

ORIGINAL

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EXHIBIT A.....CONFIDENTIALITY AND INFORMATION SECURITY SYSTEMS

EXHIBIT BCALIFORNIA DEPARTMENT OF MENTAL HEALTH LETTER 10-02

AGREEMENT FOR SERVICES #395-S1211
California Psychiatric Transitions, Inc.

THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as COUNTY) and California Psychiatric Transitions, Inc., a California non-profit public benefit corporation qualified as a tax exempt organization under Title 26 Code of Federal Regulations Section 1.501 (c) (3) commonly referred to as Section 501 (c) (3) of the Internal Revenue Code of 1986, whose principal place of business is 9226 Hinton Avenue (mailing P.O. Box 339) Delhi, CA 95315 (hereinafter referred to as CONTRACTOR);

RECITALS

WHEREAS, COUNTY has determined that it is necessary to obtain a contractor to provide long-term, twenty-four (24) hour a day programs and facilities for seriously mentally ill adults (hereinafter referred to as CLIENTS) on an "as requested" basis for the County of El Dorado Health and Human Services Agency, 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 County of El Dorado Charter, Section 210 (b) (6) and/or Government Code 31000;

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

Article I. SCOPE OF SERVICES

Section 1.01 CONTRACTOR Responsibilities

- (a) CONTRACTOR acknowledges that this Agreement is funded in whole or in part with funds from the State of California. CONTRACTOR shall adhere to all terms and conditions herein and shall specifically adhere to all terms and conditions as set forth in Article VI; Confidentiality and Information Security Provisions set forth in Exhibit A; and Exhibit B DMH Letter 10-02.
- (b) CONTRACTOR shall maintain a staff including a minimum of two (2) on-site psychiatrists; one (1) on-site medical doctor; and sufficient nursing staff scheduled twenty-four (24) hours a day, seven days a week, to meet the needs of the clients.
- (c) Provide psychiatric treatment and rehabilitation services including but not limited to:
 - (i) A treatment plan designed specifically for each resident, focusing on medication, behavioral and psychiatric needs;
 - (ii) A daily agenda to assist CLIENTS with elementary functions including activities of daily living, interactive groups, both cognitive and rudimentary, as well as group outings and associated work programs; and
 - (iii) A highly structured program that caters to a wide spectrum of the mental health community, with a goal to allow CLIENTS to develop into self-reliant human beings and thus allow their return to a less restrictive setting in the community.

Section 1.02 Programs

- (a) **MHRC Main Program** employs a highly structured daily program that allows both developmental growth and self-reliance. The daily program assists CLIENTS with rudimentary skills including activities of daily living and interactive groups.
 - (i) *Cognitive sessions* focus on such topics as; anger management, medication awareness and impulse control, provide necessary tools for each resident to realize their potential.
 - (ii) *Group therapy sessions* provided on a weekly schedule, conducted by the Staff Psychiatrist, the Director of Nursing, Team Leader(s) and staff. These sessions help identify and isolate resident concerns, progress and reoccurring issues and gauge the overall progress of the unit.
 - (iii) *One-on-one sessions* also referred to as "Resident Staffing," are designed to delve further into the root causes of behavior as well as the specific needs of the individual resident, addressing behavioral issues, medication changes and program compliance. One-on-one supervisions shall be provided on an "as needed" basis as determined by medical order of the CONTRACTOR's staff psychiatrist and with approval within twenty-four (24) hours of the Health and Human Services Agency Director or Director's designee. The purpose of one-on-one supervision is to maintain placement and reduce the possibility of injury to self or others.
 - (iv) The program examines the progress of each resident as it pertains to their needs and gauges their individual success.

- (b) The **Diversion Program** is designed to serve court ordered diversion and Incompetent to Stand Trial – Penal Code 1370 (IST 1370) individuals. The individuals in this program have been incarcerated facing charges of either misdemeanor or felony and are unable to stand trial due to a mental illness or a mental illness with a co-occurring developmental disability.
- (i) The program goal is to use a structured daily program to allow for competency restoration and diversionary programs. By treating these individuals, the CONTRACTOR can assess whether or not an individual is competent to stand trial or is in need of further psychiatric evaluation and treatment.
 - (ii) The daily program assists CLIENTS with rudimentary skills including activities of daily living and interactive/cognitive groups as well as comprehensive treatment plans designed to address their individual mental health needs.
 - (iii) Specific training sessions addressing competency restoration focus on such topics as; an understanding of courtroom proceedings; penalties, charges and defenses; legal terminology, and various tests used to determine levels of competency.
 - (iv) There are five (5) levels within the Diversion Program, as noted below. Individuals admitted to Level 4 remain at that level until/unless deemed to be competent to stand trial by the Court. Clients converted from a PC 1370 (Level 4) status (via Murphy’s Conservatorship) to LPS or 6500 Conservatorship(s) shall convert to a Level 0.

