

**Systems Improvement Agreement  
between Milwaukee County Behavioral Health Division  
and the Centers for Medicare & Medicaid Services**

This Systems Improvement Agreement (SIA or the Agreement) is between the Centers for Medicare & Medicaid Services (CMS), a division of the United States Department of Health and Human Services (HHS), and Milwaukee County Behavioral Health Division (BHD or the Hospital) (collectively the Parties). BHD is a psychiatric hospital governed by the Mental Health Board of Milwaukee County (the Board) of the Milwaukee County Department of Health & Human Services (MCDHHS). BHD participates in the Medicare program under CCN #52-4001.

This Agreement is being executed and will be implemented to further the objectives of Titles XVIII and XIX of the Social Security Act; to facilitate the delivery of quality psychiatric hospital services to the community served by BHD; to promote consistent compliance by BHD with the applicable Medicare Conditions of Participation for Hospitals at 42 C.F.R. §§ 482.11 – 482.57 and for Psychiatric Hospitals at 42 C.F.R. §§ 482.61-482.62; and to promote consistent compliance with the regulations implementing the Emergency Medical Treatment and Labor Act (EMTALA).

**Recitals**

*Whereas*, numerous surveys at BHD found noncompliance with multiple Medicare Conditions of Participation and noncompliance with the regulations implementing EMTALA, as follows:

1. The Wisconsin Department of Health Services identified an immediate jeopardy to patient health and safety at BHD following a complaint survey conducted on August 9, 2018. CMS notified BHD of the immediate jeopardy finding on September 25, 2018. The immediate jeopardy finding was based on 42 C.F.R. § 489.24 for failure to perform comprehensive medical screening exams or to stabilize and provide appropriate treatment prior to discharge for patients who presented to the Emergency Department (ED) with psychiatric symptoms. CMS notified BHD that it was terminating BHD's provider agreement effective October 18, 2018. CMS received an acceptable plan of correction on October 1, 2018.
2. The Wisconsin Department of Health Services conducted a revisit on November 26, 2018. The revisit resulted in CMS removing the immediate jeopardy, but noncompliance remained at 42 C.F.R. §§ 489.20 and 489.24 under the Emergency Medical Treatment and Labor Act (EMTALA). On December 12, 2018, CMS notified BHD that it was extending the termination date to January 23, 2019. CMS received an acceptable plan of correction on January 3, 2019.

3. The Wisconsin Department of Health Services conducted a second revisit on January 17, 2019, which found continued noncompliance at 42 C.F.R. §§ 489.20 and 489.24 under EMTALA. CMS notified BHD on January 23, 2019, that it would extend the termination date. On January 29, 2019, CMS notified BHD that the revised termination date would be March 9, 2019. CMS received an acceptable plan of correction on February 22, 2019.
4. The Wisconsin Department of Health Services conducted a third revisit on March 5, 2019, which found continued noncompliance at 42 C.F.R. §§ 489.20 and 489.24 under EMTALA. CMS notified BHD on March 7, 2019, that CMS was extending the termination date to May 6, 2019.
5. On March 13, 2019, surveyors from the Wisconsin Department of Health Services and surveyors contracted by CMS conducted a recertification survey, which found BHD out of compliance with the Medicare Conditions of Participation at 42 C.F.R. § 482.13, Patient Rights; and 42 C.F.R. § 482.61, Special Medical Record Requirements for Psychiatric Hospitals. CMS notified BHD on April 25, 2019, that it was extending the termination date to May 21, 2019. CMS also offered BHD the option to enter into a System Improvement Agreement.

*Whereas*, CMS has determined that, in view of the impact BHD's termination would have on the community, affording BHD an additional opportunity to achieve and maintain substantial compliance with all Medicare Conditions of Participation for Hospitals and for Psychiatric Hospitals and with the regulations implementing EMTALA is in the best interest of the Medicare program in particular and the community served by BHD, generally. CMS issued a letter to BHD on May 15, 2019, indicating CMS's agreement to enter into a System Improvement Agreement with BHD and to extend the termination date to allow the parties to develop and finalize this SIA.

Whereas, BHD does not admit to the existence of the deficiencies referenced above and does not agree that these deficiencies were cited correctly. Nevertheless, BHD has agreed to remedy these alleged deficiencies and to enter into this SIA in order to comply with all required Federal laws and evidence BHD's commitment to maintain compliance therewith.

