractor's place of business or at such other mutually agreeable location in California, in a form maintained in accordance with the general standards applicable to such book or record keeping, for a term of at least five years from the close of the DMH's fiscal year in which the subcontract was in effect.

c. The Contractor agrees to include in any subcontractor's agreement the requirement to make all of its books and records, pertaining to the goods and services furnished under the terms of the subcontract, available for inspection, examination or copying by the DMH, DHS, HHS, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, at all reasonable times at the subcontractor's place of business or at such other mutually agreeable location in California, in a form maintained in accordance with the general standards applicable to such book or record keeping, for a term of at least five years from the close of the DMH's fiscal year in which the subcontract was in effect.

## **9. Additional Contract Provisions**

a. The Contractor shall comply with the provisions of the Copeland Anti-Kickback Act (18 U.S.C. 874 and 40 U.S.C. 276c), which requires that all contracts and subcontracts in excess of \$2,000 for construction or repair awarded by the Contractor and its subcontractors shall include a provision for compliance with the Copeland Anti-Kickback Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (Title 29, CFR, Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States").

b. The Contractor shall comply with the provisions of Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7), which requires that, when required by Federal Medicaid program legislation, all construction contracts awarded by the Contractor and its subcontractors of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (Title 29, CFR, Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction").

c. The Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as applicable, which requires that all subcontracts awarded by the Contractor in excess of \$2,000 for construction and in excess of \$2,500 for other subcontracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (Title 29, CFR, Part 5).

d. The Contractor shall comply with the provisions of Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended, which provide that contracts and subcontracts of amounts in excess of \$100,000 shall contain a provision that requires the Contractor or subcontractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. Violations shall be reported to the Centers for Medicare and Medicaid Services.

e. The Contractor shall comply with the provisions of Title 42, CFR, Section 438.610 and Executive Orders 12549 and 12689, "Debarment and Suspension," which excludes parties listed on the General Services Administration's list of parties excluded from federal procurement or nonprocurement programs from having a relationship with the Contractor.

f. The Contractor shall not employ or contract with providers or other individuals and entities excluded from participation in Federal health care programs under either Section 1128 or 1128A of the Social Security Act. Federal financial participation is not available for amounts expended for providers excluded by Medicare, Medicaid, or the State Children's Insurance Program, except for emergency services.

#### **10. Inpatient Contracts and Subcontracts**

If this contract is for inpatient services, the Contractor acknowledges that they must maintain necessary licensing and certification. All inpatient subcontracts must require that subcontractors maintain necessary licensing and certification.

#### **11. Assignment or Delegation**

Contractor agrees that assignment or delegation of this Agreement shall be void, unless prior written approval is obtained from County.

#### **12. Hold Harmless**

Contractor agrees to hold harmless both the State and beneficiaries in the event the County cannot or shall not pay for services performed by the Contractor pursuant to this Agreement.

#### **13. Additional Requirements Based on Federal Regulations**

If applicable, based on the services provided under this Agreement, the Contractor agrees to comply with:

a. The Contractor shall maintain written policies and procedures respecting advance directives in compliance with the requirements of Title 42, Code of Federal Regulations (CFR), Sections 422.128 and 438.6(i)(1), (3) and (4). Any written materials prepared by the Contractor for beneficiaries shall be updated to reflect changes in state laws governing advance directives as soon as possible, but no later than 90 days after the effective date of the change.

b. The Contractor shall obtain approval from the DMH prior to implementing a Physician Incentive Plan as described at Title 42, CFR, Section 438.6(h). The DMH shall approve the Contractor's request only if the proposed Physician Incentive Plan complies with all applicable federal and state regulations.

**EXHIBIT B-1** rev Mar 2008  
**CALIFORNIA DEPARTMENT OF MENTAL HEALTH**  
**SPECIAL TERMS AND CONDITIONS**

1. **SUBCONTRACTS.** Except for subcontracts identified in the proposal in accordance with the Request for Proposal or Invitation for bid, Contractor shall submit any subcontracts which are proposed to be entered into in connection with this Contract to the State Agency (State) for its prior written approval before entering into the same. No work shall be subcontracted without the prior written approval of the State. Upon the termination of any subcontract, State shall be notified immediately. Any subcontract shall include all the terms and conditions of this Contract and its attachments.

2. **PUBLICATIONS AND REPORTS.**

If a publication and/or report is required under this Contract, Contractor shall:

- A. Incorporate any comments or revisions required by the State into any publication or report and shall not publish any material until it receives final State approval.
- B. Furnish two copies of each publication and report required plus one reproducible original.
- C. Prepare all illustrations, maps and graphs in a manner which allows the complete illustration to be contained on a single 8-1/2 by 11 page unless specific written approval is given to the contrary.
- D. Print all graphs, illustrations and printed materials in a single color throughout each publication unless prior State approval is granted.
- E. Place the Contractor's name only on the cover and title page of publications and reports and summaries. Covers and title pages shall read as follows:

**DEPARTMENT OF MENTAL HEALTH**  
**TITLE**  
**By (Contractor)**

The State reserves the right to use and reproduce all publications, reports, and data produced and delivered pursuant to this Contract. State further reserves the right to authorize others to use or reproduce such materials, provided the author of the report is acknowledged in any such use or reproduction.

If the publication and/or report are prepared by non-employees of the State, and the total cost for such preparation exceeds \$5,000, the publication and/or report shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of the publication and report in a separate section of the report (Government Code Section 7550).

