

LANTERMAN DEVELOPMENTAL CENTER AGREEMENT

Preamble

This Agreement (Referenced herein as "the Agreement") is between the California Department of Public Health ("CDPH"), the designated agent for the California Department of Health Care Services ("State Medicaid Agency"), and the California Department of Developmental Services on behalf of its agent, the Lanterman Developmental Center ("LDC"), a Medicaid/Medi-Cal-certified Intermediate Care Facility for Individuals with Intellectual Disabilities ("ICFs/IID"), (collectively, "the Parties.") This Agreement will be executed and implemented to further the objectives of the California State Medicaid program ("Medi-Cal"), to facilitate the delivery of quality health care and rehabilitative services to the community served by LDC and to promote consistent, sustained compliance with all applicable provisions of the federal Social Security Act ("the Act") and regulatory Conditions of Participation ("CoPs"). Section 1905(d) of the Act, 42 U.S.C. § 1396d (d) (defining "intermediate care facility for the mentally retarded", now "Intermediate Care Facilities for Individuals with Intellectual Disabilities or "ICFs/IID"); 42 C.P.R. Part 483, subpart I (CoPs); see also 42 C.P.R. Part 442 (provider agreement and certification of ICFs/IID).

The Agreement will be executed, implemented, and applicable to all ICF/IID units of LDC. Further, this Agreement will be effective and binding on the parties beginning **January 16, 2014**, and will continue in effect until such time as the Parties jointly agree it is no longer necessary, unless any of the following occurs earlier: (1) DDS voluntarily withdraws the LDC ICF/IIDs from Medi-Cal participation; (2) LDC breaches any material provision of its obligations herein (in which case, this Agreement will be null and void); or (3) CDPH or the United States Department of Health and Human Services terminates the Medi-Cal provider agreement of the LDC ICF/IID.

The Agreement may only be amended, or extended beyond the date of LDC's closure by joint and mutual written agreement of the Parties.

Recitals:

Whereas, a CDPH ICF/IID Medicaid compliance survey of LDC completed by CDPH on September 26, 2013, found noncompliance with three (3) of the applicable CoPs, including deficiencies that posed immediate jeopardy to the health and safety of clients that were found to be abated on October 2, 2013;

Whereas, on October 4, 2013, CDPH notified LDC by letter that CDPH was initiating a process that would lead to termination of LDC's Medicaid/Medi-Cal certification and, thereby, LDC's participation in the Medi-Cal program as a provider of ICF/IID services on or before December 26, 2013; and later extended to January 17, 2014.

Whereas, LDC is scheduled to close entirely by December 31, 2014, and as of October 24, 2013, was still providing ICF/IID services to over 80 individuals in its care;

Whereas, CDPH has determined that it is in the best interest of the Medi-Cal program and ICF/IID clients in particular, and the community served by LDC generally, to allow LDC a further opportunity to achieve and maintain compliance in view of: (1) the impact that the immediate

termination of LDC as a provider of ICF/IID services would have on the clients, staff and community; (2) LDC's acknowledgment of deficiencies identified during the survey process and commitment to undertake the comprehensive action necessary to make sustainable improvements to client services through closure; and (3) the commitment by the State of California to provide the financial and human resources needed for LDC to achieve substantial compliance with all applicable Medi-Cal requirements and otherwise meet its clients individual needs through the date of the facility's closure;

THEREFORE, CDPH agrees to stay termination from the Medicaid/Medi-Cal Program for all of LDC's currently certified ICF/IID units for the duration of this Agreement (subject to the conditions set forth in this agreement), and any extension thereto mutually agreed to and memorialized by the Parties in consideration of the following "Commitments" by DDS and its agent, LDC.