*NOW, THEREFORE*, in consideration of the stipulations contained herein the Parties agree as follows:

## Agreement

1. **Term of Agreement.** This Agreement is in effect for the period beginning on the date this Agreement is signed by CMS, through July 1, 2021, unless voluntary withdrawal or termination of the Medicare Provider Agreement occurs, the Parties amend the Agreement in accordance with Section 23, or the terms of the Agreement are fulfilled earlier, in accordance with the provisions contained in this Agreement. CMS will be the last party to sign the Agreement.

2. **Stay of Scheduled Termination Date.** CMS agrees to stay the scheduled termination BHD's Medicare Provider Agreement during the pendency of this Agreement and agrees to provide written notice of the same to be executed and delivered to BHD within 24 hours after execution of the Agreement.

A. During the term of the Agreement, CMS further agrees to exercise its discretion in conducting survey and enforcement activities with respect to BHD as provided below in Section 10.B.

B. In consideration for CMS's stay of the scheduled termination of BHD's Medicare Provider Agreement and exercise of discretion in survey and enforcement activities with respect to BHD, BHD agrees to perform the services and activities described in this Agreement at its expense.

3. **Retention of Independent Expert Consultant.** BHD, through MCDHHS, will obtain an Independent Expert Consultant ("Expert Consultant") to conduct an onsite review of BHD and to perform the services and activities specified in Sections 4, 5, and 6 of this Agreement.

A. **Name and Information of Expert Consultant:** Within 90 calendar days after the effective date of this Agreement, BHD shall provide CMS with written notification of the name and qualifications of at least three Expert Consultants that BHD proposes to retain to carry out the services and activities specified in Sections 4, 5, and 6 of this Agreement. The written notification to CMS shall contain the name of the Expert Consultant and the Expert Consultant's proposal submitted in response to MCDHHS' Request for Proposals ("RFP") to carry out the services and activities specified in this Agreement. If BHD does not receive at least three responses to MCDHHS' RFP for an Expert Consultant, BHD will submit to CMS all of the names and Expert Consultant proposals that it did receive.

B. **Minimum Qualifications of Expert Consultant:** At minimum, the proposed Expert Consultant shall be an organization or individual with expertise in the design, implementation, management, and evaluation of psychiatric hospital services, including, but not limited to the following:

1. Governance and leadership organizational effectiveness;
2. Human resource and organizational culture change management;
3. Quality and appropriateness of services provided to patients in accordance with the applicable Medicare Conditions of Participation for Hospitals, the Medicare Conditions of Participation for Psychiatric Hospitals, the regulations implementing EMTALA, and nationally accepted standards of practice;
4. Protection and promotion of patients' rights;
5. Maintenance of safe environment of care;
6. Assessment for the use of restraints;
7. Development of individualized treatment plans;
8. Quality assessment and performance improvement; and
9. Treatment of individuals with a prior criminal history.

**C. Approval or Rejection of Expert Consultant:** BHD, through MCDHHS, shall not enter into a contract with the proposed Expert Consultant to perform the duties set forth in this Agreement until BHD receives CMS's approval of the proposed Expert Consultant. Within 10 calendar days after receiving written notification of the proposed Expert Consultants as described in Section 3.A., CMS shall notify BHD in writing whether it approves or rejects each of the proposed Expert Consultants. BHD will then select an Expert Consultant from the candidates approved by CMS. If CMS rejects all three proposed Expert Consultants, BHD shall submit the names of three additional proposed Expert Consultants in accordance with the requirements set out in Section 3.A and 3.B. above. If on the third attempt at submitting names of proposed Expert Consultants, BHD fails to propose an Expert Consultant meeting the qualifications identified in Section 3.B., BHD will be in breach of this Agreement.

**D. Conflict of Interest:** Unless otherwise approved in writing by CMS, no proposed Expert Consultant may be an employee of BHD, Milwaukee County, or the State of Wisconsin or have worked for BHD, Milwaukee County, or the State of Wisconsin in the past 12 months. For the purposes of this Agreement, a conflict of interest means a person has a financial, private, or personal interest that may adversely affect or influence or appear to adversely affect or influence the professional and objective exercise of his or her duties and obligations as set forth in this

Agreement. If BHD proposes an Expert Consultant with a potential conflict of interest, BHD will explain in writing the nature and scope of the interests involved.