3. **PROGRESS REPORTS.** If progress reports are required by the Contract, Contractor shall provide a progress report in writing, or orally if approved by the State Contract Manager, at least once a month to the State Contract Manager. This progress report shall include, but not limited to, a statement that the Contractor is or is not on schedule, any pertinent reports, or interim findings. Contractor shall cooperate with and shall be available to meet with the State to discuss any difficulties, or special problems, so that solutions or remedies can be developed as soon as possible.
4. **PRESENTATION.** Upon request, Contractor shall meet with the State to present any findings, conclusions, and recommendations required by the Contract for approval. If set forth in the Contract, Contractor shall submit a comprehensive final report for approval. Both the final meeting and the final report shall be completed on or before the date indicated in the Contract.
5. **DEPARTMENT OF MENTAL HEALTH STAFF.** Department of Mental Health staff shall be permitted to work side by side with Contractor's staff to the extent and under conditions as directed by the State Contract Manager. In this connection, Department of Mental Health staff shall be given access to all data, working papers, etc., which Contractor seeks to utilize.
6. **CONFIDENTIALITY OF DATA AND DOCUMENTS.**

Contractor shall not disclose data or documents or disseminate the contents of the final or any preliminary report without written permission of the State Contract Manager. However, all public entities shall comply with California Public Records Act (Government Code Sections 6250 et seq.) and the Freedom of Information Act (Title 5 of the United States Code Section 552), as applicable.

Permission to disclose information or documents on one occasion shall not authorize Contractor to further disclose such information or documents on any other occasions except as otherwise provided in the Contract or required by law.

Contractor shall not comment publicly to the press or any other media regarding the data or documents generated, collected, or produced in connection with this contract, or the State's actions on the same, except to the Department of Mental Health staff, Contractor's own personnel involved in the performance of this Contract, or as required by law.

If requested by State, Contractor shall require each of its employees or officers who will be involved in the performance of this Contract to agree to the above terms in a form to be approved by State and shall supply State with evidence thereof.

Each subcontract shall contain the foregoing provisions related to the confidentiality of data and nondisclosure.

After any data or documents submitted has become a part of the public records of the State, Contractor may at its own expense and upon written approval by the State Contract Manager, publish or utilize the same data or documents but shall include the following Notice:

#### LEGAL NOTICE

This report was prepared as an account of work sponsored by the Department of Mental Health (Department), but does not necessarily represent the views of the Department or any of its employees except to the extent, if any, that it has formally been approved by the Department. For information regarding any such action, communicate directly with the Department at P.O. Box 952050, Sacramento, California, 94252-2050. Neither said Department nor the State of California, nor any officer or employee thereof, or any of its contractors or subcontractors makes any warranty, express or implied, or assumes any legal liability whatsoever for the contents of this document. Nor does any party represent that use of the data contained herein, would not infringe upon privately owned rights without obtaining permission or authorization from any party who has any rights in connection with the data.

#### 7. PROVISIONS RELATING TO DATA.

"Data" as used in this Contract means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or be used to define a design or process; or support a premise or conclusion asserted in any deliverable document called for by this Contract. The data may be graphic or pictorial delineations in media, such as drawings or photographs, charts, tables, mathematical modes, collections or extrapolations of data or information, etc. It may be in machine form, as punched cards, magnetic tape, computer printouts, or may be retained in computer memory.

"Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Contract at State expense, together with complete documentation thereof, shall be treated in the same manner as generated data.

"Deliverable data" is that data which under terms of this Contract is required to be delivered to the State. Such data shall be property of the State.

Prior to the expiration of any legally required retention period and before destroying any data, Contractor shall notify the State of any such contemplated action; and State may within 30 days of said notification determine whether or not this data shall be further preserved. The State shall pay the expense of further preserving this data. State shall have unrestricted reasonable access to the data that is preserved in accordance with this Contract.

Contractor shall use best efforts to furnish competent witnesses to identify such competent witnesses to testify in any court of law regarding data used in or generated under the performance of this Contract.

8. APPROVAL OF PRODUCT. Each product to be approved under this Contract shall be approved by the Contract Manager. The State's determination as to satisfactory work shall be final absent fraud or mistake.
9. SUBSTITUTIONS. Contractor's key personnel as indicated in its proposal may not be substituted without Contract Manager's prior written approval.
10. NOTICE. Notice to either party shall be given by first class mail properly addressed, postage fully prepaid, to the address beneath the name of each respective party. Such notice shall be effective when received as indicated by post office records or if deemed undeliverable by post office, such notice shall be effective nevertheless 15 days after mailing. Alternatively, notice may be given by personal delivery by any means whatsoever to the party, and such notice shall be deemed effective when delivered.
11. WAIVER. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of State to enforce at any time the provisions of this Contract, or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions not to affect the validity of this Contract or the right of State to enforce said provisions.

12. **GRATUITIES AND CONTINGENCY FEES.** The State, by written notice to the Contractor, may terminate the right of Contractor to proceed under this Contract if it is found, after notice and hearing by the State, that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or performing of such contract.

In the event this Contract is terminated as provided in the paragraph above, State shall be entitled (a) to pursue the same remedies against Contractor as it could pursue in the event of the breach of the Contract by the Contractor, and (b) as a predetermined amount of liquidated damages, to exemplary damages in an amount which shall not be less than three times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

The Contractor warrants by execution of this Contract that no person or selling agency has been employed or retained to solicit or secure this Contract upon a Contract or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Contractor, for the purpose of securing business. For breach or violation of this warranty, the State shall have the right to annul this Contract without liability, paying only for the values of the work actually returned, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

13. **INSURANCE.** Contractor hereby warrants that it carries and shall maintain in full force and effect during the full term of this contract and any extensions to said term:

Sufficient and adequate Worker's Compensation Insurance for all of its employees who shall be engaged in the performance of this Contract and agrees to furnish to State satisfactory evidence thereof at any time the State may request the same; and

Sufficient and adequate Liability Insurance to cover any and all potential liabilities and agrees to furnish to State satisfactory evidence thereof upon request by State.

