

**INTEGRITY AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
FRESNO COUNTY, CALIFORNIA**

I. PREAMBLE

Fresno County, California (Fresno County) hereby enters into this Integrity Agreement (IA) with the Office of Inspector General (OIG) of the United States Department of Health and Human Services (HHS) to promote compliance by Fresno County and all departments and entities within its control that provide mental health services, including, but not limited to, the Department of Behavioral Health Services, the Department of Children & Family Services, and the Human Services Fiscal Division of the Auditor-Controller/Treasurer-Tax Collector Department, and all officials, employees, contractors and agents of these departments, with the statutes, regulations, and written directives of Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) (Federal health care program requirements).

In the event that Fresno County provides mental health services through other departments or agencies, in addition to those provided through the Department of Behavioral Health Services, the Department of Children & Family Services, the Human Services Fiscal Division of the Auditor-Controller/Treasurer-Tax Collector Department, the terms and obligations of this IA shall also apply to such mental health services and the department(s) or operating unit(s) through which such services are provided. Contemporaneously with this IA, Fresno County is entering into a Settlement Agreement with the United States, and this IA is incorporated by reference into the Settlement Agreement.

Prior to the Effective Date of this IA, Fresno County established a voluntary compliance program (the Fresno County Mental Health Plan Compliance Program) that includes certain compliance measures, including the appointment of a Compliance Officer and Compliance Committee, and the establishment of: 1) standards of conduct, 2) training and education requirements; 3) a disclosure program; 4) screening measures for ineligible

persons; 5) monitoring and auditing procedures; and 6) enforcement and disciplinary measures.

Fresno County shall continue the operation of its Mental Health Plan Compliance Program in accordance with the terms set forth below for the term of this IA. Fresno County may modify its voluntary compliance measures as appropriate, but, at a minimum, Fresno County shall ensure that during the term of this IA, it shall comply with the integrity obligations enumerated in this IA.

II. TERM AND SCOPE OF THE IA

A. The period of the compliance obligations assumed by Fresno County under this IA shall be five years from the effective date of this IA, unless otherwise specified. The effective date shall be the date on which the final signatory of this IA executes this IA (Effective Date). Each one-year period, beginning with the one-year period following the Effective Date, shall be referred to as a "Reporting Period."

B. Sections VII, VIII, IX, X, and XI shall expire no later than 120 days after OIG's receipt of: (1) Fresno County's final Annual Report; or (2) any additional materials submitted by Fresno County pursuant to OIG's request, whichever is later.

C. The scope of this IA shall be governed by the following definitions:

1. "*Covered Persons*" includes:

a. all officials and employees of Fresno County with responsibilities pertaining to the ordering, provision, documentation, coding, or billing of mental health services payable by a Federal health care program; and

b. all contractors, subcontractors, agents and other persons who provide mental health items or services or who perform ordering, documentation, coding or billing functions for such items or services on behalf of Fresno County. Except as otherwise provided in this IA, Covered Persons specifically includes all contracted individual and organizational providers of mental health services.

2. *Off-Site Contractor Providers.* The term “Off-Site Contractor Providers” refers to Covered Persons who contract with Fresno County (or who are employed by or sub-contract with a person or entity who contracts with Fresno County) to provide Medi-Cal mental health services at locations that are not owned or leased by Fresno County. Apart from the Medi-Cal services, Fresno County represents that it has not entered contracts with any Off-Site Contractor Providers to provide mental health services that are billed to any other Federal health care programs (including Medicare) for which the programs reimburse Fresno County.

3. *Pre-Existing Contractors.* The term “Pre-Existing Contractors” refers to Covered Persons who are independent contractors with whom Fresno County has an existing contract on the Effective Date of this IA that has not been renewed or modified after the Effective Date. Once Fresno County renegotiates, modifies, or renews a contract with an existing contractor, that contractor ceases to be a Pre-Existing Contractor as that term is used for the purposes of this IA, and Fresno County will have full responsibility for the certification and training compliance obligations as pertain to that contractor.

Notwithstanding the above, these defined terms do not include part-time or per diem employees, contractors, subcontractors, agents, and other persons who are not reasonably expected to work more than 160 hours per year, except that any such individuals shall become “Covered Persons” at the point when they work more than 160 hours during the calendar year.

Also, these defined terms do not include Stanislaus County - Stanislaus Behavioral Health and Recovery Services; Fresno Community Hospital and Medical Center - Community Behavioral Health; or Kaweah Delta District Hospital - Cypress Mental Health Center. These hospitals have each contracted with Fresno County for in-patient psychiatric services. Fresno County has represented that the hospitals provide the in-patient psychiatric services at issue, that the hospitals bill the services directly to Medi-Cal, and that the hospitals are reimbursed directly by Medi-Cal for the services.

III. CORPORATE INTEGRITY OBLIGATIONS

To the extent not already accomplished through the Mental Health Plan Compliance Program, Fresno County shall establish and maintain a Compliance Program that includes the following elements:

A. Compliance Officer and Committee.

1. *Compliance Officer.* Prior to the Effective Date, Fresno County appointed an individual to serve as its Compliance Officer. Fresno County shall maintain a Compliance Officer throughout the term of this IA. The Compliance Officer shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this IA and with Federal health care program requirements. The Compliance Officer shall be a member of senior management of Fresno County, shall make periodic (at least quarterly) reports regarding compliance matters directly to the Board of Supervisors of Fresno County, and shall be authorized to report on such matters to the Board of Supervisors at any time. The Compliance Officer shall not be or be subordinate to the County Counsel or to the Fresno County Auditor-Controller/Treasurer-Tax Collector. The Compliance Officer will report to the County Administrative Officer. The Compliance Officer shall be responsible for monitoring the day-to-day compliance activities engaged in by Fresno County as well as for any reporting obligations created under this IA.

Fresno County shall report to OIG, in writing, any changes in the identity or position description of the Compliance Officer, or any actions or changes that would affect the Compliance Officer's ability to perform the duties necessary to meet the obligations in this IA, within 15 days after such a change.

2. *Compliance Committee.* Prior to the Effective Date, Fresno County appointed a Compliance Committee, and the County shall maintain a Compliance Committee throughout the term of this IA. The Compliance Committee shall, at a minimum, include the Compliance Officer and other members of senior management necessary to meet the requirements of this IA (*e.g.*, senior executives of relevant departments, such as billing, clinical, human resources, audit, and operations). The Compliance Officer shall chair the Compliance Committee and the Committee shall support the Compliance Officer in fulfilling his/her responsibilities (*e.g.*, shall assist in the analysis of the organization's risk areas and shall oversee monitoring of internal and external audits and investigations).

Fresno County shall report to OIG, in writing, any changes in the composition of the Compliance Committee, or any actions or changes that would affect the Compliance Committee's ability to perform the duties necessary to meet the obligations in this IA, within 15 days after such a change.

B. Written Standards.

1. *Code of Conduct.* To the extent not already accomplished, Fresno County shall develop, implement, and distribute written codes of conduct to all Covered Persons. Prior to the Effective Date, Fresno County established a Code of Conduct applicable to all county employees with responsibilities relating to mental health services, and a Contractor Code of Conduct and Ethics applicable to all contractors and their corresponding employees and subcontractors who are Covered Persons. Collectively, the two codes of conduct shall be known as the "Codes of Conduct." Fresno County shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of all Covered Persons. The Codes of Conduct shall, at a minimum, set forth:

- a. Fresno County's commitment to full compliance with all Federal health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements;
- b. Fresno County's requirement that all Covered Persons shall be expected to comply with all Federal health care program requirements and with Fresno County's own Policies and Procedures as implemented pursuant to this Section III.B (including the requirements of this IA);
- c. the requirement that all Covered Persons shall be expected to report to the Compliance Officer or other appropriate individual designated by Fresno County suspected violations of any Federal health care program requirements or of Fresno County's own Policies and Procedures;
- d. the possible consequences to both Fresno County and Covered Persons of failure to comply with Federal health care program

requirements and with Fresno County's own Policies and Procedures and the failure to report such noncompliance; and

e. the right of all individuals to use the Disclosure Program described in Section III.E, and Fresno County's commitment to nonretaliation and to maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

To the extent not already accomplished, and except as otherwise provided in this Section III.B.1, within 90 days after the Effective Date, each Covered Person shall certify, in writing, that he or she has received, read, understood, and shall abide by either the Code of Conduct or the Contractor Code of Conduct and Ethics, whichever is applicable. New Covered Persons shall receive either the Code of Conduct or the Contractor Code of Conduct and Ethics, whichever is applicable, and shall complete the required certification within 30 days after becoming a Covered Person or within 90 days after the Effective Date, whichever is later.