Level 4	Entry to Incompetent to Stand Trial (IST) – Penal Code 1370
Level 3	Resident declared either trial competent or non-restorable to trial competency, or resident has been admitted from jail to this program unrelated to “IST – Penal Code 1370.”
Level 2	Behavior has improved enough to gain additional in-residence privileges.
Level 1	Behavior has improved enough to go on Supervised Outings.
Level 0	Resident converted from “IST – Penal Code 1370” to LPS Conservatorship and pending transfer to Main Program or discharge.

- (v) CONTRACTOR shall obtain written authorization from COUNTY pursuant to Section 1.05(d) prior to moving CLIENTS from their level on admission to a higher level of care. Movement to a lower level of care is at the discretion of the CONTRACTOR or upon request from COUNTY.
 - (vi) The program examines the progress of each resident as it pertains to their needs and gauges their varying levels of competency and individual successes. Once competency is determined, the individual may be remanded back to the county of jurisdiction for further proceedings, or, if applicable, further treatment may be ordered.
- (c) The **Disruptive Behavioral Unit** provides individuals an intensive therapeutic program that will focus directly on disruptive behaviors. These behaviors inhibit treatment and have

the potential to affect other resident's progress. Placing individuals that are disruptive in one common area allows the CONTRACTOR to formulate and implement specific types of treatment plans designed to identify the stressors that may be causing the disruptive behaviors.

- (i) This highly structured program creates an atmosphere that minimizes distraction and focuses on recovery. Behaviors that are deemed severely disruptive and counterproductive to treatment include but are not limited to the following:
 - 1) Assaultive behavior;
 - 2) Clients at risk of being absent without leave (AWOL);
 - 3) Damage to property;
 - 4) Hygienically inappropriate;
 - 5) Hyper-sexual; and
 - 6) Noncompliance with treatment plan.
- (ii) Admission of a CLIENT to the DBU requires written preauthorization by the Health and Human Services Agency Director, or designee.
- (iii) Clients whose symptoms stabilize on the DBU are admitted directly to the MHRC program to ensure continuity of care.
- (iv) DBU Staffing:
 - 1) The unit at full capacity has a ratio of three (3) CLIENTS to one (1) staff member. This ratio provides the attention and rehabilitative skills necessary for a quicker recovery.
 - 2) In addition to the 3:1 staffing ratio, a twenty-four (24) hour nursing staff provides medications necessary to reduce agitation levels as needed, as well as activity personnel to provide group and leisure activities.
 - 3) A Team Leader and Program Clerk are also assigned to the unit for treatment plan implementation, progress reviews, and quarterly reporting.
- (v) The DBU program includes:
 - 1) Weekly one-on-one staffing sessions addressing behavioral issues, medication changes and program compliance are conducted by Board Certified Forensic Psychiatrist.
 - 2) Weekly group therapy sessions that gauge the overall progress of the unit are also conducted by the psychiatrist.

Section 1.03 Notification of Occurrences

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

Section 1.04 COUNTY-CONTRACTOR Information Sharing

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

Section 1.05 COUNTY Responsibilities

- (a) Evaluation of CONTRACTOR's Performance: The CONTRACTOR's performance under this Agreement shall be evaluated by the COUNTY after completion of the Agreement. A copy of any written evaluation shall be maintained in the COUNTY contract file.
- (b) Each service to be approved under this Agreement shall be approved by the COUNTY Contract Administrator. The COUNTY's determination as to satisfactory work shall be final absent fraud or mistake.
- (c) COUNTY shall provide written, fourteen (14) calendar days' notice to CONTRACTOR of request to discharge any CLIENT. Absent the aforementioned written fourteen (14) day notice, CONTRACTOR may in its discretion, invoice COUNTY the daily rate applicable to the specific CLIENT for those days.
- (d) COUNTY shall provide written authorization by the Health and Human Services Agency Director or designee for changes in service levels as noted in Section 1.02(b)(v).
- (e) COUNTY shall provide written preauthorization by the Health and Human Services Agency Director or designee for any CLIENT admitted to the DBU, pursuant to Section 1.02(c)(ii).