14. **CONTRACT IS COMPLETE.** Other than as specified herein, no document or communication passing between the parties hereto shall be deemed a part of this Contract.

15. **CAPTIONS.** The clause headings appearing in this Contract have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they pertain.

16. **PUBLIC HEARINGS.** If public hearings on the subject matter dealt with in this Contract are held within one year from the contract expiration date, Contractor shall make available to testify the personnel assigned to this Contract at the hourly rates specified in the Contractor's proposed budget. State shall reimburse Contractor for travel of said personnel at the contract rates for such testimony as may be requested by State.

17. **DVBE.** Unless specifically waived by the Deputy Director of Administrative Services of the Department, Contractor shall comply with the Disabled Veteran Business Enterprises participation goal in accordance with the provisions of Public Contract Code Section 10115 et seq.

18. **FORCE MAJEURE.** Neither the State nor the Contractor shall be deemed to be in default in the performance of the terms of this Contract if either party is prevented from performing the terms of this Contract by causes beyond its control, including without being limited to: acts of God, interference, rulings or decision by municipal, Federal, State or other governmental agencies, boards or commissions; any laws and/or regulations of such municipal, State, Federal, or other governmental bodies; or any catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other party written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable, performance under this Contract.

19. **PERMITS AND LICENSES.** The Contractor shall procure and keep in full force and effect during the term of this Contract all permits, registrations and licenses necessary to accomplish the work specified in this Contract, and give all notices necessary and incident to the lawful prosecution of the work.

20. The Contractor shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and to comply with all prevailing Federal, State, and local laws, and rules and regulations made pursuant to said Federal, State, and local laws, which in any way affect the conduct of the work of this Contract. If any conflict arises between provisions of the plans and specifications and any such law above referred to, then the Contractor shall immediately notify the State in writing.

21. **LITIGATION.** The State, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the State or its officers or employees for which the contractor



must provide indemnification under this Contract. The failure of the State to give such notice, information, authorization or assistance shall not relieve the Contractor of its indemnification obligations. The Contractor shall immediately notify the State of any claim or action against it which affects, or may affect, this Contract, the terms and conditions hereunder, or the State, and shall take such action with respect to said claim or action which is consistent with the terms of this Contract and the interest of the State.

22. **DISPUTES.** Contractor shall first discuss and attempt to resolve any dispute arising under or relating to the performance of this Contract, which is not disposed of by the Contract, informally with the State Contract Manager. If the dispute cannot be disposed of at this level, then the dispute shall be decided by the Department of Mental Health's Deputy Director of Administration. All issues pertaining to this dispute shall be submitted in written statements and addressed to the Deputy Director of Administration, Department of Mental Health, 1600 9th Street, Room 150, Sacramento, California 95814. Such written notice must contain the Contract Number. The decision of the Deputy Director of Administrative Services shall be final and binding to all parties. Within ten days of receipt of the written grievance report from the Contractor, the Deputy Director of Administration Director of Administration or his/her designee, the Contractor shall proceed diligently with the performance of the Contract. Neither the pendency of a dispute, nor its consideration by the Deputy Director of Administration, shall excuse the Contractor from full and timely performance of the services required in accordance with the terms of the contract.
23. Notwithstanding any other provisions of this Contract, after recourse to the procedure set forth in the paragraph above, any controversy or claim arising out of or relating to this Contract or breach thereof shall be settled by arbitration at the election of either party in accordance with California Public Contract Code Section 10240 et. seq. and judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction thereof.
24. **EVALUATION OF CONTRACTOR'S PERFORMANCE.** The Contractor's performance under this Contract shall be evaluated by the State after completion of the contract. A copy of the written evaluation shall be maintained in the contract file and may be submitted to the Office of Legal Services, Department of General Services.
25. **TRAVEL.** Contractor's headquarters for purposes of payment of travel shall be the city designated in the signature block unless otherwise specified in the contract.
26. For travel necessary to the performance of this Contract, contractor shall use and submit travel reimbursement forms provided by the Department . All reimbursements shall be made in accordance with, and shall not exceed the rates authorized by, the State Administrative Manual and the Policies and Procedures of the Department. All requests to exceed any base reimbursement rate established in the State Administrative Manual or the Policies and Procedures of the Department must be made and approved prior to the date of travel and must be submitted in writing to the State's Contract Manager.
27. **TERMINATION.** Unless otherwise specified, either party may terminate this Contract by giving 30 days written notice to the other party. The notice of termination shall specify the effective date of termination. Upon the Contractor's receipt of notice of termination from the State, and except as otherwise directed in the notice, the Contractor shall:
  - A. Stop work on the date specified in the notice.
  - B. Place no further orders or enter into any further subcontracts for materials, services or facilities except as necessary to complete work under the Contract up to effective date of termination.
  - C. Terminate all orders and subcontracts;
  - D. Promptly take all other reasonable and feasible steps to minimize any additional cost, loss, or expenditure associated with work terminated, including, but not limited to reasonable settlement of all outstanding liability and claims arising out of termination of orders and subcontracts;
  - E. Deliver or make available to the Department all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor under this Contract, whether completed, partially completed, or in progress.

In the event of termination, an equitable adjustment in the price provided for this Contract shall be made. Such adjustment shall include reasonable compensation for all services rendered, materials supplies, and expenses incurred pursuant to this Contract prior to the effective date of termination.

