

EATING DISORDERS

THIS THIRD AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING constitutes part of the Memorandum of Understanding made and entered between Inland Empire Health Plan, a Joint Powers Agency (“IEHP”) and the San Bernardino County Department of Behavioral Health (“SBDBH”) (jointly referred to as “Parties”) dated February 13, 2018.

WHEREAS, the Parties have a mutual desire to provide medically and clinically appropriate health services to IEHP members and DBH clients, identified as having a severe eating disorder;

WHEREAS, the Parties desire to add this Addendum (ADDENDUM) to the Memorandum of Understanding, which is intended to be Addendum II;

WHEREAS, this ADDENDUM delineates the areas of understanding and agreement between IEHP and SBDBH;

NOW, THEREFORE, the Parties agree to incorporate this ADDENDUM as follows:

EATING DISORDERS

I. INTRODUCTION

For the purpose of this ADDENDUM, a severe eating disorder is one that requires consideration of a higher level of care to manage the eating disorder than either SBDBH or IEHP can reasonably provide treatment via their respective outpatient provider networks. IEHP is responsible for primary health services to Medi-Cal recipients who have selected IEHP as their managed care plan, while SBDBH is the Mental Health Plan (MHP) responsible for providing Specialty Mental Health Services to eligible Medi-Cal beneficiaries.

IEHP and SBDBH mutually agree to put forth its best efforts and reasonable diligence in determination and treatment of members/clients identified as having an eating disorder. IEHP and SBDBH mutually agree to establish satisfactory methods for problem resolution in the quickest possible manner, which is also in the best interest of the mutual member/client. IEHP and SBDBH agree to resolve issues at the lowest possible level, before implementing the problem resolution clause indicated in this ADDENDUM.

SBDBH and IEHP agree that the following treatment services for eating disorders are not generally covered by Medi-Cal:

- specialized inpatient eating disorders units,
- residential treatment centers,
- partial hospitalization programs, and/or
- intensive outpatient programs.

II. DEFINITIONS

- A. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) – A federal law designed to improve portability and continuity of health insurance coverage in the

ADDENDUM II

- group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes.
- B. MEMBER – shall mean each Individual whose enrolled at IEHP and receiving services from SBDBH.
 - C. PERSONALLY IDENTIFIABLE INFORMATION (PII) – PII is information that can be used alone or in conjunction with other personal or identifying information, which is linked or linkable to a specific individual. This includes: name, social security number, date of birth, address, driver's license, photo identification, other identifying number (case number, client index number, County's billing and transactional database system number /medical record number, etc.).
 - D. PROTECTED HEALTH INFORMATION (PHI) – PHI is individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper or oral. Individually identifiable information is information, including demographic data, that relates to the individual's past, present or future physical or mental health or condition; the provision of health care to the individual; or the past, present, or future payment for the provision of health care to the individual, and identifies the individual or for which there is reasonable basis to believe it can be used to identify the individual. PHI excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; in records described at 20 U.S.C. 1232g(a)(4)(B)(iv); in employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than fifty (50) years.
 - E. SEVERE EATING DISORDER - a severe eating disorder is one that requires consideration of a higher level of care to manage the eating disorder than either SBDBH or IEHP can reasonably provide treatment via their respective outpatient provider networks

III. SBDBH SPECIFIC RESPONSIBILITIES

- A. SBDBH shall notify IEHP of any IEHP Medi-Cal members identified as having a severe eating disorder so both parties can engage in payment discussions for specialized eating disorders treatment services not covered by Medi-Cal. Both parties will engage in the decision-making process within State mandated timeframes, excluding weekends or holidays, of receipt of the request from IEHP, but no later than the deadline regarding the proposed treatment services BEFORE providing payment approval for specialized eating disorders treatment services. SBDBH and IEHP will develop a mutually agreed upon process to notify each other.

ADDENDUM II

1. SBDBH shall provide IEHP verbal notification if it disagrees with the national care guidelines recommended level of treatment within 48 hours, excluding weekends and holidays, of DBH receiving the request/referral. SBDBH shall provide IEHP with the reasoning for the dissent in writing no later than five (5) business days from the verbal notification.
 2. SBDBH agrees to consider retroactive payment approval after a client's admission to specialized eating disorders programs, if IEHP provides a payment approval without SBDBH's prior approval, only in exceptional circumstances, such as when a client's condition as a result of their severe eating disorder requires admission to a higher level of care to prevent serious risk of harm or death to the HEALTH PLAN member.
 3. Should IEHP fail to notify SBDBH AND fail to obtain SBDBH's approval for the proposed level of treatment within five (5) business days, SBDBH will be exempt from reimbursing IEHP 50% of the accrued facility and professional fees.
 4. SBDBH and IEHP agree to develop mutually agreed upon methods to transmit the eating disorder requests that ensure compliance with the timely notification and response within the required five (5) business day timeframe.
- B. SBDBH shall assess every member approved for specialized eating disorder treatment services and enroll members in appropriate DBH specialty mental health services/programs (if not already enrolled), and maintain contact with the member and specialized eating disorders treatment providers, to ensure case management and outpatient care coordination services.
1. Should a severe eating disorder treatment provider/agency prohibit or obstruct SBDBH from engaging with a client, IEHP will act as a liaison between provider and DBH to ensure proper information is being communicated.
- C. SBDBH shall be responsible to reimburse IEHP for 50% of the specialized eating disorders treatment facility and professional services fees not covered by Medi-Cal, for IEHP Medi-Cal members where SBDBH has provided prior approval to IEHP for these services.
- D. SBDBH will review IEHP's monthly claim package (monthly report, summary page and UB04 Claim Forms) and shall remit payment within 60 business days from the receipt of claims package.