Article II. TERM

This Agreement shall become effective upon final execution by both parties hereto and shall cover the period of May 10, 2012 to March 31, 2014 unless earlier terminated pursuant to the provisions under Article XIII and Article XIV herein.

Article III. COMPENSATION FOR SERVICES

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 and Human Services Agency 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.

For services provided herein, COUNTY agrees to pay CONTRACTOR monthly in arrears and within thirty (30) days following the COUNTY's receipt and approval of itemized invoice(s) identifying services rendered. For the purpose of this Agreement, the billing rates shall be in accordance with Section 3.02.

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

provided COUNTY with evidence of insurance coverage as outlined in Article XX hereof. COUNTY may provide retroactive authorization when special circumstances exist, as determined by the Health and Human Services Agency Director, or Director's designee, based upon CONTRACTOR's written request.

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

Section 3.01 Bed Hold and Discharge Days

Payment shall be made for services rendered and shall not be made for services the CLIENT did not attend or receive, except for:

- Bed hold days – only bed hold days authorized in writing by COUNTY.
- Discharge days without written notice - any days CLIENT is discharged at the request of COUNTY absent the required fourteen (14) calendar days written notice as indicated in Section 1.05(c).
- Bed hold and unauthorized discharged days shall be paid at the rates indicated in Section 3.02.

Section 3.02 Rates

Program Type	Level of Service	Rate
Mental Health Resource Center (MHRC)	Level 3	\$300 per day
	Level 2	\$275 per day
	Level 1	\$240 per day
Diversion Program	Level 4	\$525 per day
	Level 3	\$475 per day
	Level 2	\$450 per day
	Level 1	\$425 per day
	Level 0	\$350 per day
Disruptive Behavior Unit	n/a	\$699 per day
*One-on-one Supervision	n/a	\$30 per hour
<i>*One-on-one supervision rates shall not be charged for those clients in the Disruptive Behavioral Unit.</i>		

Section 3.03 Not-to-Exceed

The not-to-exceed amount over the term of this Agreement shall be \$250,000.

Section 3.04 Invoices/Remittances

Invoices / Remittance shall be addressed as indicated in the table below or to such other location as COUNTY or CONTRACTOR may direct per Article XV – Notice to Parties.

Mail invoices to:	Mail remittance to:
Health & Human Services Agency – Finance Unit 929 Spring Street Placerville, CA 95667	California Psychiatric Transitions, Inc. P.O. Box 339 Delhi, CA 95315 Attn: Accounts Receivable

Article IV. NOTIFICATION OF ANCILLARY MEDICAL SERVICES

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

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

Article V. MANDATED REPORTER

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

Article VI. SPECIAL TERMS AND CONDITIONS

By signing this Agreement, CONTRACTOR and any of CONTRACTOR’s subcontractors providing services under this Agreement (pursuant to Article XI) shall comply with these terms and conditions.

Section 6.01 License and Certifications

(a) Inpatient Contracts and Subcontracts

If this Agreement 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.

(b) Permits and Licenses

The CONTRACTOR shall procure and keep in full force and effect during the term of this Agreement all permits, registrations and licenses necessary to accomplish the work specified in this Agreement, and give all notices necessary and incident to the lawful execution of the work.

The CONTRACTOR shall keep informed of, observe, comply with, and cause all of its agents, subcontractors 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 Agreement. 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 COUNTY in writing.

Section 6.02 Key Personnel

CONTRACTOR's key personnel as identified at the time of execution of this Agreement may not be substituted without COUNTY Contract Administrator's prior written approval.

Section 6.03 Utilization Review

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.

Section 6.04 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.

Section 6.05 Non-Discrimination Provisions

- (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 human immunodeficiency virus [HIV] and acquired immune deficiency syndrome [AIDS]), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. CONTRACTOR and any subcontractors shall ensure 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 (Government Code [GC] Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations [CCR] Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing GC Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code (CCR), 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.

Section 6.06 Disabled Veteran Business Enterprises (DVBE)

Unless specifically waived by the COUNTY, CONTRACTOR shall comply with the Disabled Veteran Business Enterprises participation goal in accordance with the provisions of Public Contract Code Section 10115 et seq.

Section 6.07 Audit and Inspection Rights

- (a) CONTRACTOR agrees that COUNTY, California Department of Health Care Services or Department of Mental Health (DHCS-DMH), the State 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 COUNTY and 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).
- (b) COUNTY or State staff shall be permitted to work side-by-side with CONTRACTOR's staff to the extent and under conditions as directed by the COUNTY Contract Administrator. In this connection, COUNTY or State staff shall be given access to all data, working papers, etc., which CONTRACTOR seeks to utilize.