E. **Change of Expert Consultant:** If the Expert Consultant retained by BHD fails to fulfill its obligations to BHD and/or MCDHHS as specified in this Agreement, breaches a material term of a contract with BHD and/or MCDHHS, or abandons the position, BHD and/or MCDHHS may terminate, in accordance with State and/or County law and administrative processes, its relationship with the Expert Consultant after providing CMS with written notice of the basis for terminating its relationship with the Expert Consultant and obtaining CMS's comments prior to the termination. Within 14 calendar days after receiving CMS's written comments regarding the termination of the Expert Consultant, BHD shall provide CMS with information as described in Section 3.A regarding a replacement Expert Consultant. The process for approving the replacement Expert Consultant shall then proceed as set forth in Section 3.C. The Parties will amend this Agreement, if necessary, to incorporate any new deadlines required as a result of the change in Expert Consultant.

4. **Written Report: Gap and Root Cause Analyses.** The Expert Consultant will prepare a written report that includes a Gap Analysis that identifies areas of needed improvements in BHD's regulatory compliance; a Root Cause Analysis of process and system failures; and recommendations to achieve and sustain compliance based on the findings of the Gap and Root Cause analyses.

A. **Gap Analysis:** The Gap Analysis will include a comprehensive hospital-wide analysis of BHD's current operations compared to industry-accepted standards of practice that achieve and maintain compliance with all applicable Medicare Conditions of Participation for Hospitals and Psychiatric Hospitals, including, but not limited to the following areas:

1. Governance/leadership/management accountability mechanisms;
2. BHD's governing body, management team, and leadership structure with regard to their ability to oversee a Corrective Action Plan (as described in Section 5), with any recommendations for changes to the governing body's membership or management;
3. Providing emergency services in accordance with the Emergency Medical Treatment and Labor Act (EMTALA);
4. Quality and appropriateness of services in a safe environment;
5. Patients' rights protections;

6. Qualified and supportive staffing resources;
7. Staff training and education;
8. Nursing Services;
9. Restraint use;
10. Treatment plan development;
11. BHD's current Quality Assurance and Performance Improvement (QAPI) program, including, but not limited to whether:
  - a. The program is effective in achieving increased patient safety and improved quality of care;
  - b. It is ongoing and has adequate resources;
  - c. Hospital leadership (including the governing body) is appropriately engaged in the program;
  - d. The program is hospital-wide;
  - e. It is data-driven, including the process for determining the selection of tracking measures that comply with the requirements of 42 C.F.R. § 482.21, definitions of adverse events and methods to identify them;
  - f. Data collection and analysis are adequate; and
  - g. The program includes a process to develop, implement and evaluate performance improvement activities and projects.

**B. Root Cause Analysis:** The Root Cause Analysis of process and system failures will address the following:

1. Problem identification and definition;
2. Investigation for gathering information;
3. Identification of root causes;
4. Implementation of solutions; and

5. Process for monitoring these solutions to confirm they continue to prevent the original problem identified.

C. **Recommendations:** In addition to the Gap and Root Cause Analyses, the written report shall also include recommendations for hospital-wide changes and improvement to achieve and sustain substantial compliance with all the applicable Medicare Conditions of Participation for Hospitals and Psychiatric Hospitals and with the regulations implementing EMTALA. The recommendations must include, at a minimum, recommendations related to sustaining compliance with the Conditions of Participation at Governing Board, Patient Rights, Quality Assessment and Performance Improvement, Nursing Services, and Special Medical Record Requirements for Psychiatric Hospitals; and to sustaining compliance with regulations implementing EMTALA requirements. CMS is aware that BHD is a County owned and operated psychiatric hospital and that any recommendations submitted by the Expert Consultant may factor in BHD's need to adhere to State and/or County regulations, legislative appropriation processes and limitations, union contracts, other external factors, or market influences. BHD is aware that its status as a County owned and operated psychiatric hospital does not alleviate its obligation to comply with all applicable Medicare Conditions of Participation for Hospitals and Psychiatric Hospitals or with the regulations implementing EMTALA.