28. **CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS.** The Contractor shall comply with applicable laws and regulations, including but not limited to Sections 14100.2 and 5328 et seq. of the Welfare and Institutions Code, Section 431.300 et seq. of Title 42, Code of Federal Regulations, and the Health Insurance Portability and Accountability Act (HIPAA), and its implementing regulations (including but not limited to Title 45, CFR, Parts 160, 162 and 164) regarding the confidentiality and security of individually identifiable health information (IIHI).
29. **NONDISCLOSURE.** Contractor shall not use or disclose confidential, individually identifiable, or sensitive information other than as permitted or required by the Contract and as required by law.



30. AUDITS, INSPECTION AND ENFORCEMENT.

- A. From time to time, the State may inspect the facilities, systems, books and records of Contractor to monitor compliance with the Contract.
- B. Contractor shall promptly remedy any violation of any provision of the Contract and shall certify the same to the Department Information Security Officer in writing.
- C. The fact that the State inspects, or fails to inspect, or has the right to inspect Contractor's facilities, systems, and procedures does not relieve Contractor of its responsibility to comply with the Contract.
- D. The State's failure to detect or the State's detection of any unsatisfactory practices, but failure to notify Contractor or require Contractor's remediation of the unsatisfactory practices does not constitute acceptance of such practice or a waiver of the State's enforcement rights under the Contract.

31. Use of State Funds. Contractor, including its officers and members, shall not use funds received from the Department pursuant to this contract to support or pay for costs or expenses related to the following:

- A. Campaigning or other partisan activities to advocate for either the election or defeat of any candidate for elective office, or for or against the passage of any proposition or ballot measure; or,
- B. Lobbying for either the passage or defeat of any legislation.

This provision is not intended and shall not be construed to limit any expression of a view, opinion, or position of any member of Contractor as an individual or private citizens, as long as state funds are not used; nor does this provision limit Contractor from merely reporting the results of a poll or survey of its membership.

32. Drug-Free Workplace Certification. Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and shall provide a drug-free workplace.

33. Conflict of Interest Certification. In accordance with State laws and Departmental policy, no employees (including contractors) shall participate in incompatible activities, which are in conflict with their job duties. In addition, State law requires employees whose positions are designated in the Department's Conflict of Interest Code to file statements of economic interest. Employees whose positions have been designated will be notified by the Department if a statement is required.

In signing this contract, I certify that I have read and understand GOVERNMENT CODE 19990.

**EXHIBIT B-2** rev Mar 2008  
**CALIFORNIA DEPARTMENT OF MENTAL HEALTH**  
**CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS**

1. CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS.

A. The Contractor shall comply with applicable laws and regulations, including but not limited to Sections 14100.2 and 5328 et seq. of the Welfare and Institutions Code, Section 431.300 et seq. of Title 42, Code of Federal Regulations, and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320 d et seq. of Title 42, United States Code and its implementing regulations (including but not limited to Title 45, CFR, Parts 142, 160, 162 and 164) regarding the confidentiality and security of individually identifiable health information (IIHI).

B. Permitted Uses and Disclosures of IIHI by the Contractor.

1) *Permitted Uses and Disclosures.* Except as otherwise provided in this Agreement, the Contractor, may use or disclose IIHI to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate federal or state laws or regulations.

2) *Specific Uses and Disclosures Provisions.* Except as otherwise indicated in the Agreement, the Contractor may:

a) Use and disclose IIHI for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided that such use and disclosures are permitted by law.

b) Use IIHI to provide data aggregation services to DMH. Data aggregation means the combining of IIHI created or received by the Contractor for the purposes of this contract with IIHI received by the Contractor in its capacity as the Contractor of another HIPAA covered entity, to permit data analyses that relate to the health care operations of DMH.

C. *Safeguards.* Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities. The information privacy and security program shall reasonably and appropriately protect the confidentiality, integrity, and availability of the IIHI that it creates, receives, maintains, or transmits; and prevent the use or disclosure of IIHI other than as provided for by this Agreement. The Contractor shall provide DMH with information concerning such safeguards as DMH may reasonably request from time to time.

The Contractor shall implement administrative, technical, and physical safeguards to ensure the security of DMH information on portable electronic media (e.g., floppy disks and CD-Rom) and in paper files. Administrative safeguards to be implemented shall include, but are not limited to training, instructions to employees, and policies and procedures regarding the HIPAA Privacy Rule. Technical safeguards to be implemented shall include, but are not limited to, role based access, computer passwords, timing out of screens, storing laptop computers in a secure location (never leaving the equipment unattended at workplace, home or in a vehicle) and encryption. Physical safeguards to be implemented shall include, but are not limited to, locks on file cabinets, door locks, partitions, shredders, and confidential destruct.

D. The Contractor shall implement appropriate authentication methods to ensure information system access to confidential, personal (e.g., IIHI) or sensitive data is only granted to properly authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), the Contractor shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-68 and the SANS Institute Password Protection Policy. The Contractor shall:

1) Implement the following security controls on each server, workstation, or portable (e.g., laptop computer) computing device that processes or stores confidential, personal, or sensitive data:

a) Network-based firewall and/or personal firewall

b) Continuously updated anti-virus software

c) Patch-management process including installation of all operating system/software vendor security patches

- 2) Encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, CDs and thumb drives) and on computing devices (including, but not limited to, desktop computers, laptop computers and PDAs) with a solution that uses proven industry standard algorithms.
- 3) Prior to disposal, sanitize all DMH confidential data contained in hard drives, memory devices, portable electronic storage devices, mobile computing devices, and networking equipment in a manner consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-88.

The Contractor shall not transmit confidential, personal, or sensitive data via e-mail or other Internet transport protocol over a public network unless, at minimum, a 128-bit encryption method (for example AES, 3DES, or RC4) is used to secure the data.

