AGREEMENT FOR SERVICES #251-157-M-E2010

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 Crestwood Behavioral Health, Inc., a Delaware Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 7590 Shoreline Drive, (Mailing: P.O. Box 7877), Stockton, CA 95219, (hereinafter referred to as "CONTRACTOR");

RECITALS

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

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

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

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

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

Article I. SCOPE OF SERVICES

CONTRACTOR agrees to furnish licensed facilities, personnel and services necessary to provide long-term 24-hour programs and facilities for clients on an "as requested" basis for the Health Services Department, Mental Health Division. CONTRACTOR agrees to comply with all applicable provisions of Title 9 of the California Code of Regulations (CCR).

CONTRACTOR'S responsibilities shall include, but not be limited to, services set forth in Exhibit "A," marked "Institute for Mental Diseases (IMD) Program Description," incorporated herein and made by reference a part hereof.

Article II. TERM

This Agreement shall be effective July 1, 2010 and shall expire June 30, 2013, unless terminated earlier pursuant to provisions under Article XIV or Article XV herein.

Article III. COMPENSATION FOR SERVICES

Section 3.01 The total amount of this Agreement shall not exceed $1,025,000.

Section 3.02 CONTRACTOR shall submit monthly invoices no later than thirty (30) days following the end of a "service month" except in those instances where CONTRACTOR obtains written approval from COUNTY Health Services Director or Director's designee granting an extension of the time to complete billing for services or expenses. For billing purposes, a "service month" shall be defined as a calendar month during which CONTRACTOR provides services in accordance with ARTICLE I, "Scope of Services."

Section 3.03 For services provided herein, COUNTY agrees to pay CONTRACTOR monthly in arrears and within forty-five (45) days following the COUNTY'S receipt and approval of itemized invoice(s) identifying services rendered. For the purposes of this Agreement, the billing rates shall be in accordance with Exhibit "B," marked "Rate Schedule," incorporated herein and made part by reference hereof. Payment shall be made for actual services rendered and shall not be made for service units the client did not attend or receive, except for bed hold days that may be authorized in writing by COUNTY. Each claim shall describe: a) units of service by individual client served, b) dates of service detail for each client, and c) facility at which services were provided.

Section 3.04 CONTRACTOR may propose rate increases or decreases from those listed herein by giving COUNTY thirty (30) days written notice of such proposed change. Rate changes will only become effective upon written acceptance of the Health Services Director or his/her designee. The Health Services Director or his/her designee may designate an effective date of such rate changes.

Section 3.05 It is expressly understood and agreed between the parties hereto that the COUNTY shall make no payment for COUNTY-responsible clients and have no obligation to make payment to CONTRACTOR unless the services provided by CONTRACTOR hereunder received prior written authorization from Health Services Director or the Director's designee. It is further agreed that COUNTY shall make no payments for services unless CONTRACTOR has provided COUNTY with evidence of insurance coverage as outlined in ARTICLE XVIII hereof. COUNTY may provide retroactive authorization when special circumstances exist, as determined by the Health Services Director or the Director's designee, based upon CONTRACTOR'S written request.

Section 3.06 It is understood that any payments received from COUNTY for services rendered under this Agreement shall be considered as payment in full and CONTRACTOR cannot look to any other source for reimbursement for the units of service provided under this Agreement, except with specific authorization from the Health Services Director.

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 (medical ancillary) 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 in writing of such occurrence. For the purposes of this provision, facilities subject to the IMD exclusion are considered to include any facility that has more than 16 beds and is in the following categories: psychiatric health facilities (PHFs); skilled nursing facilities (SNFs) with a certified special treatment program for the mentally disordered (STPs); mental health rehabilitation centers (MHRCs), and other acute psychiatric hospitals primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.

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

Article V. LIMITATION OF COUNTY LIABILITY FOR DISALLOWANCES

Notwithstanding any other provision of the Agreement, COUNTY shall be held harmless from any Federal or State audit disallowance resulting from payments made to CONTRACTOR pursuant to this Agreement. To the extent that a Federal or State audit disallowance results from a claim or claims for which CONTRACTOR has received reimbursement for services provided, COUNTY shall recoup within 30 days from CONTRACTOR through offsets to pending and future claims or by direct billing, amounts equal to the amount of the disallowance

in that fiscal year. All subsequent claims submitted to COUNTY applicable to any previously disallowed claim may be held in abeyance, with no payment made, until the federal or state disallowance issue is resolved.