D. **Submission and Approval of the Expert Consultant Report:**

1. The Expert Consultant will submit the written report described in this Section to CMS for review and approval and will also provide an oral briefing to CMS, at the discretion of CMS, on the report's findings. This report will be due to CMS no later than 90 calendar days after CMS has provided written notice of its approval of the Expert Consultant.
2. The Expert Consultant must submit the written report to BHD and MCDHHS at the same time the report is submitted to CMS, and BHD or MCDHHS may request an oral briefing from the Expert Consultant on the contents of the report after the report is submitted to CMS. However, the Expert Consultant must not solicit any feedback or input for inclusion or revision of the report from BHD or MCDHHS.
3. If CMS rejects the written report, CMS will notify the Expert Consultant, BHD, and MCDHHS in writing that it is rejecting the written report either in total or in part. CMS may, at its discretion, provide an oral and/or written explanation to the Expert Consultant, BHD, and MCDHHS regarding its rationale for rejecting the report. The Expert Consultant will have 30 calendar days from the date of

its receipt of CMS's written notification rejecting the report to submit a revised written report.

- a. The Expert Consultant must provide a copy of the revised written report to BHD and MCDHHS at the same time the revised written report is submitted to CMS but must not solicit any feedback or input for inclusion or revision of the report from BHD or MCDHHS.
  - b. The Expert Consultant's failure to submit an acceptable written report on the third attempt shall be deemed a breach of this Agreement. Upon such failure, CMS may, at its discretion, allow BHD to obtain a new Expert Consultant in lieu of terminating BHD's Medicare Provider Agreement pursuant to Section 24. CMS recognizes that BHD is bound by State and/or County law and administrative processes in terminating the Expert Consultant and solicitation and selection of a new Expert Consultant.
4. If CMS accepts the written report described in this Section, CMS will notify the Expert Consultant, BHD, and MCDHHS in writing (via electronic mail) that CMS accepts the report. After CMS has reviewed and accepted the written report, CMS will determine a due date for submitting a Corrective Action Plan as described below in Section 5.

**5. Corrective Action Plan.**

A. **Development of the Corrective Action Plan.** After CMS has approved the written report described in Section 4, the Expert Consultant, in consultation with BHD and MCDHHS, will develop and submit to CMS a detailed, written Corrective Action Plan identifying specific actions to be taken, including milestones, to achieve and sustain substantial compliance with all the applicable Medicare Conditions of Participation for Hospitals and Psychiatric Hospitals and with the regulations implementing EMTALA. The Corrective Action Plan must include the following:

1. Identification of actions to correct identified deficiencies in each service /functional area;
2. Identification of detailed milestones related to each deficiency;
3. A proposed timeline for completion of the specific actions to be taken as identified above, including a nine-month "window" for survey activities following the completion of the Corrective Action Plan.



B. **Submission and Approval of the Corrective Action Plan.** The Expert Consultant will submit the Corrective Action Plan described in this Section to CMS for review and approval no later than the due date established in Section 4.D.4. A copy of the Corrective Action Plan must be provided to BHD and MCDHHS at the same time the Expert Consultant provides it to CMS.

1. If CMS rejects the Corrective Action Plan, CMS will notify the Expert Consultant, BHD, and MCDHHS in writing that it is rejecting the Corrective Action Plan either in total or in part. CMS may, at its discretion, provide an oral and/or written explanation to the Expert Consultant, BHD, and MCDHHS regarding its rationale for rejecting the Corrective Action Plan. The Expert Consultant shall have 30 calendar days from the date of its receipt of CMS's written notification rejecting the report to submit a revised written report. The Expert Consultant must provide a copy of the revised Corrective Action Plan to BHD and MCDHHS at the same time the revised written report is submitted to CMS.
2. The Expert Consultant's failure to submit an acceptable corrective action plan on the third attempt shall be deemed a breach of this Agreement. Upon such failure, CMS may, at its discretion, allow BHD to obtain a new Expert Consultant in lieu of terminating BHD's Medicare Provider Agreement pursuant to Section 24. CMS recognizes that BHD is bound by State and County law and administrative processes in terminating the Expert Consultant and solicitation and selection of a new Expert Consultant.

C. **Implementation of the Corrective Action Plan.** If CMS accepts the Corrective Action Plan described in this Section, CMS will notify the Expert Consultant, BHD, and MCDHHS in writing (via electronic mail) no later than seven calendar days after the date CMS accepts it. No later than 14 calendar days after receipt of CMS's notice accepting the Corrective Action Plan, BHD and MCDHHS must notify CMS in writing (via electronic mail) that they have received the Corrective Action Plan and are committed to implementing the Corrective Action Plan.