Fresno County shall periodically review the Codes of Conduct to determine if revisions are appropriate and shall make any necessary revisions based on such review. Any revised Code of Conduct or Contractor Code of Conduct and Ethics shall be distributed within 30 days after any revisions are finalized. Each Covered Person shall certify, in writing, that he or she has received, read, understood, and shall abide by the revised Code of Conduct or Contractor Code of Conduct and Ethics within 30 days after the distribution of the applicable revised code of conduct.

For Off-Site Contractor Providers, Fresno County shall require in its contracts with the contracting individuals or entities through which the Off-Site Contractor Providers are associated with Fresno County that: (1) the contractors acknowledge Fresno County's Mental Health Plan Compliance Program and Contractor Code of Conduct and Ethics; (2) the Contractor Code of Conduct and Ethics (including the toll-free telephone number) shall be provided (either by Fresno County or the contracting entity) to all Covered Persons who are employees or subcontractors of Fresno County contractors; and (3) the contractors obtain and retain (subject to review by Fresno County and/or OIG) signed certifications that each such individual has received, has read, and understands the Contractor Code of Conduct and agrees to abide by the requirements of Fresno's Compliance Program, including the Contractor Code of Conduct and Ethics. Fresno County shall make a good faith effort to ensure that the above obligations are met by the Off-Site Contractor Providers. If an Off-Site Contractor Provider is also Pre-Existing

Contractor, then the exceptions for Pre-Existing Contractors, as set forth in Section III.C.4 below, may be applied to that Fresno County contractor.

Fresno County shall distribute the Contractor Code of Conduct and Ethics to all Pre-Existing Contractors (as defined in section II.B.3 above). Within 90 days after the Effective Date, Fresno County shall use its best efforts to obtain written certification from each Pre-Existing Contractor that he, she, or it has received, has read, understands, and shall abide by the Contractor Code of Conduct and Ethics. Any revisions to the Contractor Code of Conduct and Ethics shall be distributed to each Pre-Existing Contractor within 30 days after finalizing the changes. Fresno County shall use its best efforts to obtain on an annual basis a written certification from each Pre-Existing Contractor that he, she or it has received, read, understands, and shall abide by the Contractor Code of Conduct and Ethics. Fresno County shall maintain records of the percentage of Pre-Existing Contractors who provide such certification.

2. *Policies and Procedures.* To the extent not already accomplished, within 90 days after the Effective Date, Fresno County shall implement written Policies and Procedures regarding the operation of Fresno County's Mental Health Plan Compliance Program and its compliance with Federal health care program requirements. At a minimum, the Policies and Procedures shall address:

- a. the subjects relating to the Code of Conduct and the Contractor Code of Conduct and Ethics identified in Section III.B.1;
- b. the proper provision, documentation of, coding for, and cost report and claims submission for mental health related items and services. Among other things, these policies shall address: (1) the use of proper physician identifiers in claims submitted to Federal health care programs, identifying the physician who ordered, referred, provided, or supervised the services; (2) the requisite qualifications required by a health care professional to order, refer, provide, or supervise services billed to Federal health care programs; (3) the proper documentation of and coding for claims submitted to Federal health care programs so that they accurately reflect the services provided; and (4) the submission of claims and cost reports to Federal health care programs that are for items and services that are allowable under Federal health care program coverage criteria.

To the extent not already accomplished, within 90 days after the Effective Date, the relevant portions of the Policies and Procedures shall be distributed to all individuals whose job functions relate to those Policies and Procedures. Appropriate and knowledgeable staff shall be available to explain the Policies and Procedures.

At least annually (and more frequently, if appropriate), Fresno County shall assess and update as necessary the Policies and Procedures. Within 30 days after the effective date of any revisions, the relevant portions of any such revised Policies and Procedures shall be distributed to all individuals whose job functions relate to those Policies and Procedures.

C. Training and Education.

1. *General Training.* Within 90 days after the Effective Date, Fresno County shall provide at least one and one half hours of General Training to each Covered Person. This training, at a minimum, shall explain Fresno County's:

- a. IA requirements; and
- b. Fresno County's Mental Health Plan Compliance Program (including the Code of Conduct or the Contractor Code of Conduct and Ethics, as applicable, and the Policies and Procedures as they pertain to general compliance issues).

New Covered Persons shall receive the General Training described above within 30 days after becoming a Covered Person or within 90 days after the Effective Date, whichever is later. After receiving the initial General Training described above, each Covered Person shall receive at least one hour of General Training annually.

2. *Specific Training.* Within 90 days after the Effective Date, each Relevant Covered Person as defined below in Sections III.C.2.A-B shall receive at least two hours of Specific Training as described below in addition to the General Training required above.

Relevant Covered Persons shall receive the applicable Specific Training within 30 days after the beginning of their employment or becoming Relevant Covered Persons, or within 90 days after the Effective Date, whichever is later. A Fresno County employee who has completed the Specific Training shall review a new Relevant Covered Person's

work, to the extent that the work relates to the delivery of patient care items or services and/or the preparation or submission of claims for reimbursement from any Federal health care program, until such time as the new Relevant Covered Person completes his or her Specific Training.

After receiving the initial Specific Training described in this Section, each Relevant Covered Person shall receive at least two hours of Specific Training annually.

A. *Billing/Reimbursement Training.* Within 90 days after the Effective Date, each Covered Person who has responsibility for, or who supervises any person who has responsibility for, the preparation or submission (including, but not limited to, coding and billing) of cost reports or claims for reimbursement from the Federal health care programs for mental health items or services shall receive at least two hours of Billing/Reimbursement Training in addition to the General Training required above. This Billing/Reimbursement Training shall include a discussion of:

- a. the submission of accurate claims or cost reports relating to services rendered to Federal health care program patients;
- b. policies, procedures and other requirements applicable to the documentation of medical records;
- c. the personal obligation of each individual involved in the billing process to ensure that claims and cost report submissions are accurate;
- d. applicable reimbursement rules and statutes;
- e. the legal sanctions for improper billings; and
- f. examples of proper and improper billing practices.

B. *Provider Training.* Within 90 days after the Effective Date, each Covered Person who has responsibility for, or who supervises any person who has responsibility for, the ordering, prescribing, provision, or documentation of mental health items or services for which Fresno County seeks reimbursement shall receive at least two hours of Provider Training in addition to the General Training required above. The Provider Training shall include a discussion of:

- a. the submission of accurate claims for services rendered to Federal health care program patients;
- b. Fresno County's billing and claims submission process and an explanation of the role provider documentation plays in this process;
- c. policies, procedures and other requirements applicable to the documentation of medical records;
- d. the personal obligation of each individual involved in the documentation and billing process to ensure that such documentation and billings are accurate;
- e. applicable reimbursement rules and statutes, including any regulations related to medical necessity;
- f. the legal sanctions for improper documentation and billings; and
- g. examples of proper and improper patient file documentation.

To the extent that Fresno County has provided training that satisfies the General and/or Specific Training requirements set forth above within 180 days prior to the Effective Date, the OIG shall credit that training for purposes of satisfying part of Fresno County's training obligations for the first year of the CIA. For purposes of the General Training requirements, if Fresno County provided training on the Mental Health Plan Compliance Program that satisfies the requirements set forth in Section III.C.1 above to Covered Persons within 180 days prior to the Effective Date, the County may satisfy its remaining General Training obligation for the first year of the IA by notifying those Covered Persons of the fact that the County entered an IA and notifying them of the County's requirements and obligations under the IA.

3. *Exception for Off-Site Contractor Providers.* Fresno County shall undertake the following obligations with respect to training and certification of Off-Site Contractor Providers. Fresno County shall make the General Training, and the Billing/Reimbursement Training and/or the Provider Training as appropriate to job responsibilities, available to all Off-Site Contractor Providers. Fresno County shall use its best efforts to encourage Off-Site Contractor Provider attendance and participation.