Commitments:

On behalf of LDC, DDS commits to the following:

- 1) **Implementation of LDC's Plan of Correction (POC):** Immediately upon signing this Agreement, if not already begun, LDC will begin implementing corrective action in accordance with its CDPH-accepted POC. CDPH will begin unannounced monitoring visits to validate evidence of ongoing correction.
- 2) **Oversight of POC, Technical Addendum and Process of Facility Closure by Independent Monitor:** Within **forty-five (45)** days after the effective date of this Agreement, DDS will provide CDPH with a draft contract /scope of services between DDS and a third party hereinafter designated as the Independent Monitor (Monitor). CDPH will actively participate with DDS in the selection process and will approve the LDC Monitor ensuring composition and credentials consistent with the following:

The Monitor must have expertise in the design, implementation and management of large healthcare facilities for specialized populations as well as demonstrated national expertise in all aspects of ICF/IID services, including, but not limited to:

- (a) assurance of a safe and community oriented environment; (b) active treatment modalities/ programs; (c) leadership and management supervision and accountability; (d) assessment of the quality and appropriateness of services, including health services and medication and pharmacy services provided to clients in accordance with the Medicaid ICF/IID regulations;
- (e) protection and promotion of client rights; (f) qualified and supportive staffing resources; and (g) staff training, orientation, competence and education.

In addition, the contract between DDS and the Monitor will include a requirement that the Monitor must provide on-site evaluation of the implementation of the POC and Technical Addendum, as well as of continued compliance with federal requirements throughout the process of facility closure. The Monitor shall report to LDC and CDPH monthly on the progress of the POC and Technical Addendum (as attached to this Agreement), the facility's degree of substantial compliance with the Medicaid CoPs for ICF-IIDs, and make recommendations on the implementation to ensure compliance with federal requirements.

Further, the terms of the contract must allow the Monitor to provide technical assistance to the facility within the scope of the contract deliverables and budget, as needed, and to monitor facility training provided to ensure it achieves compliance with the Plan of Correction.

The execution of the contract by DDS is subject to the express, written approval of CDPH, which shall not be unreasonably withheld.

Within **thirty (30)** days of the approval of the draft contract, DDS must have an executed contract with the monitor.

- 3) The parties further understand and agree, notwithstanding any provision of this Agreement, or any document generated pursuant hereto, that CDPH and its agents retain full legal authority and responsibility to investigate complaints and entity-reported events and otherwise evaluate compliance with applicable Medicaid/Medi-Cal requirements, including through unannounced monitoring visits. To this end, CDPH and its agent may survey LDC and take enforcement action including, but not limited to, termination pursuant to CDPH's statutory and regulatory authority.
- 4) This Agreement shall be final and binding upon the Parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties hereto.
- 5) CDPH and DDS and its appointed ICF/IID representatives represent that this Agreement is entered into voluntarily with knowledge of the facts described herein and upon the advice of legal counsel.
- 6) This Agreement contains a complete description of the bargain between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement.
- 7) The Agreement is not binding on the Centers for Medicare & Medicaid Services, the United States Department of Health and Human Services or any other component or official role of the United States Government nor does it in any way define, limit or circumscribe Federal civil or criminal authority.
- 8) For the purposes of this Agreement, all documents, reports and notices specified in this Agreement shall be forwarded to the following representatives:

Contact Information for California Department of Developmental Services:

Patricia Flannery, Deputy Director
Developmental Centers Division
1600 Ninth Street, Rm. 340
Sacramento, California 95814

Contact Information for California Department of Developmental Services, LDC:

Cheryl Bright, Executive Director
Lanterman Developmental Center
3530 West Pomona Boulevard
P.O. Box 100
Pomona, California 91769

Contact Information for California Department of Public Health:

Scott Vivona, Chief of Field Operations
Licensing and Certification Program
California Department of Public Health
1615 Capitol Avenue
P.O. Box 997377, MS 3500
Sacramento, California 95899-7377

SIGNED THIS DAY BELOW:

FOR California Department of Developmental Services,

Printed Name: Michael Wilkening

By:  Date Signed: 11/15/14

Michael Wilkening, Acting Director
Department of Developmental Services
1600 Ninth Street, Rm. 240
Sacramento, California 95814

FOR California Department of Public Health,

Printed Name: Pam Dickfoss

By:  Date Signed: 11/15/14

Pam Dickfoss, Acting Deputy Director
Center for Health Care Quality
California Department of Public Health
1615 Capitol Avenue
P.O. Box 997377, MS 0512
Sacramento, California 95899-7377