1. Any modifications of the approved Corrective Action Plan will be made and implemented only after CMS notification and approval.
2. If the timeline in the Corrective Action Plan and the nine-month survey window extend beyond the expiration date of this Agreement, CMS may, at its discretion, agree to extend the expiration date of this Agreement.

3. CMS will schedule monthly meetings with the Expert Consultant, BHD, and MCDHHS, which may be done by telephone, to discuss BHD progress in implementing the Corrective Action Plan. The Parties may agree to change the frequency of the scheduled meetings without amending this Agreement.

6. **Monthly Expert Consultant Reports.** The Expert Consultant will submit monthly written reports and updates to CMS beginning 30 calendar days after the date on which CMS has accepted the Corrective Action Plan and continuing throughout the duration of this Agreement ("Monthly Reports"). The Expert Consultant must also send a copy of the Monthly Report to BHD and MCDHHS at the same time the Expert Consultant submits the report to CMS.

A. **Content of Monthly Reports.** The Monthly Reports must include the following:

1. Progression and status of BHD's implementation of the Corrective Action Plan;
2. New areas identified that require improvement and/or expansion of the Corrective Action Plan.
3. Identification of problems that may jeopardize successful implementation of the Corrective Action Plan; and
4. Actions underway to address identified problems.
5. After the Corrective Action Plan has been fully implemented, the Monthly Report should identify any new areas that require correction as well as the actions underway to address identified problems.

B. **Option for Telephone or In-Person Meeting.** At the discretion of CMS, the Monthly Reports may be followed by face-to-face or telephone conference discussions between the Expert Consultant and CMS as needed. Any such discussions will be confidential between CMS and the Expert Consultant and conducted at the expense of BHD. BHD and MCDHHS may also request a meeting or conference with CMS and the Expert Consultant following the submission of any Monthly Report.

7. **On-Site Independent Compliance Consultant.** In addition to engaging an Independent Expert Consultant, BHD will contract with an independent, full-time on-site Compliance Consultant ("Compliance Consultant") to work closely with the Independent Expert Consultant and the BHD Chief Nursing Officer to

monitor implementation of the Corrective Action Plan. The Compliance Consultant shall not be the same as the Expert Consultant or be an independent contractor or employee of the Expert Consultant. BHD shall retain the services of a Compliance Consultant at BHD throughout the duration of this Agreement.

**A. Compliance Consultant Duties.** The Compliance Consultant will provide ongoing feedback to the Parties about BHD's improvements and compliance with all Medicare Conditions of Participation for Hospitals and Psychiatric Hospitals and with the regulations implementing EMTALA, and will work directly with BHD's Chief Nursing Officer to coordinate BHD's Quality Assessment and Performance Improvement (QAPI) program. As part of this oversight, the Compliance Consultant will conduct quarterly comprehensive reviews of the QAPI program activities and the status of BHD's progress in meeting the Medicare Conditions of Participation for Hospitals and Psychiatric Hospitals and in meeting the requirements under EMTALA, and will provide the results to CMS, BHD, MCDHHS, and the Expert Consultant.

**B. Retention of the Compliance Consultant.**

- 1. Name and Qualifications of the Compliance Consultant.** Within 90 days after the effective date of this Agreement, BHD shall provide CMS with written notification of at least two Compliance Consultants that BHD proposes to retain to carry out the services and activities specified in this Section. The written notification to CMS shall contain the names of the Compliance Consultants and the Compliance Consultants' proposals submitted in response to MCDHHS' Request for Proposals ("RFP") to carry out the services and activities specified in this Section. If the proposed Compliance Consultant is an organization, the submission must also include the resumes for any individual that the organization is considering appointing to BHD. If BHD does not receive at least two responses to MCDHHS' RFP for a Compliance Consultant, BHD will submit to CMS the name and Compliance Consultant proposal that it did receive.
- 2. Minimum Qualifications of Compliance Consultant.** At minimum, the proposed Compliance Consultant shall be an individual or organization with expertise in the design, implementation, management, and evaluation of psychiatric hospital services, with an emphasis in the areas of Quality Assessment, Performance Improvement, and EMTALA. If BHD retains an organization as its Compliance Consultant, the organization must assign one individual to BHD throughout the duration of this Agreement.