Fresno County shall maintain records of the Off-Site Contractor Providers who do and do not attend such training. Such records shall be available for inspection by OIG.

4. *Exception for Pre-Existing Contractors.* Fresno County shall undertake the following obligations with respect to training and certification for Pre-Existing Contractors. Fresno County shall attempt to renegotiate contracts with Pre-Existing Contractors to require such contractors to meet all of the certification and training requirements of this IA. Fresno County shall make the General Training, and the Billing Reimbursement Training and/or the Provider Training as appropriate to job responsibilities, available to all pre-Existing Contractors. Fresno County shall use its best efforts to encourage Pre-Existing Contractor attendance and participation. The Compliance Officer shall keep a record of all pre-Existing Contractors who do and do not attend such training. Such records shall be available for inspection by OIG.

5. *Certification.* Each individual who is required to attend training shall certify, in writing, or in electronic form, if applicable, that he or she has received the required training. The certification shall specify the type of training received and the date received. The Compliance Officer (or designee) shall retain the certifications, along with all course materials. These shall be made available to OIG, upon request.

6. *Qualifications of Trainer(s).* Persons providing the training shall be knowledgeable about the subject area.

7. *Update of Training.* Fresno County shall annually review the training, and, where appropriate, update the training to reflect changes in Federal health care program requirements, any issues discovered during internal audits, the internal and/or IRO Claims Review, the Unallowable Cost Review, and any other relevant information.

8. *Computer-based Training.* Fresno County may provide the training required under this IA through appropriate computer-based training approaches. If Fresno County chooses to provide computer-based training, it shall make available appropriately qualified and knowledgeable staff or trainers to answer questions or provide additional information to the individuals receiving such training.

D. Review Procedures.

1. *General Description.*

a. *Engagement of Independent Review Organization.* Within 90 days after the Effective Date, Fresno County shall engage an entity (or entities), such as an accounting, auditing, or consulting firm (hereinafter “Independent Review Organization” or “IRO”), to perform reviews to assist Fresno County in assessing and evaluating its billing and coding practices and certain other obligations pursuant to this IA and the Settlement Agreement. The applicable requirements relating to the IRO are outlined in Appendix A to this IA, which is incorporated by reference.

Each IRO engaged by Fresno County shall have expertise in the documentation, billing, coding, and other requirements relating to mental health services and in the general requirements of the Federal health care program(s) from which Fresno County seeks reimbursement. Each IRO shall assess, along with Fresno County, whether it can perform the IRO review in a professionally independent and/or objective fashion, as appropriate to the nature of the engagement, taking into account any other business relationships or other engagements that may exist.

As explained below, the IRO(s) review shall evaluate and analyze Fresno County’s coding, billing, and claims submission to the Federal health care programs and the reimbursement received, and shall analyze whether Fresno County sought payment for certain unallowable costs.

b. *Frequency of Claims Review.* The Claims Review, as defined below in Section III.D.2, shall be performed annually and shall cover each of the Reporting Periods. Fresno County shall perform all components of the Claims Review, subject to Section III.D.1.d. The IRO shall perform a verification review, described in Section III.D.1.c, below.

c. *IRO Verification Review.* The IRO verification review (Verification Review) for each Reporting Period shall have two components. First, the IRO shall annually conduct a review of at least 10% of the total number of sampling units reviewed by Fresno County as part of the Business Office Medicare Review for the applicable Reporting Period. Second, the IRO shall annually review at least 50 randomly selected Paid Claims submitted to Federal health care programs from among the claims reflected in the charts reviewed by Fresno County as part of one of the three Medical Records Reviews for the applicable Reporting Period.

The IRO verification of the Medical Records Reviews shall be conducted on a rotating basis. Specifically, for the first Reporting Period, the IRO shall review 50 Paid Claims submitted to Federal health care programs reflected in the charts reviewed by Fresno County as part of the Medication Services Review. For the second Reporting Period, the IRO shall review 50 Paid Claims reflected in the charts reviewed as part of the Contract Provider Review. For the third Reporting Period, the IRO shall review 50 Paid Claims reflected in the charts reviewed as part of the County Programs Review. For the fourth Reporting Period, the IRO shall review 50 Paid Claims reflected in the charts reviewed as part of the Medication Services Review. For the final Reporting Period, the IRO shall review 50 Paid Claims reflected in the charts reviewed as part of the County Programs Review.

As part of Fresno County's Annual Report, the IRO shall submit a report that verifies that the requirements outlined in Section III.D and in Appendix B to this IA have been satisfied and shall report the results, sampling unit by sampling unit, of the Verification Review performed.

d. *IRO Claims Reviews.* Following its review of any of Fresno County's Annual Reports, if, in its sole discretion, the OIG determines that Fresno County's internal reviews were not satisfactory, the OIG can require that all aspects of the future Claims Reviews be done by the IRO.

e. *Frequency of Unallowable Cost Review.* The IRO shall perform the Unallowable Cost Review for the first Reporting Period.

f. *Retention of Records.* The IRO and Fresno County (including the departments/individuals conducting the internal audits for Fresno County) shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the IRO and Fresno County) related to the reviews.

2. Claims Review. The Claims Review shall have two components and shall be performed as described below. The applicable definitions, procedures, and reporting requirements are outlined in Appendix B to this IA, which is incorporated by reference.

a. *Current Review Procedures.*

1. Business Office Medicare Review. Under the Mental Health Plan Compliance Program, the Fresno County Business Office currently reviews a random sample of ten percent (10%) of all Medicare Paid Claims for each month to ensure compliance with select criteria outlined in the Compliance Program policies (Business Office Medicare Review). If the review identifies any Paid Claims which fail to comply with Federal health care program requirements, any payment received for those claims is promptly refunded and the Business Office conducts a 100 percent (100%) review of Medicare Paid Claims submitted during the month covered by the review. The Business Office supervisor takes appropriate action(s) to correct or eliminate any identified problems.

2. Medical Records Reviews. Under the Mental Health Plan Compliance Program, Fresno County conducts three types of medical records reviews to ensure compliance with applicable documentation and billing standards. First, pursuant to Policy No. MDR 103.0, except as otherwise provided in the policy, for each contracted individual and group provider, randomly selected charts relating to ten percent (10%) of the total cases seen for the review year or 10 cases, whichever is less, are reviewed to ensure

compliance with all applicable documentation and billing standards. This review is referred to herein as the “Contract Provider Review.”

Second, pursuant to Policy No. MDR 104.0, medication services documented in 30 charts from the caseload of each physician are reviewed for compliance with Federal health care program requirements. This review is referred to herein as the “Medication Services Review.”

Finally, pursuant to Policy No. 2.03, for each mental health program within each division of the Departments of Children & Family Services and Behavioral Health Services, a minimum of ten percent (10%) of active medical records or 10 active cases, whichever is less, are reviewed to ensure compliance with all applicable documentation and billing standards. This review is referred to herein as the “County Programs Review.”

Collectively, these three chart reviews shall be referred to as “Medical Records Reviews.” The Medical Records Reviews identify errors and disallowance amounts associated with claims submitted to Medicare and/or Medi-Cal for the services reviewed. Fresno County repays the identified disallowance amounts to Medicare and/or the Medi-Cal programs in accordance with the policies and procedures of the applicable payors.

b. *Claims Review Procedures under the IA.* Fresno County, or, if applicable, the IRO, shall continue to follow the Business Office Medicare Review Procedures and the Medical Records Reviews procedures outlined above in Sections III.D.2.a.1 and III.D.2.a.2 throughout the term of the IA (collectively, “Claims Review”). The Paid Claims shall be reviewed based on the supporting documentation available at Fresno County’s offices or under Fresno County’s control and applicable billing and coding regulations and guidance to determine whether the claim was correctly coded, submitted, and reimbursed. (Fresno County recognizes that OIG or other HHS component, in its discretion and as authorized by statute, regulation, or other appropriate authority may also analyze or review Paid Claims included, or errors identified, in the Claims Review.)

c. *Repayment of Identified Overpayments.* In accordance with Section III.H.1 of this IA, Fresno County shall repay within 30 days any Overpayment(s) identified in the Claims Review to the appropriate payor and in accordance with payor refund policies. Fresno County shall make available to OIG any and all documentation and the associated documentation that reflects the refund of the Overpayment(s) to the payor.