- (c) The CONTRACTOR shall allow COUNTY, DHCS-DMH, 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 Agreement 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 COUNTY or State. Authorized agencies shall maintain the confidentiality of such books and records in accordance with applicable laws and regulations.
- (d) 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 COUNTY or State, 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 (5) years from the close of COUNTY's fiscal year in which the subcontract was in effect.
- (e) 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 COUNTY, State, 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 (5) years from the close of COUNTY's fiscal year in which the subcontract was in effect.
- (f) From time to time, the COUNTY or the State may inspect the facilities, systems, books and records of CONTRACTOR to monitor compliance with the Agreement.
- (i) CONTRACTOR shall promptly remedy any violation of any provision of the Agreement and shall certify the same to the COUNTY Contract Administrator and the (State of California) Information Security Officer in writing.
- (ii) The fact that the COUNTY or 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 Agreement.

- (iii) The COUNTY or State's failure to detect, or the 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 COUNTY or State's enforcement rights under the Agreement.

Section 6.08 Public Hearings

If public hearings on the subject matter dealt with in this Agreement are held within one (1) year from the Agreement expiration date, CONTRACTOR shall make available to testify the personnel assigned to this Agreement at the hourly rates specified in the CONTRACTOR's proposed budget. COUNTY shall reimburse CONTRACTOR for travel of said personnel at the Agreement rates for such testimony as may be requested by COUNTY or State.

Section 6.09 Additional Agreement Provisions

(a) Copeland Anti-Kickback Act

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) Davis-Bacon Act

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) Agreement Work Hours and Safety Standards Act

The CONTRACTOR shall comply with the provisions of the Agreement 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 Agreement 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) Clean Air Act & Federal Water Pollution Control Act

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) Debarment and Suspension

The CONTRACTOR shall comply with the provisions of Title 2, CFR, Section 180 as implemented by Title 2 CFR Section 376, 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) Federal Contractor Exclusions

Pursuant to Title 42, US Code Section 1320a-7 and 1320c-5, and Welfare and Institutions Code Section 14123, the CONTRACTOR shall not employ or enter into an Agreement 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.

(g) Federal Regulations Requirements

If applicable, based on the services provided under this Agreement, the CONTRACTOR agrees to comply as follows:

(i) 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 ninety (90) days after the effective date of the change.

(ii) The CONTRACTOR shall obtain approval from COUNTY prior to implementing a Physician Incentive Plan as described at Title 42, CFR, Section 438.6(h). COUNTY shall confer with DHCS-DMH as necessary and shall approve the CONTRACTOR's request only if the proposed Physician Incentive Plan complies with all applicable Federal and State regulations.

(h) Captions

The clause headings appearing in this Agreement 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.

Article VII. RECORD RETENTION

CONTRACTOR agrees to make all of its books and records pertaining to the goods and services furnished under the terms of this Agreement available for inspection, examination, or copying by authorized COUNTY, State of California, or Federal agencies, or their duly authorized representatives, at all reasonable times at 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 (5) years from the close of the COUNTY's fiscal year in which the Agreement was in effect, or longer period as may be required by Federal or State of California law including, but not limited to any record retention laws pertaining to minors, psychiatric health facilities, psychology clinics, psychologists and/or other licensed professionals. If at the end of the applicable retention period, there is litigation or an audit or other investigation involving those books or records, CONTRACTOR will retain the books or records until the resolution of such litigation, audit or investigation.

Article VIII. PUBLICATIONS AND REPORTS

Section 8.01 Publications

If a publication and/or report is required under this Agreement, CONTRACTOR shall:

- (a) Incorporate any comments or revisions required by the COUNTY into any publication or report and shall not publish any material until it receives final COUNTY approval.
- (b) Furnish two (2) 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 COUNTY 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)

- (f) COUNTY and the State of California reserve the right to use and reproduce all publications, reports, and data produced and delivered pursuant to this Agreement. COUNTY and the State of California further reserve 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.
- (g) If the publication and/or report are prepared by non-employees of the COUNTY and the State of California, 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).

Section 8.02 Progress Reports

If progress reports are required by this Agreement, CONTRACTOR shall provide a progress report in writing, or orally if approved by the COUNTY Contract Administrator, at intervals to be determined by Contract Administrator. This progress report shall include, but not be limited to, a statement that the CONTRACTOR is or is not on schedule, any pertinent reports, interim findings and other information as directed by COUNTY. CONTRACTOR shall cooperate with and shall be available to meet with the COUNTY to discuss any difficulties, or special problems, so that solutions or remedies can be developed as soon as possible.