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

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

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

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

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

A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

B. Have not within a three year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification of 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 Paragraph b(2) herein;

D. Have not within a three (3)-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default;

E. Shall not knowingly enter in to any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the State; and

F. Shall include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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

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

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

Article IX. RECORDS RETENTION

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

Article X. CHANGES TO AGREEMENT

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

Article XI. CONTRACTOR TO COUNTY

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

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

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

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

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

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

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

Article XV. DEFAULT, TERMINATION, AND CANCELLATION

Section 15.01 Default
Upon the occurrence of any default of the provisions of this Agreement, a party shall give written

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

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

Section 15.02 Bankruptcy
This Agreement, at the option of the COUNTY, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONTRACTOR.

Section 15.03 Ceasing Performance
COUNTY may terminate this Agreement in the event CONTRACTOR ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

Section 15.04 Termination or Cancellation without Cause
COUNTY may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by COUNTY without cause. If such prior termination is effected, COUNTY will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to CONTRACTOR, and for such other services, which COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, CONTRACTOR shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

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

Notices to COUNTY shall be addressed as follows:

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

or to such other location as the COUNTY directs.

Notices to CONTRACTOR shall be addressed as follows:

CRESTWOOD BEHAVIORAL HEALTH, INC.
7590 SHORELINE DRIVE
STOCKTON, CA 95219
ATTN: GEORGE C. LYTAL

or to such other location as the CONTRACTOR directs.

Article XVII. INDEMNITY

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

Article XVIII. INSURANCE

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

Full Workers' Compensation and Employers' Liability Insurance covering all employees of CONTRACTOR as required by law in the State of California.

Commercial General Liability Insurance of not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

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.

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.

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

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.

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.

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

The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to COUNTY, and;

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.

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.

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.

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.

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.

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

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.

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

Article XIX. INTEREST OF PUBLIC OFFICIAL

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

Article XX. INTEREST OF CONTRACTOR

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

Article XXI. CONFLICT OF INTEREST

The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. CONTRACTOR attests that it has no current business or financial relationship with any COUNTY employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. COUNTY represents that it is unaware of any financial or economic interest of any public officer or employee of CONTRACTOR relating to this Agreement. It is further understood and agreed that if such a financial interest does exist

at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

Article XXII. CALIFORNIA RESIDENCY (FORM 590)
All independent Contractors providing services to the COUNTY must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or COUNTY shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding $1,500.00.

Article XXIII. TAXPAYER IDENTIFICATION NUMBER (FORM W-9)
All independent Contractors or corporations providing services to the COUNTY must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

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

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

Article XXVI. AUTHORIZED SIGNATURES
The parties to this Agreement represent that the undersigned individuals executing this 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 XXVII. 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 XXVIII. VENUE
Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

Article XXIX. ENTIRE AGREEMENT

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

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: _____ Dated: 7/2/10

Neda West, Director
Health Services Department

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

--COUNTY OF EL DORADO--

By: _____ Dated: _____

Norma Santiago, Chair
Board of Supervisors
"COUNTY"

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

_____ Dated: _____

Deputy

--CONTRACTOR--

CRESTWOOD BEHAVIORAL HEALTH, INC.
A DELWARE CORPORATION

By: _____ Dated: 7/8/10

George C. Lytal, President &
Chief Executive Officer
"Contractor"

By: _____ Dated: 7/7/10

~~Corporate Secretary~~ CONTROLLER

EXHIBIT "A"
INSTITUTE FOR MENTAL DISEASES (IMD)
PROGRAM DESCRIPTION
CRESTWOOD BEHAVIORAL HEATH, INC.

Contractor agrees to provide El Dorado County Health Services Department, Mental Health Division with Skilled Nursing Facility (SNF)/Special Treatment Program (STP)/Institute for Mental Diseases (IMD)/Mental Health Rehabilitation Center (MHRC) services to mentally disabled adult persons ages 18-64 pursuant to Welfare and Institutions Code, Division 5, commencing with Section 5000; for IMD patients Title 22 of the California Code of Regulations, Sections 72443-72475; State Department of Mental Health Policies and Directives; and other applicable statutes and regulations.