3. Claims and Other Internal Reviews Report. Depending on whether Fresno County conducted an internal Claims Review with an IRO Verification Review or the IRO conducted the Claims Review, Fresno County and/or the IRO shall prepare a report based upon the respective reviews performed (Claims Review Reports). With regard to the Medical Records Reviews, Fresno County shall report on each of the three component reviews annually. Information to be included in the Claims Review Report is described in Appendix B.

As part of its Mental Health Plan Compliance Program, Fresno County also conducts other internal audits, including Medi-Cal Reviews, Cost Report Reviews, and reviews of Medicare Billing through the DSG system. To the extent that these reviews pertain to Medicare, Medi-Cal, or other Federal health care programs, or to services provided to the beneficiaries of such programs, Fresno County will summarize the results or findings of these internal audits in its Claims Review Reports. Fresno County agrees to provide additional information to the OIG about these audits upon request.

4. Unallowable Cost Review. The IRO shall conduct a review of Fresno County's compliance with the unallowable cost provisions of the Settlement Agreement (Unallowable Cost Review). The IRO shall determine whether Fresno County has complied with its obligations not to charge to, or otherwise seek payment from, Federal or State payors for unallowable costs (as defined in the Settlement Agreement) and its obligation to identify to applicable Federal or State payors any unallowable costs included in payments previously sought from the United States, or any State Medicaid program. This unallowable cost analysis shall include, but not be limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Fresno County or any

affiliates. To the extent that such cost reports, cost statements, information reports, or payment requests, even if already settled, have been adjusted to account for the effect of the inclusion of the unallowable costs, the IRO shall determine if such adjustments were proper. In making this determination, the IRO may need to review cost reports and/or financial statements from the year in which the Settlement Agreement was executed, as well as from previous years.

5. Unallowable Cost Review Report. The IRO shall prepare a report based upon the Unallowable Cost Review performed. The Unallowable Cost Review Report shall include the IRO's findings and supporting rationale regarding the Unallowable Costs Review and whether Fresno County has complied with its obligation not to charge to, or otherwise seek payment from, Federal or State payors for unallowable costs (as defined in the Settlement Agreement) and its obligation to identify to applicable Federal or State payors any unallowable costs included in payments previously sought from such payor.

6. Validation Review. In the event OIG has reason to believe that:
(a) Fresno County's Claims Review and/or Verification Review or Unallowable Cost Review fails to conform to the requirements of this IA; or
(b) Fresno County's and/or the IRO's findings or Claims or Verification Review results or Unallowable Cost Review results are inaccurate, the OIG may, at its sole discretion, conduct its own review to determine whether the Claims or Verification Review or Unallowable Cost Review complied with the requirements of the IA and/or the findings or Claims or Verification Review results or Unallowable Cost Review results are inaccurate (Validation Review). Fresno County shall pay for the reasonable cost of any such review performed by OIG or any of its designated agents. Any Validation Review of Reports submitted as part of Fresno County's final Annual Report must be initiated no later than one year after Fresno County's final submission (as described in Section II) is received by OIG.

Prior to initiating a Validation Review, OIG shall notify Fresno County of its intent to do so and provide a written explanation of why OIG believes such a review is necessary. To resolve any concerns raised by OIG, Fresno County may request a meeting with OIG to: (a) discuss the results of any Claims or Verification Review or Unallowable Cost Review submissions or

findings; (b) present any additional information to clarify the results of the Claims or Verification Review or Unallowable Cost Review or to correct the inaccuracy of the Claims Review or Unallowable Cost Review; and/or (c) propose alternatives to the proposed Validation Review. Fresno County agrees to provide any additional information as may be requested by OIG under this Section in an expedited manner. OIG will attempt in good faith to resolve any Claims Review or Unallowable Cost Review issues with Fresno County prior to conducting a Validation Review. However, the final determination as to whether or not to proceed with a Validation Review shall be made at the sole discretion of OIG.

7. Independence/Objectivity Certification. The IRO shall include in its report(s) to Fresno County a certification or sworn affidavit that it has evaluated its professional independence and/or objectivity, as appropriate to the nature of the engagement, with regard to the Claims Review, Verification Review, and/or Unallowable Cost Review and that it has concluded that it is, in fact, independent and/or objective.

E. Disclosure Program.

Prior to the Effective Date, Fresno County established a Disclosure Program that includes a mechanism (e.g., a toll-free compliance telephone line) to enable individuals to disclose, to the Compliance Officer or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with Fresno County's policies, conduct, practices, or procedures with respect to a Federal health care program believed by the individual to be a potential violation of criminal, civil, or administrative law. Fresno County shall continue the Disclosure Program throughout the term of this IA. Fresno County shall appropriately publicize the existence of the disclosure mechanism (e.g., via periodic e-mails to employees or by posting the information in prominent common areas).

The Disclosure Program shall emphasize a nonretribution, nonretaliation policy, and shall include a reporting mechanism for anonymous communications for which appropriate confidentiality shall be maintained. Upon receipt of a disclosure, the Compliance Officer (or designee) shall gather all relevant information from the disclosing individual. The Compliance Officer (or designee) shall make a preliminary, good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be

conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice; and (2) provides an opportunity for taking corrective action, Fresno County shall conduct an internal review of the allegations set forth in the disclosure and ensure that proper follow-up is conducted.

The Compliance Officer (or designee) shall maintain a disclosure log, which shall include a record and summary of each disclosure received (whether anonymous or not), the status of the respective internal reviews, and any corrective action taken in response to the internal reviews. The disclosure log shall be made available to OIG, upon request.

F. Ineligible Persons.

1. *Definitions.* For purposes of this IA:

a. an “Ineligible Person” shall include an individual or entity who:

i. is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs; or

ii. has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

b. “Exclusion Lists” include:

i. the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://oig.hhs.gov>); and

ii. the General Services Administration’s List of Parties Excluded from Federal Programs (available through the Internet at <http://epls.arnet.gov>).

c. "Screened Persons" include prospective and current employees, contractors, and agents of Fresno County.

2. *Screening Requirements.* Fresno County shall ensure that all Screened Persons are not Ineligible Persons, by implementing the following screening requirements.

a. Fresno County shall screen all Screened Persons against the Exclusion Lists prior to engaging their services and, as part of the hiring or contracting process, shall require such persons to disclose whether they are an Ineligible Person.

b. Fresno County shall screen all Screened Persons against the Exclusion Lists within 90 days after the Effective Date and on an annual basis thereafter.

c. Fresno County shall implement a policy requiring all Screened Persons to disclose immediately any debarment, exclusion, suspension, or other event that makes that person an Ineligible Person.

To the extent that Fresno County has screened certain Screened Persons against the Exclusions Lists and required disclosure of eligibility status within 180 days prior the Effective Date, such actions will satisfy the County's obligations with regard to those Screened Persons for purposes of Section III.F.2.b for the first year of the IA.

Nothing in this Section affects the responsibility of (or liability for) Fresno County to refrain from billing Federal health care programs for items or services furnished, ordered, or prescribed by an Ineligible Person.

3. *Removal Requirement.* If Fresno County has actual notice that a Screened Person has become an Ineligible Person, Fresno County shall remove such person from responsibility for, or involvement with, Fresno County's business operations related to the Federal health care programs and shall remove such person from any position for which the person's compensation or the items or services furnished, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds at least until such time as the person is reinstated into participation in the Federal health care programs.

4. *Pending Charges and Proposed Exclusions.* If Fresno County has actual notice that a Screened Person is charged with a criminal offense that falls within the ambit of 42 U.S.C. §§ 1320a-7(a), 1320a-7(b)(1)-(3), or is proposed for exclusion during

his or her employment or contract term, Fresno County shall take all appropriate actions to ensure that the responsibilities of that person have not and shall not adversely affect the quality of care rendered to any beneficiary, patient, or resident, or the accuracy of any claims submitted to any Federal health care program.