- E. **Mitigation of Harmful Effects.** Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor or its subcontractors in violation of the requirements of this Agreement.
- F. **Reporting of Improper Disclosures.** Contractor shall report to DMH within twenty-four (24) hours during a work week, of discovery by Contractor that PHI has been used or disclosed other than as provided for by this Agreement.
- G. **Agents and Subcontractors of the Contractor.** Contractor shall ensure that any agent, including a subcontractor to which the Contractor provides PHI received from, or created or received by the Contractor on behalf of DMH, shall comply with the same restrictions and conditions that apply through this Agreement to the Contractor with respect to such information.
- H. **Internal Practices.** Contractor shall make Contractor's internal practices, books and records relating to the use and disclosure of PHI received from DMH, or created or received by the Contractor on behalf of DMH, available to DMH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DMH or by the Secretary, for purposes of determining DMH's compliance with the HIPM regulations.
- I. **Notification of Electronic Breach or Improper Disclosure.** During the term of this Agreement, Contractor shall notify DMH immediately upon discovery of any breach of Medi-Cal IHI and/or data, where the information and/or data is reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to the DMH Information Security Officer, within two business days of discovery, at (916) 651-6776. Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Contractor shall investigate such breach and provide a written report of the investigation to the DMH Information Security Officer, postmarked within thirty (30) working days of the discovery of the breach to the address below:

**Information Security Officer  
Office of HIPAA Compliance  
California Department of Mental Health  
1600 9th Street, Room 102  
Sacramento, CA 95814**

- J. **Employee Training and Discipline:** Contractor shall train and use reasonable measures to ensure compliance with the requirements of this Agreement by employees who assist in the performance of functions or activities on behalf of DMH under this Agreement and use or disclosure of IHI; and discipline such employees who intentionally violate any provisions of this Agreement, including by termination of employment.
- K. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all IHI received from DMH (or created or received by Contractor on behalf of DMH) that Contractor still maintains in any form, and shall retain no copies of such IHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Agreement to such information, and limit further use of such IHI to those purposes that make the return or destruction of such IHI infeasible. This provision shall apply to IHI that is in the possession of subcontractors or agents of the Contractor.
- L. **Miscellaneous Provisions.**
  - 1) **Disclaimer.** DMH makes no warranty or representation that compliance by Contractor with this Agreement, HIPAA or the HIPAA regulations shall be adequate or satisfactory for Contractor's own purposes or that any information in the Contractor's possession or control, or transmitted or received by the Contractor, is or shall be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of IHI.

- 2) Assistance in Litigation or Administrative Proceedings. Contractor shall make itself, and use its best efforts to make any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Agreement, available to DMH at no cost to DMH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DMH, its directors, officers or employees for claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy based upon actions or inactions of the Contractor and/or its subcontractor, employee, or agent, except where Contractor or its subcontractor, employee, or agent is a named adverse party.
  - a) No Third-Party Beneficiaries. Nothing expressed or implied in the terms and conditions of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than DMH or Contractor and their respective successors or assignees, any rights remedies, obligations or liabilities whatsoever.
  - b) Interpretation. The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
  - c) Regulatory References. A reference in the terms and conditions of this Agreement to a section in the HIPAA regulations means the section as in effect or as amended.
  - d) Survival. The respective rights and obligations of Contractor under Section 6.C of this Agreement shall survive the termination or expiration of this Agreement.
- 3) Violations reported to U.S. Department of Health and Human Services. Upon DMH's knowledge of a material breach of this Agreement by Contractor, that has not been cured or for which termination of the Agreement is not feasible, the DMH Information Security Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- 4) Judicial or Administrative Proceedings. DMH may terminate this Agreement, effective immediately, if (i) Contractor is found guilty in a civil or criminal proceeding for a violation of the HIPAA Privacy or Security Rule or (ii) a finding or stipulation that the Contractor has violated a privacy or security standard or requirement of HIPAA, or other security or privacy laws is made in an administrative or civil proceeding in which the Contractor is a party.

EXHIBIT "C"  
CALIFORNIA DEPARTMENT OF  
 Mental Health

1600 9<sup>th</sup> Street, Sacramento, CA 95814  
(916) 654-2309

December 22, 2008

DMH INFORMATION NOTICE NO.: 08-38

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

SUBJECT: THERAPEUTIC BEHAVIORAL SERVICES

REFERENCE: UNITED STATES CENTRAL DISTRICT OF CALIFORNIA COURT  
ORDERS OF NOVEMBER 14, 2008, AND OCTOBER 24, 2008,  
INCLUDING THE NINE-POINT SETTLEMENT IMPLEMENTATION  
PLAN.

This Department of Mental Health (DMH) Information Notice clarifies to Mental Health Plans (MHPs) and their providers the requirements to increase utilization of Therapeutic Behavioral Services (TBS).

On November 14, 2008 the federal court in *Emily Q. v. Bonta* adopted a Nine-Point Plan (Plan) to increase access and to improve delivery of TBS. It is anticipated that implementation of this Plan will lead to increased utilization and better outcomes for children/youth.

Implementation of this Information Notice and the Nine-Point Plan is scheduled to take effect on January 1, 2009.

The points in the Plan below refine earlier orders, definitions, and policies. This Information Notice is the current iteration of the DMH on TBS, and replaces previous DMH Letters and Notices that address the specific subject of TBS.

## **I. Background of TBS as an EPSDT Supplemental Specialty Mental Health Service**

*Emily Q v. Bonta* is a class action lawsuit filed in 1998. The federal court ordered a permanent injunction and final judgment in 2001. The injunction recognized TBS as a Medi-Cal reimbursable Early and Periodic Screening and Diagnostic Treatment (EPSDT) supplemental service. The court ordered the State to implement procedures for requesting and accessing TBS as a Medi-Cal EPSDT service, and to inform Class members about these available procedures. In 2004, the Court ordered the State to increase TBS utilization.