I. DEDICATED CAPACITY

Contractor will provide SNF/STP/IMD/MHRC services as requested to El Dorado County patients under mutually agreed upon admission and utilization with any or all of the following facilities:

Crestwood Manor – Modesto
1400 Celeste Drive
Modesto, CA 95355

Crestwood Manor – Stockton
1130 Monaco Court
Stockton, CA 95207

Crestwood Behavioral Health Center – Eureka
2370 Buhne Street
Eureka, CA 95501

Crestwood Geriatric Treatment Center
(Redding)
3062 Churn Creek Road
Redding, CA 96602

Crestwood Manor – Sacramento
2600 Stockton Blvd.
Sacramento, CA 95817

Crestwood Manor – San Jose
1425 Fruitdale Avenue
San Jose, CA 95128

Crestwood Geriatric Treatment Center
2127 Mowry
Fremont, CA 94538

Crestwood Behavioral Health Center – Solano
2201 Tuolomne Street
Vallejo, CA 94589

Crestwood Behavioral Health Center
(Bakersfield)
6600 Eucalyptus Drive
Bakersfield, CA 93306

American River Residential Services
4741 Engle Road
Carmichael, CA 95608

Fruitridge Transitional Home
4256 Fruitridge Road
Sacramento, CA 95820

Crestwood Center at Napa Valley
295 Pine Breeze Drive
Angwin, CA 94508

Crestwood Manor – Fremont
4303 Stevenson Blvd.
Fremont, CA 94538

For the purpose of this Agreement, the term "bed day" includes beds held vacant for Clients who are temporarily (not more than seven days) absent from a facility.

II. PRIOR AUTHORIZATION

Written authorization must be obtained from the Director or designated staff of El Dorado County Health Services Department before admitting a patient under the terms of this Agreement. This authorization will include the agreed upon enhanced service rate, if any. Such rates are defined in Section V below.

III. LICENSING AND CERTIFICATION

Each facility referenced in this Agreement shall meet the licensing and certification requirements as follows:

- SNF with STP – requires both an SNF State license with California Department of Public Health and an STP certification from California Department of Mental Health
- MHRC – State license with California Department of Mental Health
- Community Care Center – State license with California Department of Social Services

IV. BASIC SERVICES

Basic Services for IMDs consist of usual and customary SNF services plus those services that are included in STPs as contained in Title 22 of the California Code of Regulations, Sections 72443-72475.

STPs are designed to serve clients who have a chronic psychiatric impairment and whose adaptive functioning is moderately impaired. These clients require continuous supervision and may be expected to benefit from an active rehabilitation program designed to improve their adaptive functioning or prevent any further deterioration of their adaptive functioning. Services are provided to individuals having special needs or deficits in one or more of the following areas: self-help skills, behavioral adjustment, interpersonal relationships, pre-vocational preparation and alternative placement planning.

It is further agreed by the Contractor that Basic Services will also include reasonable access to required medical treatment, up-to-date psychopharmacology, transportation to needed off-site services and bilingual/bicultural programming.

V. ENHANCED SERVICES

Enhanced Services consist of specialized program services which augment the services of STPs. Enhanced Services are designated to serve clients who have a sub-acute psychiatric impairment and/or whose adaptive functioning is severely impaired.

Exhibit B
Billing Rate Schedule
Crestwood Behavioral Health Inc
Contract Period 7/1/10 to 6/30/13

Age	Facility	Level		Basic Day Rate	Enhanced Day Rate	Total
Skilled Nursing Facility (SNF) - State License with CA Dept of Public Health and Specialty Treatment Program (STP) Certification from CA Dept of Mental Health Locked Facilities - Subject to IMD Exclusion						
18-64	**Redding - Geriatric Treatment Center (GTC)**	1		**164.09**	**10.00**	**174.09**
		2		**164.09**	**20.00**	**184.09**
		3		**164.09**	**40.00**	**204.09**
		4		**164.09**	**50.00**	**214.09**
65+	**Redding - Geriatric Treatment Center (GTC)**	1		-	-	-
		2		-	**20.00**	**20.00**
		3		-	**50.00**	**50.00**