G. Notification of Government Investigation or Legal Proceedings.

Within 30 days after discovery, Fresno County shall notify OIG, in writing, of any ongoing investigation or legal proceeding known to Fresno County conducted or brought by a governmental entity or its agents involving an allegation that Fresno County has committed a crime or has engaged in fraudulent activities. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Fresno County shall also provide written notice to OIG within 30 days after the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the investigation or proceedings, if any.

H. Reporting.

1. *Overpayments.*

a. Definition of Overpayments. For purposes of this IA, an “Overpayment” shall mean the amount of money Fresno County has received in excess of the amount due and payable under any Federal health care program requirements.

b. Reporting of Overpayments. If, at any time, Fresno County identifies or learns of any Overpayment, Fresno County shall notify the payor (e.g., Medicare fiscal intermediary or carrier) within 30 days after identification of the Overpayment and take remedial steps within 60 days after identification (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the Overpayment from recurring. Also, within 30 days after identification of the Overpayment, Fresno County shall repay the Overpayment to the appropriate payor to the extent such Overpayment has been quantified. If not yet quantified, within 30 days after identification, Fresno County shall notify the payor of its efforts to quantify the Overpayment amount along with a

schedule of when such work is expected to be completed. Notification and repayment to the payor shall be done in accordance with the payor's policies, and, for Medicare contractors, shall include the information contained on the Overpayment Refund Form, provided as Appendix C to this IA. Notwithstanding the above, notification and repayment of any Overpayment amount that routinely is reconciled or adjusted pursuant to policies and procedures established by the payor should be handled in accordance with such payor policies and procedures.

2. *Reportable Events.*

a. Definition of Reportable Event. For purposes of this IA, a "Reportable Event" means anything that involves:

- i. a substantial Overpayment; or
- ii. a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative laws applicable to any Federal health care program for which penalties or exclusion may be authorized.

A Reportable Event may be the result of an isolated event or a series of occurrences.

b. Reporting of Reportable Events. If Fresno County determines (after a reasonable opportunity to conduct an appropriate review or investigation of the allegations) through any means that there is a Reportable Event, Fresno County shall notify OIG, in writing, within 30 days after making the determination that the Reportable Event exists. The report to OIG shall include the following information:

- i. If the Reportable Event results in an Overpayment, the report to OIG shall be made at the same time as the notification to the payor required in Section III.H.1, and shall include all of the information on the Overpayment Refund Form, as well as:

(A) the payor's name, address, and contact person to whom the Overpayment was sent; and

(B) the date of the check and identification number (or electronic transaction number) by which the Overpayment was repaid/refunded;

ii. a complete description of the Reportable Event, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;

iii. a description of Fresno County's actions taken to correct the Reportable Event; and

iv. any further steps Fresno County plans to take to address the Reportable Event and prevent it from recurring.

IV. NEW BUSINESS UNITS OR LOCATIONS

In the event that, after the Effective Date, Fresno County changes locations or sells, closes, purchases, or establishes a new business unit or location related to the furnishing of mental health related items or services that may be reimbursed by Federal health care programs, Fresno County shall notify OIG of this fact as soon as possible, but no later than within 30 days after the date of change of location, sale, closure, purchase, or establishment. This notification shall include the address of the new business unit or location, phone number, fax number, Medicare Provider number, provider identification number and/or supplier number, and the corresponding contractor's name and address that has issued each Medicare number. Each new business unit or location shall be subject to all the requirements of this IA.

V. IMPLEMENTATION AND ANNUAL REPORTS

A. Implementation Report. Within 120 days after the Effective Date, Fresno County shall submit a written report to OIG summarizing the status of its implementation of the requirements of this IA (Implementation Report). The Implementation Report shall, at a minimum, include:

1. the name, address, phone number, and position description of the Compliance Officer required by Section III.A, and a summary of other noncompliance job responsibilities the Compliance Officer may have;
2. the names and positions of the members of the Compliance Committee required by Section III.A;
3. a copy of Fresno County's Codes of Conduct required by Section III.B.1;
4. a copy of all Policies and Procedures required by Section III.B.2;
5. the number of individuals (including employees and contractors) required to complete the Codes of Conduct certifications required by Section III.B.1, the percentage of individuals who have completed such certification, and an explanation of any exceptions (the documentation supporting this information shall be available to OIG, upon request);
6. the following information regarding each type of training required by Section III.C:
 - a. a description of such training, including a summary of the topics covered, the length of sessions and a schedule of training sessions; and
 - b. number of individuals (identified separately for employees and contractors) required to be trained, percentage of individuals actually trained, and an explanation of any exceptions.

A copy of all training materials and the documentation supporting this information shall be available to OIG, upon request.

7. a description of the Disclosure Program required by Section III.E;
8. the following information regarding the IRO(s): (a) identity, address, and phone number; (b) a copy of the engagement letter; (c) a summary and description of any and all current and prior engagements and agreements

between Fresno County and the IRO; and (d) the proposed start and completion dates of the Verification Review and Unallowable Cost Review;

9. a certification from the IRO regarding its professional independence and/or objectivity with respect to Fresno County;

10. a description of the process by which Fresno County fulfills the requirements of Section III.F regarding Ineligible Persons;

11. the name, title, and responsibilities of any person who is determined to be an Ineligible Person under Section III.F; the actions taken in response to the screening and removal obligations set forth in Section III.F; and the actions taken to identify, quantify, and repay any overpayments to Federal health care programs relating to items or services furnished, ordered or prescribed by an Ineligible Person;

12. a list of all of Fresno County's locations (including locations and mailing addresses) at which mental health services are provided and/or coded or billed; the corresponding name under which each location is doing business; the corresponding phone numbers and fax numbers; each location's Medicare Provider number(s), provider identification number(s), and/or supplier number(s); and the name and address of each Medicare contractor to which Fresno County currently submits claims;

13. a description of Fresno County's organizational structure, including identification of all relevant departments and agencies, and their respective functions; and

14. the certifications required by Section V.C.

B. Annual Reports. Fresno County shall submit to OIG annually a report with respect to the status of, and findings regarding, Fresno County's compliance activities for each of the five Reporting Periods (Annual Report).

Each Annual Report shall include, at a minimum:

1. any change in the identity, position description, or other noncompliance job responsibilities of the Compliance Officer and any change in the membership of the Compliance Committee described in Section III.A;
2. a summary of any significant changes or amendments to the Policies and Procedures required by Section III.B and the reasons for such changes (*e.g.*, change in contractor policy) and copies of any compliance-related Policies and Procedures;
3. the number of individuals (including employees and contractors) required to complete the Codes of Conduct certifications required by Section III.B.1, the percentage of individuals who have completed such certification, and an explanation of any exceptions (the documentation supporting this information shall be available to OIG, upon request);
4. the following information regarding each type of training required by Section III.C:
 - a. a description of such training, including a summary of the topics covered, the length of sessions and a schedule of training sessions;
 - b. number of individuals (identified separately for employees and contractors) required to be trained, percentage of individuals actually trained, and an explanation of any exceptions.

A copy of all training materials and the documentation supporting this information shall be available to OIG, upon request.

5. a complete copy of all reports prepared pursuant to Section III.D, along with a copy of the IRO's engagement letter (if applicable);
6. Fresno County's response and corrective action plan(s) related to any issues raised by the reports prepared pursuant to Section III.D;

7. summary and description of any and all current and prior engagements and agreements between Fresno County and the IRO, if different from what was submitted as part of the Implementation Report;
8. a certification from the IRO regarding its professional independence and/or objectivity with respect to Fresno County;
9. a summary of Reportable Events (as defined in Section III.H) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events;
10. a report of the aggregate Overpayments that have been returned to the Federal health care programs. Overpayment amounts shall be broken down into the following categories: inpatient Medicare, outpatient Medicare, Medicaid (report each applicable state separately, if applicable), and other Federal health care programs (including Medi-Cal). Overpayment amounts that are routinely reconciled or adjusted pursuant to policies and procedures established by the payor do not need to be included in this aggregate Overpayment report;
11. a summary of the disclosures in the disclosure log required by Section III.E that: (a) relate to Federal health care programs; or (b) allege abuse or neglect of patients;
12. any changes to the process by which Fresno County fulfills the requirements of Section III.F regarding Ineligible Persons;
13. the name, title, and responsibilities of any person who is determined to be an Ineligible Person under Section III.F; the actions taken by Fresno County in response to the screening and removal obligations set forth in Section III.F; and the actions taken to identify, quantify, and repay any overpayments to Federal health care programs relating to items or services relating to items or services furnished, ordered or prescribed by an Ineligible Person;
14. a summary describing any ongoing investigation or legal proceeding required to have been reported pursuant to Section III.G. The summary shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal

proceeding;

15. a description of all changes to the most recently provided list of Fresno County's locations (including addresses) as required by Section V.A.11; the corresponding name under which each location is doing business; the corresponding phone numbers and fax numbers; each location's Medicare Provider number(s), provider identification number(s), and/or supplier number(s); and the name and address of each Medicare contractor to which Fresno County currently submits claims; and

16. the certifications required by Section V.C.