Section 8.03 Presentation

Upon request, CONTRACTOR shall meet with the COUNTY to present any findings, conclusions, and recommendations required by the Agreement 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.

Article IX. 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 X. 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 XI. 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. In the event COUNTY agrees in writing that CONTRACTOR may subcontract for services under this Agreement, CONTRACTOR shall include in any subcontract all the terms and conditions of Article IV this Agreement; shall require that all subcontractors comply with all terms and conditions of this Agreement; and shall require that all subcontractors comply with all pertinent Federal and State statutes and regulations.

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Article XII. 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 XIII. FISCAL CONSIDERATIONS

Section 13.01 Fiscal Considerations

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

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

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

Section 13.02 Hold Harmless

CONTRACTOR agrees to hold harmless the State of California and its beneficiaries in the event the COUNTY cannot or shall not pay for services performed by the CONTRACTOR pursuant to this Agreement.

Article XIV. DEFAULT, TERMINATION, AND CANCELLATION

Section 14.01 Default

- (a) 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.
- (b) 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.
- (c) No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of COUNTY to enforce at any time the provisions of this Agreement, 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 nor to affect the validity of this Agreement or the right of COUNTY to enforce said provisions.

Section 14.02 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 14.03 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 14.04 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 Agreement 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.

Section 14.05 Transfer of Care

Prior to the termination or expiration of this Agreement and upon request by the COUNTY or State of California DHCS-DMH, the CONTRACTOR shall assist in the orderly transfer of beneficiaries' mental health care. In doing this, the CONTRACTOR shall make available to COUNTY or the State of California 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 COUNTY. Costs of reproduction shall be borne by the COUNTY. In no circumstances shall a beneficiary be billed for this service.

Article XV. 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 AND HUMAN SERVICES AGENCY
3057 BRIW ROAD, SUITE A
PLACERVILLE, CA 95667
ATTN: DANIEL NIELSON, M.P.A., DIRECTOR

or to such other location as the COUNTY directs.

Notices to CONTRACTOR shall be addressed as follows:

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

or to such other location as the CONTRACTOR directs.

Article XVI. CONFIDENTIALITY AND INFORMATION SECURITY

Section 16.01 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), 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). CONTRACTOR shall comply with Exhibit A Confidentiality and Information Security Provisions, attached hereto and incorporated by reference herein.

- (b) Nondisclosure. CONTRACTOR shall not use or disclose confidential, individually identifiable, or sensitive information other than as permitted or required by the Agreement and as required by law.

Section 16.02 Confidentiality of Data and Documents

- (a) CONTRACTOR shall not disclose data or documents or disseminate the contents of the final or any preliminary report without written permission of the COUNTY Contract Administrator. 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.
- (b) 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 Agreement or required by law.
- (c) 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 COUNTY or State's actions on the same, except to COUNTY or State staff or CONTRACTOR's own personnel involved in the performance of this Contract, or as required by law.
- (d) If requested by COUNTY, CONTRACTOR shall require each of its employees or officers who will be involved in the performance of this Agreement to agree to the above terms in a form to be approved by COUNTY and shall supply COUNTY with evidence thereof.
 - (i) Each subcontract shall contain the foregoing provisions related to the confidentiality of data and nondisclosure.
- (e) After any data or documents submitted have become a part of the public records of the COUNTY or the State of California, CONTRACTOR may at its own expense and upon written approval by the COUNTY Contract Administrator, 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.

Section 16.03 Provisions Relating to Data

- (a) "Data" as used in this Agreement 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 Agreement. 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.
- (b) "Generated data" is that data, which CONTRACTOR has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the CONTRACTOR in the performance of this Agreement at State expense, together with complete documentation thereof, shall be treated in the same manner as generated data.
- (c) "Deliverable data" is that data which under terms of this Agreement is required to be delivered to the COUNTY. Such data shall be property of the COUNTY.
- (d) Prior to the expiration of any legally required retention period and before destroying any data, CONTRACTOR shall notify the COUNTY of any such contemplated action; and COUNTY may within thirty (30) days of said notification determine whether or not this data shall be further preserved. The COUNTY shall pay the expense of further preserving this data. COUNTY shall have unrestricted reasonable access to the data that is preserved in accordance with this Agreement.
- (e) CONTRACTOR shall use best efforts to identify and furnish competent witnesses to testify in any court of law regarding data used in or generated under the performance of this Agreement.