On February 21, 2008, the Court appointed Richard Saletta as Special Master. On November 14, 2008 the federal court approved a Nine-Point Plan to increase TBS access and utilization for the class.

This Plan, developed by the Special Master working with the parties and stakeholders, significantly reduces the administrative requirements for MHPs and providers related to the provision of TBS services to the Class; refines and clarifies definitions of TBS "eligibility" and "at risk;" and includes strategies to increase TBS access and improve the quality of TBS. The Plan is available on the DMH website.

## **II. Definition of TBS**

TBS are a one-to-one behavioral mental health service available to children/youth with serious emotional challenges who are under age 21 and who are eligible for a full array of Medi-Cal benefits without restrictions or limitations (full scope Medi-Cal). TBS can help children/youth and parents/caregivers, foster parents, group home staff, and school staff learn new ways of reducing and managing challenging behaviors as well as strategies and skills to increase the kinds of behavior that will allow children/youth to be successful in their current environment.

TBS are designed to help children/youth and parents/caregivers (when available) manage these behaviors utilizing short-term, measurable goals based on the needs of the child/youth and family. TBS are never a stand-alone therapeutic intervention. It is used in conjunction with another mental health service.

## **III. TBS Class Eligibility**

On May 5, 1999, the Court certified the class as follows:

All current and future beneficiaries of the Medicaid program below age 21 in California who:

- Are placed in a Rate Classification Level (RCL) facility of 12 or above and/or a locked treatment facility for the treatment of mental health needs;
- Are being considered for placement in these facilities; or
- Have undergone at least one emergency psychiatric hospitalization related to their current presenting disability within the preceding 24 months.

This letter clarifies that a child/youth meets the requirements of “being considered for” placement in an RCL 12 or above when an RCL 12 or above placement is one option (not necessarily the only option) that is being considered as part of a set of possible solutions to address the child/youth’s needs. Additionally, a child/youth meets the requirements when his or her behavior could result in placement in such a facility if the facility were actually available, regardless of whether an RCL 12 or above placement is available.

DMH Letter 04-11 clarified that TBS services are available to beneficiaries who are at risk of admission to a hospital for acute psychiatric inpatient hospital services or to a psychiatric health facility for acute care as a result of behaviors that may benefit from TBS interventions. The DMH Letter 04-11 is available on the DMH Website.

This letter clarifies that the child/youth meets the requirements of “at risk of” hospitalization in an acute care psychiatric facility when hospitalization is one option (not necessarily the only option) that is being considered as part of a set of possible solutions to address the child/youth needs. Additionally, a child/youth meets the requirements when his or her behavior could result in hospitalization in such a facility if the facility were actually available, regardless of whether hospitalization is available.

#### **IV. Criteria for TBS Eligibility**

Once the child/youth is identified as meeting the requirements for class eligibility, the MHP then determines the need for TBS based upon the following criteria:

- A. The child/youth is receiving other specialty mental health services; and
- B. The clinical judgment of the mental health provider indicates that it is highly likely that without the additional short-term support of TBS that:
  - 1. The child/youth will need to be placed out-of-home, or into a higher level of residential care, including acute care, because of the child/youth’s behaviors or symptoms which jeopardize continued placement in the current facility; “acute care” includes acute psychiatric hospital inpatient services, psychiatric health facility services, and crisis residential treatment services or;

2. The child/youth needs this additional support to transition to a home or foster home or lower level of residential placement. Although the child/youth may be stable in the current placement, a change in behavior or symptoms is expected and TBS are needed to stabilize the child/youth in the new environment. The MHP or its provider must document the basis for the expectation that the behavior or symptoms will change.

#### **V. 30 Day Unplanned Contact**

Under certain circumstances, a MHP may authorize the provision of TBS for a maximum of 30 calendar days when class membership cannot be established for a child/youth. This may be done:

- A. Up to 30 days or until class membership is established whichever comes first, and
- B. When the child/youth presents with urgent or emergency conditions to address his/her behaviors, and
- C. Those behaviors jeopardize his/her current living arrangement, and
- D. The MHP determines that TBS would be an appropriate intervention, and
- E. Documentation includes evidence that TBS was medically necessary and the most appropriate level of service available to address the child/youth's mental health condition.

MHPs should use service function code 58 during this period of time to allow DMH to track utilization. The steps taken to establish class membership should also be documented.

#### **VI. Medi-Cal Reimbursement for TBS**

To be Medi-Cal reimbursable, the child/youth must:

- A. Be a full-scope Medi-Cal beneficiary under age 21;
- B. Meet the MHP medical necessity criteria; and
- C. Be a member of the certified class or must have previously received TBS while a member of the certified class.

TBS should be claimed under Mode 15, Service Function Code 58.



TBS are not reimbursable under the following conditions:

- A. For the convenience of the family or other caregivers, physician, or teacher.
- B. To provide supervision or to assure compliance with terms and conditions of probation.
- C. To ensure the child/youth's physical safety or the safety of others (e.g. suicide watch).
- D. To address conditions that are not a part of the child's mental health condition,
- E. For children/youth who can sustain non-impulsive, self-directed behavior, handle themselves appropriately in social situations with peers, and who are able to appropriately handle transitions during the day.
- F. For children/youth who will never be able to sustain non-impulsive self-directed behavior and engage in appropriate community activities without full-time supervision; or when the beneficiary is an inpatient of a hospital, psychiatric health facility, nursing facility, Institutions for Mental Diseases (IMD), or crisis residential program.

## **VII. Continuing Administrative Requirements**

Necessary administrative requirements to ensure the integrity of the service will continue under the Plan. These administrative requirements include the following:

### **A. MHP Providers Lists**

Each MHP with at least one class member shall continue to provide a list of TBS providers to DMH annually by June 30. These lists will be posted on the DMH website.