The first Annual Report shall be received by OIG no later than 60 days after the end of the first Reporting Period. Subsequent Annual Reports shall be received by OIG no later than the anniversary date of the due date of the first Annual Report.

C. Certifications. The Implementation Report and Annual Reports shall include a certification by the Compliance Officer that:

(1) to the best of his or her knowledge, except as otherwise described in the applicable report, Fresno County is in compliance with all of the requirements of this IA;

(2) he or she has reviewed the Report and has made reasonable inquiry regarding its content and believes that the information in the Report is accurate and truthful; and

(3) Fresno County has complied with its obligations under the Settlement Agreement: (a) not to resubmit to any Federal health care program payors any previously denied claims related to the Covered Conduct addressed in the Settlement Agreement, and not to appeal any such denials of claims; (b) not to charge to or otherwise seek payment from Federal or State payors for unallowable costs (as defined in the Settlement Agreement); and (c) to identify and adjust any past charges or claims for unallowable costs.

D. Designation of Information. Fresno County shall clearly identify

any portions of its submissions that it believes are trade secrets, or information that is commercial or financial and privileged or confidential, and therefore potentially exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Fresno County shall refrain from identifying any information as exempt from disclosure if that information does not meet the criteria for exemption from disclosure under FOIA.

VI. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise stated in writing after the Effective Date, all notifications and reports required under this IA shall be submitted to the following entities:

OIG:

Administrative and Civil Remedies Branch
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, S.W.
Washington, DC 20201
Telephone: 202.619.2078
Facsimile: 202.205.0604

Fresno County:

Donna Taylor
Acting Compliance Officer
Fresno County Managed Care/Mental Health Plan
2536 N. Grove Industrial Drive
Fresno, CA 93727
Telephone: (559) 488-2796
Facsimile: (559) 488-6796

Unless otherwise specified, all notifications and reports required by this IA may be made by certified mail, overnight mail, hand delivery, or other means, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

VII. OIG INSPECTION, AUDIT, AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s) may examine or request copies of Fresno County's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Fresno County's locations for the purpose of verifying and evaluating: (a) Fresno County's compliance with the terms of this IA; and (b) Fresno County's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Fresno County to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit, or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of Fresno County's employees, contractors, or agents who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG. Fresno County shall assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. Fresno County's employees may elect to be interviewed with or without a representative of Fresno County present.

VIII. DOCUMENT AND RECORD RETENTION

Fresno County shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs, or to compliance with this IA, for six years (or longer if otherwise required by law).

IX. DISCLOSURES

Consistent with HHS's FOIA procedures, set forth in 45 C.F.R. Part 5, OIG shall make a reasonable effort to notify Fresno County prior to any release by OIG of information submitted by Fresno County pursuant to its obligations under this IA and identified upon submission by Fresno County as trade secrets, or information that is commercial or financial and privileged or confidential, under the FOIA rules. With respect to such releases, Fresno County shall have the rights set forth at 45 C.F.R. § 5.65(d).

X. BREACH AND DEFAULT PROVISIONS

Fresno County is expected to fully and timely comply with all of its IA obligations.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Fresno County and OIG hereby agree that failure to comply with certain obligations as set forth in this IA may lead to the imposition of the following monetary penalties (hereinafter referred to as “Stipulated Penalties”) in accordance with the following provisions.

1. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Fresno County fails to establish and implement any of the following obligations as described in Section III:

- a. a Compliance Officer;
- b. a Compliance Committee;
- c. written Codes of Conduct;
- d. written Policies and Procedures;
- e. the training of Covered Persons;
- f. a Disclosure Program;
- g. Ineligible Persons screening and removal requirements;
and
- h. Notification of Government investigations or legal proceedings.

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Fresno County fails to engage an IRO, as required in Section III.D and Appendix A.

3. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day

after the date the obligation became due) for each day Fresno County fails to submit the Implementation Report or the Annual Reports to OIG in accordance with the requirements of Section V by the deadlines for submission.

4. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Fresno County fails to submit the annual Claims Review and/or Verification Review Reports in accordance with the requirements of Section III.D and Appendix B.

5. A Stipulated Penalty of \$1,500 for each day Fresno County fails to grant access to the information or documentation as required in Section VII. (This Stipulated Penalty shall begin to accrue on the date Fresno County fails to grant access.)

6. A Stipulated Penalty of \$5,000 for each false certification submitted by or on behalf of Fresno County as part of its Implementation Report, Annual Report, additional documentation to a report (as requested by the OIG), or otherwise required by this IA.

7. A Stipulated Penalty of \$1,000 for each day Fresno County fails to comply fully and adequately with any obligation of this IA. OIG shall provide notice to Fresno County, stating the specific grounds for its determination that Fresno County has failed to comply fully and adequately with the IA obligation(s) at issue and steps Fresno County shall take to comply with the IA. (This Stipulated Penalty shall begin to accrue 10 days after Fresno County receives this notice from OIG of the failure to comply.) A Stipulated Penalty as described in this Subsection shall not be demanded for any violation for which OIG has sought a Stipulated Penalty under Subsections 1-6 of this Section.

B. Timely Written Requests for Extensions. Fresno County may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any notification or report required by this IA. Notwithstanding any other provision in this Section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after Fresno County fails to meet the revised deadline set by OIG. Notwithstanding any other provision in this Section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until three business days after Fresno County receives OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five business days prior to the date by which any act is

due to be performed or any notification or report is due to be filed.

C. Payment of Stipulated Penalties.

1. *Demand Letter.* Upon a finding that Fresno County has failed to comply with any of the obligations described in Section X.A and after determining that Stipulated Penalties are appropriate, OIG shall notify Fresno County of: (a) Fresno County's failure to comply; and (b) OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is referred to as the "Demand Letter").

2. *Response to Demand Letter.* Within 10 days after the receipt of the Demand Letter, Fresno County shall either: (a) cure the breach to OIG's satisfaction and pay the applicable Stipulated Penalties; or (b) request a hearing before an HHS administrative law judge (ALJ) to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in Section X.E. In the event Fresno County elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Fresno County cures, to OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this IA and shall be grounds for exclusion under Section X.D.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to: "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in Section VI.

4. *Independence from Material Breach Determination.* Except as set forth in Section X.D.1.c, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for OIG's decision that Fresno County has materially breached this IA, which decision shall be made at OIG's discretion and shall be governed by the provisions in Section X.D, below.

D. Exclusion for Material Breach of this IA.

1. *Definition of Material Breach.* A material breach of this IA means:

- a. a failure by Fresno County to report a Reportable Event, take corrective action, and make the appropriate refunds, as required in Section III.H;

- b. a repeated or flagrant violation of the obligations under this IA, including, but not limited to, the obligations addressed in Section X.A;
- c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with Section X.C; or
- d. a failure to engage and use its internal auditors and/or an IRO in accordance with Section III.D.

2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this IA by Fresno County constitutes an independent basis for Fresno County's exclusion from participation in the Federal health care programs. Upon a determination by OIG that Fresno County has materially breached this IA and that exclusion is the appropriate remedy, OIG shall notify Fresno County of: (a) Fresno County's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude").