Article XVII. INDEMNITY

The CONTRACTOR shall defend, indemnify, and hold the COUNTY, its Officers, employees, agents, and representatives, or State of California or its officers or employees, 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, State of California 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 and the State of California harmless includes the duties to defend set forth in California Civil Code Section 2778.

Article XVIII. LITIGATION

The COUNTY, promptly after receiving notice thereof, shall notify the CONTRACTOR in writing of the commencement of any claim, suit, or action against the COUNTY or State of California or its officers or employees for which the CONTRACTOR must provide indemnification under this Agreement. The failure of the COUNTY to give such notice, information, authorization or assistance shall not relieve the CONTRACTOR of its indemnification obligations. The CONTRACTOR shall immediately notify the COUNTY of any claim or action against it which affects, or may affect, this Agreement, the terms and conditions hereunder, or the COUNTY or State of California, and shall take such action with respect to said claim or action which is consistent with the terms of this Agreement and the interest of the COUNTY and State.

Article XIX. DEBARMENT

Debarment and Suspension Certification: By signing this Agreement, the CONTRACTOR agrees to comply with applicable Federal suspension and debarment regulations and CONTRACTOR further certifies to the best of its knowledge and belief that it and its principals or affiliates or any sub-contractor utilized under the agreement:

- 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 or destruction 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 the above Paragraph B;
- D. Have not within a three (3)-year period preceding this 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 or subrecipient covered transaction with any person(s) who are proposed for debarment under Federal regulations or are 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 or subrecipient covered transactions.

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 and State Governments, COUNTY may immediately terminate this Agreement for cause or default.

The CONTRACTOR shall comply with the provisions of Title 2, CFR, Section 180 as implemented by Title 2 CFR Section 376, 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.

Article XX. INSURANCE

Section 20.01 CONTRACTOR shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that CONTRACTOR maintains insurance that meets the following requirements:

- (a) Full Workers' Compensation and Employers Liability Insurance covering all employees of CONTRACTOR as required by law in the State of California; and
- (b) Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage;
- (c) Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by the CONTRACTOR in the performance of the Agreement.
- (d) 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 20.02 CONTRACTOR shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.

Section 20.03 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 20.04 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 20.05 The certificate of insurance must include the following provisions listed under Section 20.05(a) and (b) (including an endorsement page for the "additional insured" language pursuant to Section 20.05(b)), 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 20.06 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 20.07 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 20.08 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 20.09 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 20.10 CONTRACTOR's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

Section 20.11 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 20.12 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 XXI. 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 XXII. 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 XXIII. CONFLICT OF INTEREST

Section 23.01 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 Agreement 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".

Section 23.02 Gratuities and Contingency Fees

The COUNTY, by written notice to the CONTRACTOR, may terminate the right of CONTRACTOR to proceed under this Agreement if it is found, after notice and hearing by the COUNTY or the State of California, that gratuities were offered or given by the CONTRACTOR or any agent or representative of the CONTRACTOR to any officer or employee of the COUNTY or the State of California 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 Agreement is terminated as provided in the paragraph above, COUNTY shall be entitled (a) to pursue the same remedies against CONTRACTOR as it could pursue in the event of the breach of the Agreement 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 COUNTY provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

The CONTRACTOR warrants by execution of this Agreement that no person or agency has been employed or retained by it to solicit or secure this Agreement 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 COUNTY shall have the right to annul this Agreement without liability, paying only for the values of the work actually returned, or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Section 23.03 Use of State Funds

CONTRACTOR, including its officers and members, shall not use funds received pursuant to this Agreement 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 citizen, 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.

Section 23.04 Conflict of Interest Certification

In accordance with State of California laws and State of California 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 State Conflict of Interest Code to file statements of economic interest.

In signing this Agreement, CONTRACTOR certifies that they have read and understand GOVERNMENT CODE 19990.

Article XXIV. 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/Agreement exceeding \$1,500.00.

Article XXV. 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 XXVI. COUNTY BUSINESS LICENSE

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

Article XXVII. ADMINISTRATOR

The County Officer or employee with responsibility for administering this Agreement is Robert Evans, Mental Health Programs Manager, or successor.

Article XXVIII. 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 XXIX. 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 XXX. FORCE MAJEURE

Neither the COUNTY, the State of California, nor the CONTRACTOR shall be deemed to be in default in the performance of the terms of this Agreement if either party is prevented from performing the terms of this Agreement 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, to complete performance under this Agreement.