3. **Approval or Rejection of Compliance Consultant.** BHD, through MCDHHS, shall not enter into a contract with the proposed Compliance Consultant to perform the duties set forth in this Section until BHD receives CMS's approval of the proposed Compliance Consultant. Within 10 calendar days from receiving written notification of the proposed Compliance Consultants as described in Section 7.B.1., CMS shall notify BHD and MCDHHS in writing whether it approves or rejects each of the proposed Compliance Consultants. BHD shall select a Compliance Consultant from the list of candidates approved by CMS. If CMS rejects BHD's proposed Compliance Consultants, BHD shall propose two new Compliance Consultants as described in Section 7.B.1. If on the third attempt at submitting names of proposed Compliance Consultants, BHD fails to propose a Compliance Consultant meeting the qualifications specified in Section 7.B.2, BHD will be in breach of this Agreement.
4. **Conflict of Interest.** Unless otherwise approved in writing by CMS, no proposed Compliance Consultant may be an employee of BHD or MCDHHS or have been employed by BHD or MCDHHS in the past 12 months. For purposes of this Agreement, a conflict of interest means a person has a financial, private, or personal interest that may adversely affect or influence or appear to adversely affect or influence the professional and objective exercise of his or her duties and obligations as set forth in this Agreement. If BHD proposes an individual with a potential conflict of interest, BHD will explain in writing the nature and scope of the interests involved.
5. **Change of Compliance Consultant.** If the Compliance Consultant retained by BHD fails to fulfill its obligations to BHD or MCDHHS as specified in this Agreement, or abandons the position, BHD, through MCDHHS, may terminate, in accordance with State and/or County law and administrative processes, its relationship with the Compliance Consultant after providing CMS with written, explanatory notice of the basis for terminating its relationship with the Compliance Consultant and obtaining CMS's comment prior to the termination. Within 14 calendar days after receiving CMS's written comments regarding the termination of the Compliance Consultant, BHD shall propose a replacement Compliance Consultant to CMS in accordance with Section 7.B.1. The process for approving the replacement Compliance Consultant shall then proceed as set forth in Section 7.B.3.

8. **Final Surveys.** CMS will authorize two unannounced full Medicare certification surveys upon the completion of the approved Corrective Action Plan

described in Section 5 of this Agreement. The surveys will determine BHD's compliance with all applicable Medicare Conditions of Participation for Hospitals and Psychiatric Hospitals and with the regulations implementing EMTALA. The surveys will be conducted prior to the end date of this Agreement.

9. **BHD Resource Allocation.** BHD and MCDHHS agree that financial and personnel resources, within legislative appropriation, will be made available to ensure BHD's efforts to comply with the terms of this Agreement. In addition, MCDHHS and BHD agree that the availability of these financial and personnel resources, within legislative appropriation, will not negatively impact the operations of any other health care providers operated by MCDHHS.

10. **Compliance & Enforcement.**

A. Notwithstanding any provision of this Agreement, or any document generated pursuant hereto, CMS and its agents retain full legal authority and responsibility to investigate substantial allegations of noncompliance and otherwise evaluate compliance with Medicare participation requirements. To this end, CMS, or its authorized agents, may use its existing authority to survey BHD and take enforcement action, including termination of BHD's Medicare Provider Agreement.

B. Without limiting its authority to investigate substantial allegations of noncompliance and otherwise evaluate compliance with Medicare participation requirements, CMS will consider exercising discretion in conducting survey and enforcement activity at BHD while this Agreement remains in effect.

1. CMS may provide the Expert Consultant, BHD, and MCDHHS with information acquired during the course of this Agreement that may be relevant to the development or implementation of the Corrective Action Plan.
2. CMS will provide BHD with the opportunity to provide information about any deficiencies identified during any survey and to meet with CMS to discuss the deficiencies.