3. *Opportunity to Cure.* Fresno County shall have 30 days from the date of receipt of the Notice of Material Breach and Intent to Exclude to demonstrate to OIG's satisfaction that:

- a. Fresno County is in compliance with the obligations of the IA cited by OIG as being the basis for the material breach;
- b. the alleged material breach has been cured; or
- c. the alleged material breach cannot be cured within the 30-day period, but that: (i) Fresno County has begun to take action to cure the material breach; (ii) Fresno County is pursuing such action with due diligence; and (iii) Fresno County has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If, at the conclusion of the 30-day period, Fresno County fails to satisfy the requirements of Section X.D.3, OIG may exclude Fresno County from participation in the Federal health care programs. OIG shall notify Fresno

County in writing of its determination to exclude Fresno County (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in Section X.E, below, the exclusion shall go into effect 30 days after the date of Fresno County's receipt of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and nonprocurement programs. Reinstatement to program participation is not automatic. After the end of the period of exclusion, Fresno County may apply for reinstatement by submitting a written request for reinstatement in accordance with the provisions at 42 C.F.R. §§ 1001.3001-.3004.

E. Dispute Resolution

1. *Review Rights.* Upon OIG's delivery to Fresno County of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this IA, Fresno County shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this IA. Specifically, OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an HHS ALJ and, in the event of an appeal, the HHS Departmental Appeals Board (DAB), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving Stipulated Penalties shall be made within 10 days after receipt of the Demand Letter and the request for a hearing involving exclusion shall be made within 25 days after receipt of the Exclusion Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Title 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this IA shall be: (a) whether Fresno County was in full and timely compliance with the obligations of this IA for which OIG demands payment; and (b) the period of noncompliance. Fresno County shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. OIG shall not have the right to appeal to the DAB an adverse ALJ decision related to Stipulated Penalties. If the ALJ agrees with OIG with regard to a finding of a breach of this IA and orders Fresno County to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless Fresno County requests review of the ALJ decision by the DAB. If the ALJ decision is properly appealed to the DAB and the DAB upholds the determination of OIG, the Stipulated Penalties shall become due and payable 20 days after the DAB issues

its decision.

3. *Exclusion Review.* Notwithstanding any provision of Title 42 of the United States Code or Title 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this IA shall be:

- a. whether Fresno County was in material breach of this IA;
- b. whether such breach was continuing on the date of the Exclusion Letter; and
- c. whether the alleged material breach could not have been cured within the 30-day period, but that: (i) Fresno County had begun to take action to cure the material breach within that period; (ii) Fresno County has pursued and is pursuing such action with due diligence; and (iii) Fresno County provided to OIG within that period a reasonable timetable for curing the material breach and Fresno County has followed the timetable.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to OIG, or, if the ALJ rules for Fresno County, only after a DAB decision in favor of OIG. Fresno County's election of its contractual right to appeal to the DAB shall not abrogate OIG's authority to exclude Fresno County upon the issuance of an ALJ's decision in favor of OIG. If the ALJ sustains the determination of OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Fresno County may request review of the ALJ decision by the DAB. If the DAB finds in favor of OIG after an ALJ decision adverse to OIG, the exclusion shall take effect 20 days after the DAB decision. Fresno County shall waive its right to any notice of such an exclusion if a decision upholding the exclusion is rendered by the ALJ or DAB. If the DAB finds in favor of Fresno County, Fresno County shall be reinstated effective on the date of the original exclusion.

4. *Finality of Decision.* The review by an ALJ or DAB provided for above shall not be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties to this IA agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this IA.

XI. EFFECTIVE AND BINDING AGREEMENT

Consistent with the provisions in the Settlement Agreement pursuant to which this IA is entered, and into which this IA is incorporated, Fresno County and OIG agree as follows:

A. This IA shall be binding on the successors, assigns, and transferees of Fresno County;

B. This IA shall become final and binding on the date the final signature is obtained on the IA;

C. Any modifications to this IA shall be made with the prior written consent of the parties to this IA;

D. The undersigned Fresno County signatories represent and warrant that they are authorized to execute this IA. The undersigned OIG signatory represents that he is signing this IA in his official capacity and that he is authorized to execute this IA.

ON BEHALF OF THE COUNTY OF FRESNO

COUNTY OF FRESNO

Susan B. Anderson
Chairperson, Board of Supervisors

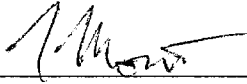
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APPROVED AS TO LEGAL FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

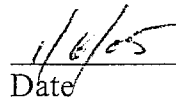
By Jamille E. Kelly

ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES



LEWIS MORRIS

Chief Counsel to the Inspector General
Office of Inspector General
U. S. Department of Health and Human Services



Date

APPENDIX A TO INTEGRITY AGREEMENT INDEPENDENT REVIEW ORGANIZATION

This Appendix contains the requirements relating to the Independent Review Organization (IRO) required by Section III.D of the Integrity Agreement (IA).

A. IRO Engagement.

Fresno County shall engage an IRO that possesses the qualifications set forth in Paragraph B, below, to perform the responsibilities in Paragraph C, below. The IRO shall conduct the review in a professionally independent and/or objective fashion, as set forth in Paragraph D. Within 30 days after OIG receives written notice of the identity of the selected IRO, OIG will notify Fresno County if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, Fresno County may continue to engage the IRO.

If Fresno County engages a new IRO during the term of the IA, this IRO shall also meet the requirements of this Appendix. If a new IRO is engaged, Fresno County shall submit the information identified in Section V.A.8 of the IA to OIG within 30 days of engagement of the IRO. Within 30 days after OIG receives written notice of the identity of the selected IRO, OIG will notify Fresno County if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, Fresno County may continue to engage the IRO.

B. IRO Qualifications.

The IRO shall:

1. assign individuals to conduct the Claims Review and/or Verification Reviews and Unallowable Cost Review engagements who have expertise in the billing, coding, reporting, and other requirements of mental health services-related claims and in the general requirements of the Federal health care program(s) from which Fresno County seeks reimbursement;
2. assign individuals to design and select the Claims Review and/or Verification Review who are knowledgeable about the appropriate statistical sampling techniques;
3. assign individuals to conduct the coding review portions of the Claims Review and/or Verification Review who have a nationally recognized coding certification (e.g., CCA, CCS, CCS-P, CPC, RRA, etc.) and who have maintained this certification (e.g., completed applicable continuing education requirements); and

4. have sufficient staff and resources to conduct the reviews required by the IA on a timely basis.

C. IRO Responsibilities.

The IRO shall:

1. perform each Claim Review and/or Verification Review, as appropriate, and Unallowable Cost Review in accordance with the specific requirements of the IA;

2. follow all applicable Federal health care program rules and reimbursement guidelines in making assessments in the Claims Review and/or Verification Review and the Unallowable Cost Review;

3. if in doubt of the application of a particular Federal health care program policy or regulation, request clarification from the appropriate authority (e.g., fiscal intermediary or carrier);

4. respond to all OIG inquiries in a prompt, objective, and factual manner; and

5. prepare timely, clear, well-written reports that include all the information required by Appendix B.

D. IRO Independence/Objectivity.

The IRO must perform the Claims Review and/or Verification Review and the Unallowable Cost Review in a professionally independent and/or objective fashion, as appropriate to the nature of the engagement, taking into account any other business relationships or engagements that may exist between the IRO and Fresno County.

E. IRO Removal/Termination.

1. *Provider.* If Fresno County terminates its IRO during the course of the engagement, Fresno County must submit a notice explaining its reasons to OIG no later than 30 days after termination. Fresno County must engage a new IRO in accordance with Paragraph A of this Appendix.

2. *OIG Removal of IRO.* In the event OIG has reason to believe that the IRO does not possess the qualifications described in Paragraph B, is not independent and/or objective as set forth in Paragraph D, or has failed to carry out its responsibilities as described in Paragraph C, OIG may, at its sole discretion, require Fresno County to engage a new IRO in accordance with Paragraph A of this Appendix.

Prior to requiring Fresno County to engage a new IRO, OIG shall notify Fresno County of its intent to do so and provide a written explanation of why OIG believes such a step is necessary. To resolve any concerns raised by OIG, Fresno County may request a meeting with OIG to discuss any aspect of the IRO's qualifications, independence or performance of its responsibilities and to present additional information regarding these matters. Fresno County shall provide any additional information as may be requested by OIG under this Paragraph in an expedited manner. OIG will attempt in good faith to resolve any differences regarding the IRO with Fresno County prior to requiring Fresno County to terminate the IRO. However, the final determination as to whether or not to require Fresno County to engage a new IRO shall be made at the sole discretion of OIG.