Article XXXI. VENUE

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

Article XXXII. 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: Daniel Nielson
Daniel Nielson, M.P.A., Director
Health and Human Services Agency

Dated: 6-9-2012

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

--COUNTY OF EL DORADO--

By: _____
John R. Knight, Chair
Board of Supervisors
COUNTY

Dated: _____

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

Deputy

Date

-- CONTRACTOR --

CALIFORNIA PSYCHIATRIC TRANSITIONS, INC

By: John T. Hackett M.D.
John T. Hackett, M.D., CEO
CONTRACTOR

Dated: 5/21/12

By: Dina Hackett
Corporate Secretary

Dated: 5/21/12

EXHIBIT A

CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS

I. 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.
- i) *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.
- ii) *Specific Uses and Disclosures Provisions.* Except as otherwise indicated in the Agreement, the CONTRACTOR may:
- (1) 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.
 - (2) Use IIHI to provide data aggregation services to COUNTY or State. 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 COUNTY and State.
- 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 COUNTY or State with information concerning such safeguards as COUNTY or State may reasonably request from time to time.

The CONTRACTOR shall implement administrative, technical, and physical safeguards to ensure the security of COUNTY or State 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

EXHIBIT A

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:

i) 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:

(1) Network-based firewall and/or personal firewall

(2) Continuously updated anti-virus software

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

ii) 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.

iii) Prior to disposal, sanitize all COUNTY and State 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 COUNTY and State 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 COUNTY or

EXHIBIT A

State, 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 COUNTY or State, or created or received by the CONTRACTOR on behalf of COUNTY or State, available to the COUNTY or State, or to the Secretary of the U.S. Department of Health and Human Services, in a time and manner designated by COUNTY or State or by the Secretary, for purposes of determining the COUNTY or State or CONTRACTOR's compliance with the HIPAA regulations.
- I. Notification of Electronic Breach or Improper Disclosure. During the term of this Agreement, CONTRACTOR shall notify the COUNTY and State immediately upon discovery of any breach of Medi-Cal IIHI 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 COUNTY and State Information Security Officer, within two (2) business days of discovery, at (530) 621-5565 or (916) 651-6776 respectively. 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 COUNTY and State Information Security Officers, postmarked within thirty (30) working days of the discovery of the breach to the addresses below:

Information Security Officer Risk Management Department County of El Dorado 330 Fair Lane Placerville, CA 95667

Information Security Officer Office of HIPAA Compliance California Department of Mental Health 1600 9 th Street, Room 102 Sacramento, CA 95814
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- 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 the COUNTY or State under this Agreement and use or disclosure of IIHI; 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 IIHI received from COUNTY or State (or created or received by CONTRACTOR on behalf of COUNTY or State) that CONTRACTOR still maintains in any form, and shall retain no copies of such IIHI 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 IIHI to those purposes that make the return or destruction of such IIHI infeasible. This provision shall apply to IIHI that is in the possession of subcontractors or agents of the CONTRACTOR.

2. MISCELLANEOUS PROVISIONS.

- A) Disclaimer. The COUNTY and State make no warranty or representation that compliance by CONTRACTOR with this Agreement, HIPAA or the HIPAA regulations shall be adequate or

EXHIBIT A

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 IIHI.

- B) 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 COUNTY or State at no cost to the COUNTY or State to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the COUNTY or State, 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.
- i) 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 the COUNTY or State or CONTRACTOR and their respective successors or assignees, any rights remedies, obligations or liabilities whatsoever.
 - ii) 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.
 - iii) 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.
 - iv) Survival. The respective rights and obligations of CONTRACTOR under Section 6.C of this Agreement shall survive the termination or expiration of this Agreement.
- C) Violations reported to U.S. Department of Health and Human Services. Upon the COUNTY or State'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 State Information Security Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- D) Judicial or Administrative Proceedings. The COUNTY 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.



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

February 1, 2010

DMH LETTER: 10-02

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

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

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

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

Inappropriate Claiming of FFP for Services Provided in IMDs

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

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

DMH LETTER NO.: 10-02
February 1, 2010
Page 2

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

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

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

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

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

Sincerely,

Original Signed by

STEPHEN W. MAYBERG, Ph.D.
Director

Enclosures

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

Exhibit B
ATTACHMENT 1

Medical Ancillary Services Billing Procedure Update

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

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

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

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

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

[Hardcopy version only]

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

DCN/IDCN 10660

EDS Editor: Marianne Temple (636-19220)
Marianne.temple@eds.com

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

Medical Ancillary Services Billing Procedure Update

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

Distribution: **Article:** IP, 13th, Part 1
MRPs: *inp ment 13/14 (Part 2)*
elig rstrict 1/2 (Part 1)
Internet: This article will be added to the Medi-Cal Newsroom

Source: DHCS-generated source doc, sent to Publications 6-15-09

DHCS Contact:

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

Effective Date: Immediately, per source doc

EDS Contact: Monica Sellers

SELECTED STATE & FEDERAL STATUTES & REGULATIONS RELATED TO IMDs

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

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

Title 42, CFR, § 435.1009, Institutionalized individuals.