Exhibit B
Billing Rate Schedule
Crestwood Behavioral Health Inc
Contract Period 7/1/10 to 6/30/13

Age	Facility	Level		Basic Day Rate	Enhanced Day Rate	Total
Skilled Nursing Facility (SNF) - State License with CA Dept of Public Health and Specialty Treatment Program (STP) Certification from CA Dept of Mental Health Locked Facility Not Subject to IMD Exclusion due to ratio of non Mental Health Clients in Facility						
18-64	**Stockton**	1	-		**25.00**	**25.00**
		2	-		**27.00**	**27.00**
65+	**Stockton**	1	-		-	-
		2	-		**20.00**	**20.00**
		3	-		**50.00**	**50.00**
18-64	**Modesto**	1	-		**25.00**	**25.00**
		2	-		**27.00**	**27.00**
65+	**Modesto**	1	-		-	-
		2	-		**20.00**	**20.00**
		3	-		**50.00**	**50.00**

Exhibit B
Billing Rate Schedule
Crestwood Behavioral Health Inc
Contract Period 7/1/10 to 6/30/13

Age	Facility	Level		Basic Day Rate	Enhanced Day Rate	Total
Mental Health Rehabilitation Centers (MHRC) - State license with CA Dept of Mental Health						
Locked Facilities - Subject to IMD Exclusion						
	Sacramento	1		**174.00**	-	**174.00**
		2	Sub Acute	**211.00**	-	**211.00**

Exhibit B
Billing Rate Schedule
Crestwood Behavioral Health Inc
Contract Period 7/1/10 to 6/30/13

Age	Facility	Level		Basic Day Rate	Enhanced Day Rate	Total
Community Care Centers - State license with CA Dept of Social Services Unlocked Facilities - Not Subject to the IMD Exclusion						
	American River Residental Services	1		-	**89.00**	**89.00**

EXHIBIT "C"

CALIFORNIA DEPARTMENT OF
Mental Health

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

February 1, 2010

DMH LETTER: 10-02

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

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

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

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

Inappropriate Claiming of FFP for Services Provided in IMDs

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

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

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

Sincerely,

Original Signed by

STEPHEN W. MAYBERG, Ph.D.
Director

Enclosures

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

ATTACHMENT 1

Medical Ancillary Services Billing Procedure Update

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

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

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

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

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

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

DCN/IDCN 10660

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

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

Effective Date: Immediately, per source doc

EDS Contact: Monica Sellers

ATTACHMENT 2

SELECTED STATE & FEDERAL STATUTES & REGULATIONS RELATED TO IMDs

Title 42, United States Code, Section 1396d(a)(28)(B), Definitions.
(Note: the text of this statute is too lengthy to reproduce here, but is available on the U.S. Code website search web page at http://uscode.house.gov/search/criteria.shtml.)

Title 42, CFR, § 435.1009, Institutionalized individuals.
"(a) FFP is not available in expenditures for services provided to –
(1) Individuals who are inmates of a public institution as defined in Sec. 435.1010.
(2) Individuals under age 65 who are patients in an institution for mental diseases unless they are under age 22 and are receiving inpatient psychiatric services under Sec. 440.160 of this subchapter.
b) The exclusion of FFP described in paragraph (a) of this section does not apply during that part of the month in which the individual is not an inmate of a public institution or a patient in an institution for tuberculosis or mental diseases.
(c) An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in that institution. However, such an individual who is under age 22 and has been receiving inpatient psychiatric services under Sec. 440.160 of this subchapter is considered to be a patient in the institution until he is unconditionally released or, if earlier, the date he reaches age 22."

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

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

"*Inmate of a public institution* means a person who is living in a public institution. An individual is not considered an inmate if—
(a) He is in a public educational or vocational training institution for purposes of securing education or vocational training; or
(b) He is in a public institution for a temporary period pending other arrangements appropriate to his needs."

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

"*Public institution* means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. The term "public institution" does not include—
(a) A medical institution as defined in this section;

(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 by 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:

(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

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

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.

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

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.