### **B. Provider Requirements**

TBS must be provided under the direction of a licensed practitioner of the healing arts (physicians, psychologists, licensed clinical social workers, marriage and family therapists, and registered nurses with a master's degree). MHPs may establish specific qualifications for the staff delivering TBS as long as these supervision requirements are met. In general, provider standards, billing procedures, and data collection requirements for Specialty Mental Health Services described in California Code of Regulations (CCR), Title 9, Chapter 11 are applicable to this service.

C. Beneficiary Notification

MHPs currently provide notices regarding general EPSDT information including information about TBS to heads of Medi-Cal beneficiary households with members under age 21. MHPs will continue to provide this notice when Medi-Cal benefits are approved or when a child/youth is issued his/her Medi-Cal identification card and annually thereafter. These notices will also continue to be provided to Medi-Cal eligible children/youth under age 21 at admittance to state hospitals and whenever these hospitals are informed that a child/youth is being considered for admission.

MHPs also have the responsibility to provide the EPSDT and TBS notices to any Medi-Cal beneficiary who is under age 21 and has been admitted with an emergency psychiatric condition to a hospital with which the MHP has a contract, to an IMD in California, or to any RCL 12 (when an MHP is involved in the placement), 13, or 14. MHPs are also required to provide these notices to the beneficiary's representative. These TBS notices can be found in DMH Letter 01-07 on the DMH Website.

D. Beneficiary Protections

All beneficiary protections under CCR Title 9, Chapter 11 are applicable to this service. This includes the grievance, appeal, and fair hearing processes.

E. Transition Services

The MHP will continue to provide TBS as a transition to a lower level of care for children/youth in state hospitals, IMDs, or RCL 12-14 when such services are medically necessary and when TBS are not duplicative of other Medi-Cal services.

F. Claiming and Reporting

TBS should be claimed under Mode 15, Service Function Code 58. Important components of delivering TBS include the following: 1) one to one services; 2) making collateral contacts with family members, caregivers and others significant in the life of the beneficiary; and 3) developing a plan clearly identifying specific target behaviors. They should be reported as Mode 15, Service Function 58 to the Client Services Information (CSI) system to enable DMH to accurately capture the dollars and time associated with providing TBS.

**G. Institutions for Mental Disease (IMD)**

Members of the Plaintiff class shall not be eligible to receive TBS during their treatment in those IMDs which disqualify them from receiving Medi-Cal services. However, while in such facilities, member of the Plaintiff class will be able to establish their eligibility to receive TBS immediately upon leaving the IMD. In such cases prior to discharge the MHP is responsible for determining this eligibility as follows: 1) whether the child/youth will be eligible for Medi-Cal upon discharge; and, 2) whether the child/youth will be eligible for MHP services upon discharge. If the MHP determines that the child/youth is eligible for Medi-Cal services upon discharge, and that TBS are appropriate, the MHP must ensure that the services are available upon discharge.

**VIII. Discontinued Administrative Requirements, Effective January 1, 2009**

Several administrative requirements present in MHP contracts that may have reduced the use of TBS have been eliminated; they will be removed from the Medi-Cal Protocol effective January 1, 2009. The updated Protocol will be posted on the DMH website. The requirements that DMH is removing are as follows:

- A. DMH MHP contracts no longer require pre-authorization, authorization, or reauthorization of TBS. This requirement will be removed from the Fiscal Year 2009-10 MHP contracts.
- B. MHPs are no longer required to submit TBS certification forms to DMH.
- C. MHPs are no longer required to certify denials of TBS services prior to placing a child/youth in an RCL 12, 13, 14, IMD, or a state hospital.
- D. MHPs are no longer required to forward Notices of Actions (NOAs) to DMH related to TBS approvals or denials.
- E. The MHP that participated in the July 29, 2004 Court-ordered TBS focused reviews will no longer be required to submit corrective action plans to DMH. These MHPs are Contra Costa, Los Angeles, Napa, San Bernardino, Yolo, Riverside, Santa Clara, Santa Barbara, San Francisco and Shasta.

## **IX. Strategies to Address Quality Improvement Including Increased Utilization**

The Nine-Point Plan approved by the Court requires the implementation of a TBS accountability structure designed to function as a continuous quality improvement process. The accountability structure will address (1) outcomes, (2) a review process; and (3) utilization. MHPs will be able to claim Federal Financial Participation (FFP) revenues for eligible quality improvement/quality assurance and utilization review activities that they undertake as part of this TBS accountability process.

- A. There are two levels of requirements. The Special Master has assigned each MHP to either Level I or Level II; all MHPs are expected to participate and to increase TBS utilization. The MHP assignments are as follows:

### **Level I MHPs**

The following 29 small and rural MHPs are assigned to Level I and must meet the requirements described in Section IX A. These MHPs are:

Alpine	Kings	Plumas
Amador	Lake	San Benito
Calaveras	Lassen	Shasta
Colusa	Madera	Siskiyou
Del Norte	Mariposa	Sutter/Yuba
El Dorado	Mendocino	Tehama
Glenn	Modoc	Trinity
Humboldt	Mono	Tuolumne
Imperial	Napa	Yolo
Inyo	Nevada	

### **Level II MHPs**

The following ten medium and large MHPs have been selected to engage in an intensive practice improvement process. This process is described in Section IX C; Start up will begin in January, 2009:—The following MHPs listed in the order of implementation, are subject to the Level II requirements:

1. Los Angeles
2. San Diego
3. San Joaquin
4. Sonoma
5. Butte
6. Alameda
7. San Bernardino
8. Kern
9. Monterey
10. Tulare