**APPENDIX B TO INTEGRITY AGREEMENT
CLAIMS REVIEW**

A. Claims Review.

1. *Definitions.* For the purposes of the Claims Review, the following definitions shall be used:

a. Overpayment: The amount of money Fresno County has received in excess of the amount due and payable under any Federal health care program requirements.

b. Item: Any discrete unit that can be sampled (e.g., code, line item, beneficiary, patient encounter, etc.).

c. Paid Claim: A code or line item submitted by Fresno County and for which Fresno County has received reimbursement from the Medicare or Medi-Cal program.

d. Population: For the first Reporting Period, the Population shall be defined as all Items for which a code or line item has been submitted by or on behalf of Fresno County and for which Fresno County has received reimbursement from Medicare or Medi-Cal (i.e., Paid Claim) during the 12 month period covered by the first Claims Review.

For the remaining Reporting Periods, the Population shall be defined as all Items for which Fresno County has received reimbursement from Medicare or Medi-Cal (i.e., Paid Claim) during the 12-month period covered by the Claims Review.

To be included in the Population, an Item must have resulted in at least one Paid Claim.

e. Error Rate: The Error Rate shall be the percentage of net Overpayments identified in the sample. The net Overpayments shall be calculated by subtracting all underpayments identified in the sample from all gross Overpayments identified in the sample. (Note: Any potential cost settlements or other supplemental payments should not be included in the net Overpayment calculation. Rather, only underpayments identified as part of the Discovery Sample shall be included as part of the net Overpayment calculation.)

The Error Rate is calculated by dividing the net Overpayment identified in the sample by the total dollar amount associated with the Items in the sample.

2. *Other Requirements.*

a. Paid Claims without Supporting Documentation. For the purpose of appraising Items included in the Claims Review, any Paid Claim for which Fresno County cannot produce documentation sufficient to support the Paid Claim shall be considered an error and the total reimbursement received by Fresno County for such Paid Claim shall be deemed an Overpayment. Replacement sampling for Paid Claims with missing documentation is not permitted.

b. Replacement Sampling. Considering the Population shall consist only of Paid Claims and that Items with missing documentation cannot be replaced, there is no need to utilize alternate or replacement sampling units.

c. Use of First Samples Drawn. For the purposes of all samples discussed in this Appendix and reviewed as part of the Claims Review, the Paid Claims associated with the Items selected in each first sample (or first sample for each strata, if applicable) shall be used (*i.e.*, it is not permissible to generate more than one list of random samples and then select one for use with applicable sample).

B. Claims Review Report. The following information shall be included in the Claims Review Report for each sample reviewed for both components of the Claims Review (*i.e.*, the Business Office Medicare Review and the Medical Records Reviews).

1. *Claims Review Methodology.*

a. Sampling Unit. A description of the Item as that term is utilized for the Claims Review.

b. Claims Review Population. A description of the Population subject to the Claims Review.

c. Claims Review Objective. A clear statement of the objective intended to be achieved by the Claims Review.

d. Sampling Frame. A description of each sampling frame, which is the totality of Items from which each sample reviewed as part of the Claims

Review has been selected, and an explanation of the methodology used to identify the sampling frame. The sampling frame may be identical to the Population.

e. Source of Data. A description of the specific documentation relied upon by Fresno County and/or the IRO when performing the Claims Review or Verification Review (e.g., medical records, physician orders, certificates of medical necessity, requisition forms, local medical review policies (including title and policy number), CMS or Medi-Cal program memoranda (including title and issuance number), Medicare or Medi-Cal carrier or intermediary manual or bulletins (including issue and date), other policies, regulations, or directives).

f. Review Protocol. A narrative description of how the Claims Review was conducted and what was evaluated.

2. *Statistical Sampling Documentation.*

a. The number of Items appraised in each sample reviewed in both components of the Claims Review.

b. A copy of the printout of the random numbers generated by the “Random Numbers” function of the statistical sampling software used by Fresno County and/or the IRO.

c. A description or identification of the statistical sampling software package used to select each sample.

3. *Claims Review Findings.*

a. Narrative Results.

i. A description of Fresno County’s billing and coding system(s), including the identification, by position description, of the personnel involved in coding and billing.

ii. A narrative explanation of Fresno County’s and/or the IRO’s findings and supporting rationale (including reasons for errors, patterns noted, *etc.*) regarding each component of the Claims Review, including the results of each monthly 10% Sample in the Business Office Medicare Review; if applicable, the results of the

100% review of all Paid Claims submitted in the month at issue; and the results of each of the three Medical Records Reviews.

b. Quantitative Results.

i. Total number and percentage of instances in which Fresno County and/or the IRO determined that the Paid Claims submitted by Fresno County (Claim Submitted) differed from what should have been the correct claim (Correct Claim), regardless of the effect on the payment.

ii. Total number and percentage of instances in which the Claim Submitted differed from the Correct Claim and in which such difference resulted in an Overpayment to Fresno County.

iii. Total dollar amount of all Overpayments in each sample.

iv. Total dollar amount of paid Items included in each sample and the net Overpayment associated with each sample.

v. Error Rate in each sample.

vi. A spreadsheet of the Claims Review results for each sample that includes the following information for each Paid Claim appraised: beneficiary health insurance claim number, date of service, procedure code submitted, procedure code reimbursed, allowed amount reimbursed by payor, correct procedure code (as determined by Fresno County and/or the IRO), correct allowed amount (as determined by Fresno County and/or the IRO), dollar difference between allowed amount reimbursed by payor and the correct allowed amount. (See Attachment 1 to this Appendix.)

4. *Credentials.* The names and credentials of the individuals who: (1) designed the statistical sampling procedures and the review methodology utilized for the Claims Review; and (2) performed the Claims Review.

OVERPAYMENT REFUND

TO BE COMPLETED BY MEDICARE CONTRACTOR

Date: _____
 Contractor Deposit Control # _____ Date of Deposit: _____
 Contractor Contact Name: _____ Phone # _____
 Contractor Address: _____
 Contractor Fax: _____

TO BE COMPLETED BY PROVIDER/PHYSICIAN/SUPPLIER

Please complete and forward to Medicare Contractor. This form, or a similar document containing the following information, should accompany every voluntary refund so that receipt of check is properly recorded and applied.

PROVIDER/PHYSICIAN/SUPPLIER NAME _____
 ADDRESS _____
 PROVIDER/PHYSICIAN/SUPPLIER # _____ CHECK NUMBER# _____
 CONTACT PERSON: _____ PHONE # _____ AMOUNT OF CHECK \$ _____
 CHECK DATE _____

REFUND INFORMATION

For each Claim, provide the following:

Patient Name _____ HIC # _____
 Medicare Claim Number _____ Claim Amount Refunded \$ _____
 Reason Code for Claim Adjustment: _____ (Select reason code from list below. Use one reason per claim)

(Please list all claim numbers involved. Attach separate sheet, if necessary)

Note: If Specific Patient/HIC/Claim #/Claim Amount data not available for all claims due to Statistical Sampling, please indicate methodology and formula used to determine amount and reason for overpayment: _____

For Institutional Facilities Only:

Cost Report Year(s) _____
 (If multiple cost report years are involved, provide a breakdown by amount and corresponding cost report year.)

For OIG Reporting Requirements:

Do you have a Corporate Integrity Agreement with OIG? _____ Yes _____ No

Reason Codes:

- | | | |
|---|---|---|
| <p><u>Billing/Clerical Error</u></p> <ul style="list-style-type: none"> 01 - Corrected Date of Service 02 - Duplicate 03 - Corrected CPT Code 04 - Not Our Patient(s) 05 - Modifier Added/Removed 06 - Billed in Error 07 - Corrected CPT Code | <p><u>MSP/Other Payer Involvement</u></p> <ul style="list-style-type: none"> 08 - MSP Group Health Plan Insurance 09 - MSP No Fault Insurance 10 - MSP Liability Insurance 11 - MSP, Workers Comp.(Including Black Lung 12 - Veterans Administration | <p><u>Miscellaneous</u></p> <ul style="list-style-type: none"> 13 - Insufficient Documentation 14 - Patient Enrolled in an HMO 15 - Services Not Rendered 16 - Medical Necessity 17 - Other (Please Specify) |
|---|---|---|