“(a) FFP is not available in expenditures for services provided to –

- (1) Individuals who are inmates of a public institution as defined in Sec. 435.1010.
- (2) Individuals under age 65 who are patients in an institution for mental diseases unless they are under age 22 and are receiving inpatient psychiatric services under Sec. 440.160 of this subchapter.

b) The exclusion of FFP described in paragraph (a) of this section does not apply during that part of the month in which the individual is not an inmate of a public institution or a patient in an institution for tuberculosis or mental diseases.

(c) An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in that institution. However, such an individual who is under age 22 and has been receiving inpatient psychiatric services under Sec. 440.160 of this subchapter is considered to be a patient in the institution until he is unconditionally released or, if earlier, the date he reaches age 22.”

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

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

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

An individual is not considered an inmate if—

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

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

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

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

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

§ 441.13, Prohibitions on FFP: Institutionalized individuals.

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

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

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

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

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

"The following services are not eligible for FFP:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit B

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

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

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

WIC, Section 5902(c)(1).

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

Exhibit B
ATTACHMENT 2

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

WIC, Section 5902(c)(3) (Excerpt related to contracts for realigned IMD services:)
"By April 1, 1992, counties shall have entered into contracts for basic institutions for mental disease services..."

WIC Section 14053.

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

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

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

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

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

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

WIC Section 14053.3.

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

4390. INSTITUTIONS FOR MENTAL DISEASES

A. Statutory and Regulatory Provisions.--The statutory provisions relating to institutions for mental diseases (IMDs) include two categories of covered services and a broad payment exclusion that can preclude payment for services provided to certain individuals in both participating and non-participating facilities.

1. IMD Coverage.--The original Medicaid legislation (P.L. 89-97) included a benefit for individuals 65 years of age or older who are in hospitals or nursing facilities that are IMDs. This provision is in §1905(a)(14) of the Act and regulations relating to this benefit are in Subpart C of 42 CFR 441.

In 1972, the Medicaid program was expanded (P.L. 92-603) to include inpatient psychiatric hospital services for individuals under age 21, or, in certain circumstances, under age 22. This provision is in §1905(a)(16) of the Act. Authority for using additional settings was enacted in P.L. 101-508. This benefit is currently being provided in a wide variety of psychiatric facilities. Regulations for this benefit are in Subpart D of 42 CFR 441.

Both IMD benefits are optional, except that inpatient psychiatric services for individuals under age 21 must be provided in any State as early and periodic screening, diagnosis and treatment (EPSDT) services if they are determined to be medically necessary.

2. IMD Exclusion.--The IMD exclusion is in §1905(a) of the Act in paragraph (B) following the list of Medicaid services. This paragraph states that FFP is not available for any medical assistance under title XIX for services provided to any individual who is under age 65 and who is a patient in an IMD unless the payment is for inpatient psychiatric services for individuals under age 21. This exclusion was designed to assure that States, rather than the Federal government, continue to have principal responsibility for funding inpatient psychiatric services. Under this broad exclusion, no Medicaid payment can be made for services provided either in or outside the facility for IMD patients in this age group.

3. IMD Definition.--In 1988, P.L. 100-360 defined an institution for mental diseases as a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. This definition is in §1905(i) of the Act and in 42 CFR 435.1009. The regulations also indicate that an institution is an IMD if its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases.

Facilities with fewer than 17 beds that specialize in treating persons with mental disorders can provide the types of services discussed in item 1 if they meet the regulatory requirements to provide these institutional benefits, but these facilities are not technically IMDs. Because IMDs are defined to be institutions with more than 16 beds, the IMD exclusion applies only to institutions with at least 17 beds.

B. Guidelines for Determining What Constitutes an Institution.--When it is necessary to determine whether an institution is an IMD, the IMD criteria listed in subsection C must be applied to the appropriate entity. In most cases, there is no difficulty in determining what entity to apply the criteria to. But in cases in which multiple components are involved, it may be necessary for the HCFA regional office (RO) to apply the following guidelines

REQUIREMENTS AND LIMITS
 4390 (Cont.) APPLICABLE TO SPECIFIC SERVICES 03-94

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit B
ATTACHMENT 3

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

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

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

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

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

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