C. If BHD demonstrates no condition-level noncompliance with any applicable Medicare Conditions of Participation and compliance with the regulations implementing EMTALA during the two Medicare certification surveys referenced in Section 8, CMS will promptly rescind the pending termination of BHD's Medicare provider Agreement. If any other deficiencies are identified during either of the Medicare certification surveys referenced in Section 8, BHD must submit to CMS within 14 calendar days of receiving the CMS 2567, Statement of Deficiencies, an acceptable plan of correction that is approved by CMS. BHD's deemed status will be restored and the survey jurisdiction of the State will be rescinded only after BHD

successfully passes both certification surveys with no condition-level noncompliance and with compliance with the regulations implementing EMTALA after an acceptable plan of correction has been approved by CMS for any other deficiencies identified during the surveys.

D. In the event that the survey(s) referenced in Section 8 finds condition-level noncompliance in one or more of the Medicare Conditions of Participation for Hospitals or Psychiatric Hospitals or any noncompliance with the regulations implementing EMTALA, CMS will promptly notify BHD and MCDHHS of these findings and set a date for termination of BHD's Medicare Provider Agreement consistent with the notice requirements at 42 C.F.R. § 489.53(d).

1. CMS agrees that this termination decision will be based solely on the findings from the Medicare certification survey(s) referenced in Section 8. CMS may, at CMS's sole discretion, decide not to terminate BHD's Medicare Provider Agreement following condition-level noncompliance that is identified during either certification survey referenced in Section 8.
2. If CMS decides not to terminate BHD's Medicare Provider Agreement for condition-level noncompliance or for noncompliance with the regulations implementing EMTALA, identified during either certification survey referenced in Section 8, BHD must require the Expert Consultant to submit to CMS within 30 calendar days of the survey, a second written report as described in Section 4 of this Agreement that includes a Gap and Root Cause Analysis focusing on the areas for which the relevant noncompliance was found.
  - a. If CMS accepts the written report, the Expert Consultant will issue the accepted report to BHD and MCDHHS no later than two calendar days after CMS accepts it, and no later than two calendar days after receipt of the written report, BHD and MCDHHS must notify CMS in writing (via electronic mail) that they have received the report. No later than 14 calendar days after BHD and MCDHHS have received the written report, BHD must prepare, in consultation with the Expert Consultant, and submit to CMS an acceptable Corrective Action Plan that identifies the specific actions to be taken to address the condition-level noncompliance or noncompliance with the regulations implementing EMTALA (as well as any other deficiencies identified during the survey).
  - b. If CMS rejects the written report submitted by the Expert Consultant or BHD fails to submit an acceptable Corrective

Action Plan within the time frame stated above, such action shall be deemed a breach of this Agreement by BHD and CMS may proceed with termination of BHD's Medicare Provider Agreement.

11. This Agreement does not impact the Wisconsin Department of Health Services' authority to take any licensure action(s) against BHD.

12. BHD shall remain solely responsible for achieving and maintaining substantial compliance with all applicable Medicare requirements.

13. CMS is not responsible for providing BHD, MCDHHS, or its outside Expert Consultant or Compliance Consultant with technical advice in meeting BHD's obligations under its existing Medicare Provider Agreement. CMS may, however, at CMS's sole discretion, provide guidance or discuss best practices with the Expert Consultant, Compliance Consultant, BHD, or MCDHHS.

14. In fulfilling any of its duties pursuant to this Agreement, CMS may consult or seek input from the Wisconsin Department of Health Services or any contractor that performs surveys on CMS's behalf.

15. **BHD'S Right to Informal Reconsideration.** If BHD or MCDHHS wish to dispute any action taken by or on behalf of CMS under this Agreement, including possible termination of BHD's Medicare Provider Agreement at the end of this Agreement based on continued noncompliance with one or more Medicare Conditions of Participation, noncompliance with the regulations implementing EMTALA, or termination due to breach of this Agreement, it may submit a written statement with supporting evidence to CMS within 30 calendar days of receiving written notice of such action. CMS will review such submission and promptly issue a written final determination. CMS's written final determination is not subject to appeal.

16. **BHD's Waiver of Appeal Rights.** Other than requests for informal reconsideration as contemplated in Section 10.B.2 and Section 15, BHD shall neither file nor submit any action or suit against the United States, DHHS, CMS (including its officers, employees, and agents, which includes the Wisconsin Department of Health Services, but only with respect to the Wisconsin Department of Health Services in its role as an agent of CMS), or any other component of the Federal Government in any administrative or judicial forum with respect to the Medicare surveys described in the Recitals or any Medicare survey conducted while this Agreement remains in effect, including any termination action following the certification surveys referenced in Section 8 or any survey conducted in accordance with Section 10.A. This paragraph shall survive the termination of this Agreement for any reason stated here.