The following 12 medium and large MHPs will only be responsible to complete the Level I requirements at this time:

Fresno	Sacramento
Marin	San Francisco
Merced	San Mateo
Orange	Santa Cruz
Placer/Sierra	Solano
Riverside	Stanislaus

As of January 1, 2009, the following 5 Level II MHPs that have demonstrated high performance in TBS delivery will be exempt from Level II requirements and will only have to meet Level I requirements:

Contra Costa	Santa Clara
San Luis Obispo	Ventura
Santa Barbara	

**B. Level I Requirements**

1. In each of the next two calendar years, MHPs in Level I are required to convene two annual meetings lasting a minimum of two hours each to review the core minimum TBS data elements on access, utilization, and behavioral and institutional risk reduction. The timing and sequence of the meetings is at the direction of the MHP Mental Health director, but the MHP must complete the first set of meetings by May, 2009, and the second set of meetings must be completed by May, 2010. MHPs will summarize the findings of the meetings in a brief TBS report to DMH within 60 days of the meetings.
  - a. One meeting will be a general forum open to the public and will be composed primarily of providers, parents/youth, Officers of the Court, attorneys, members of the faith community and other volunteers.
  - b. The other meeting will include designees of appropriate local authorities, including the Child Welfare Services Director, the Chief Probation Officer of Deputy Chief of Juvenile Probation, the Presiding Judge of the Juvenile Court, the MHP Office of Education Special Education Director, Parent/Child/Youth advocate representatives, and local TBS provider representatives.
2. The Special Master will monitor TBS utilization in small and rural MHPs. It is anticipated that TBS utilization will increase as quality improvement strategies are implemented. If this does not occur after a reasonable period of time, the Special Master will convene a meeting with all parties to consider options to address low TBS utilization.

C. Level II Requirements for Practice Improvement MHPs

1. Accountability requirements and discussions will follow the same basic format as Level I MHPs, except that quantitative and qualitative data will be explored more deeply to develop strategies to increase and improve TBS to Emily Q class members in the MHP.
2. The ten MHPs will be required to work with a DMH contracted organization to develop and implement TBS plans to improve access and services to *Emily Q* class members. The Court has approved APS, a nationally recognized quality improvement organization.
3. The ten MHPs will have access to additional, ongoing technical assistance to support TBS expansion and quality improvement through DMH.
4. Discussions will occur in two forums as identified under Level I.
5. The goal of the Level II participation will be to resolve underlying agency and system barriers that prevent eligible children/youth from receiving TBS services to which they are entitled.

More detailed description of the Levels I and II requirements and process are available on the DMH Website at:

<http://www.dmh.ca.gov/ServicesandPrograms/Children/youth/default.asp>

D. Exit Criteria and Sustainability Measures

The federal court has directed the Special Master to develop exit criteria and sustainability measures to begin in 2011. These will be presented to the Court for approval in early 2009. As part of the progress, the Special Master will monitor TBS utilization in all MHPs. It is anticipated that TBS utilization will increase as quality improvement strategies are implemented. If this does not occur and MHPs fail to increase utilization voluntarily in the next 24 months, the Special Master will recommend stronger compliance measures.

**X. Training and Support to Increase and Improve TBS Services**

The following is a list of training and technical support for the MHP to increase and to improve TBS services and to promote and ensure the integrity/fidelity of the service under the plan:

A. Description of TBS Services

"TBS Best Practice to Promote Service Integrity" is a comprehensive description of high quality TBS services including TBS assessment, family engagement, service delivery, and termination. This document is the foundation for DMH's TBS training plan and training manual.

B. TBS Training Manuals

A DMH contractor will produce a DMH TBS Best Practices manual with current definitions, updated administrative and compliance requirements, and best practices. The contractor will also produce a DMH TBS Chart Documentation manual based upon the Best Practices manual. These manuals will be completed by July, 2009.

C. Training and Technical Assistance

DMH will establish a comprehensive training plan by January 1, 2009. Best Practice and Chart Documentation regional trainings will be held in 2009 and 2010. Training will also be available via DVDs, website, and webcasts. Best Practices trainings will be available for service providers, supervisors, parents, MHP staff responsible for TBS policy and program, and DMH staff. Topics will include best practices, family engagement, any changes in administrative requirements, strength based assessments and service delivery, and culturally competent TBS services. Families and youth will be involved in the development and presentation of training materials. The training manuals must be approved by DMH.

Level II MHPs will have access to additional technical assistance and trainings that will respond to the needs of these MHP. Such training may include topics such as training TBS supervisors for fidelity adherence, multi-MHP coaching and support, and case consultation. The trainings may utilize a Learning Community Model.

D. TBS Outreach

DMH will develop an outreach plan to reach all class members and provider organizations and agencies that provide TBS services. The plan will focus on reaching class members unknown to the agencies and MHPs. The website described above under Training will also assist in TBS outreach efforts. Implementation of outreach will be implemented by May 2009.

**XI. Coordination of Care Strategy**

Significant numbers of *Emily Q.* class members are the responsibility of, and are primarily served by, Child Welfare Services, Probation, and the Juvenile Court in addition to MHP Mental Health Departments. One strategy to improve the quality of TBS services will be to promote coordination of services among state and MHP partners, which has the potential to improve access to TBS.

DMH and the California Department of Social Services are working together to improve data sharing exchange and information. In addition, DMH encourages MHP interagency linkages to support improved coordination of services and data sharing among local and state government partners.

If you have questions regarding the contents of this letter or the attachments, please contact your MHP Contract Manager listed at: <http://www.dmh.ca.gov/docs/CoOpRoster.pdf>

Sincerely,

Original signed by

STEPHEN W. MAYBERG, Ph.D.  
Director