17. **Calendar Days.** All reference to number of days herein refers to "calendar days" rather than "business days." All deadlines that fall on a weekend day or state and/or Federal holiday will be extended to the next full business day. Any deadlines or time parameters referenced in this Agreement may be extended for good cause at the sole discretion and approval of CMS. In the event of the need to extend any deadlines, BHD, MCDHHS, the Expert Consultant, or the Expert Compliance Consultant shall send written notice to CMS detailing the reasons for the requisite extension and the additional time needed to meet the referenced deadline or time parameters.

18. **Contract Complete.** This Agreement sets forth the full and complete basis for the resolution of this matter by the Parties. Each of the Parties shall be responsible for its own costs, including attorney fees associated with this Agreement and any amendments to the Agreement.

19. **Duplicate Copies.** This Agreement will be executed with duplicate originals signed by all Parties.

20. **Contact Notifications.** All reports and notices referenced in this Agreement are to be submitted to the Parties as follows:

For CMS:

Pam Thomas  
Manager, Non-Long Term Care Certification and Enforcement Branch  
Division of Survey & Certification  
Centers for Medicare & Medicaid Services  
233 N. Michigan Avenue, Suite 600  
Chicago, IL 60601  
[Pam.Thomas@cms.hhs.gov](mailto:Pam.Thomas@cms.hhs.gov)

For BHD:

Linda Oczus, Chief Nursing Officer  
Milwaukee County Behavioral Health Division  
9455 W. Watertown Plank Road  
Milwaukee, WI 53226  
[Linda.Oczus@milwaukeecountywi.gov](mailto:Linda.Oczus@milwaukeecountywi.gov)

For Wisconsin Department of Health Services:

Wisconsin Department of Health  
Bureau of Health Services



Attention: Ann Hansen, Section Chief, Acute Care Compliance Section  
PO Box 2969  
1 West Wilson Street  
Madison, WI 53701-2969  
Ann.Hansen@dhs.wisconsin.gov

21. **Binding.** The terms of this Agreement shall be binding on the Parties hereto, including their successors, transferees, administrators, heirs, executors, designees, assigns, agents and contractors.

22. **Authority to Execute Agreement.** Each person executing the Agreement in a representative capacity on behalf of the Parties warrants that he or she is duly authorized to do so and to bind the party he or she represents to the terms and conditions of the Agreement.

23. **Amendments.** The Parties may amend this Agreement by written agreement.

24. **Breach of Agreement.** Any terms of the Agreement not met by BHD or MCDHHS will constitute a breach of the Agreement and may result in CMS exercising its right to proceed with the termination of BHD's Medicare Provider Agreement in accordance with the notice requirements at 42 C.F.R. § 489.53(d).

25. **Public Disclosure.** In the spirit of Open Government and transparency, CMS will disclose the final terms of this Agreement, and any amendments to the Agreement when executed, in accordance with written requests for the Agreement submitted under the Freedom of Information Act, 5 U.S.C. § 552. BHD and MCDHHS will not object or administratively or judicially challenge CMS's disclosure of the Agreement or any amendments to the Agreement.

26. **Information Privacy and Security.** The Parties hereby agree all documents, information and data produced or prepared in accordance with this Agreement are subject to applicable Federal and state law privacy protections including, but not limited to, Wisconsin Statutes protecting the privilege and privacy of not public data, medical records, quality assurance, patient safety, peer review, and performance improvement activities. Consequently, the documents, information and data are protected from disclosure by exemptions to the Freedom of Information Act, including but not limited to, 5 U.S.C. § 552(b) and 45 C.F.R. §§ 5.61, 5.64, and 5.69. Exemptions protecting inter-agency or intra-agency memorandums or letters, which would not be available by law to a party other than an agency in litigation with an agency, continue to apply.

**Milwaukee County Behavioral Health Division**

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

Name: Michael Lappen

Title: Administrator \_\_\_\_\_

8/1/2019

Date

**Centers for Medicare and Medicaid Services**

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

8/5/19

Date

Associate Regional Administrator  
Gregg Brandush  
Division of Survey and Certification  
Centers for Medicare & Medicaid Services  
U.S. Dept. of Health & Human Services  
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