IV. IEHP SPECIFIC RESPONSIBILITIES

- A. IEHP shall notify SBDBH of any IEHP Medi-Cal members identified as having a severe eating disorder, so both parties can engage in payment discussions for specialized eating disorders treatment services not covered by Medi-Cal. IEHP shall include SBDBH in the decision-making process within one (1) business day of IEHP receiving the request for services regarding the proposed treatment services and obtain the approval of SBDBH

ADDENDUM II

BEFORE providing payment approval for specialized eating disorders treatment services. SBDBH and IEHP will develop a mutually agreed upon process to notify each other; and IEHP will utilize the national care guidelines criteria to assist in authorization determination.

- B. IEHP agrees and shall work with its specialized eating disorder treatment providers to ensure SBDBH can assess every member approved for specialized eating disorders treatment services, enroll members in appropriate DBH specialty mental health services/programs, and maintain contact with the member and specialized eating disorders treatment providers, to ensure ongoing case management and outpatient care coordination services. SBDBH engagement may begin as soon as practicable after a member's admission to specialized eating disorders treatment services.
 - 1. IEHP shall make itself available as soon as possible, but no later than five (5) business days after SBDBH notifies IEHP of disagreement with the national care guidelines recommended level of treatment so the agencies can problem solve.
 - 2. Should IEHP have a severe eating disorder treatment provider/agency that prohibits or obstructs SBDBH from engaging with a member, IEHP will act as a liaison between provider and DBH to ensure proper information is being communicated.
 - 3. IEHP and SBDBH agree to develop mutually agreed upon methods to transmit the eating disorder requests that ensure compliance with the timely notification and response within the required five (5) business day timeframe.
- C. IEHP will adjudicate facility and professional claims against pre-authorizations for specialized eating disorders treatment facility and professional service fees not covered by Medi-Cal, and shall reimburse the eating disorder treatment providers/agency (referred to as claimants) at 100% of the allowable amount.
- D. IEHP shall send claims packets to SBDBH. Effective October 27, 2020, IEHP shall send claims packets to SBDBH by the 15th of the month following payment of the invoice to the specialized eating disorders treatment facility. The invoice shall include a cover letter, a summary report, and copies of claims images to SBDBH Fiscal contact requesting reimbursement at 50% of facility and professional fees as indicated in the claims images and summary report.

V. IEHP GENERAL RESPONSIBILITIES

- A. Prohibited Affiliations
 - 1. IEHP shall not knowingly have any prohibited type of relationship with the following providing eating disorder services:
 - a. An individual or entity that is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition

ADDENDUM II

Regulation or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549 [42 C.F.R. § 438.610(a)(1)].

- b. An individual or entity who is an affiliate, as defined in the Federal Acquisition Regulation at 48 CFR 2.101, of a person described in this section [42 C.F.R. § 438.610(a)(2)].
2. IEHP shall not have a prohibited type of relationship by contracting with eating disorder providers or other individuals and entities excluded from participation in Federal health care programs (as defined in section 1128B(f) of the Social Security Act) under either Section 1128, 1128A, 1156, or 1842(j)(2) of the Social Security Act [42 C.F.R. §§ 438.214(d)(1), 438.610(b); 42 U.S.C. § 1320c-5].
3. IEHP shall not have any contracted relationships related to eating disorders prohibited by this section with an excluded, debarred, or suspended individual, provider, or entity as follows:
 - a. A director, officer, agent, managing employee, or partner of IEHP [42 U.S.C. § 1320a-7(b)(8)(A)(ii); 42 C.F.R. § 438.610(c)(1)].
 - b. A subcontractor of the Contractor, as governed by 42 C.F.R. § 438.230. [42 C.F.R. § 438.610(c)(2)].
 - c. A person with beneficial ownership of five percent (5%) or more of the IEHP's equity [(42 C.F.R. § 438.610(c)(3)].
 - d. An individual convicted of crimes described in section 1128(b)(8)(B) of the Act [42 C.F.R. § 438.808(b)(2)].
 - e. A network provider or person with an employment, consulting, or other arrangement with the Contractor for the provision of items and services that are significant and material to the Contractor's obligations under this Contract [42 C.F.R. § 438.610(c)(4)].
 - f. IEHP shall not contract with, directly or indirectly, such individuals or entities for the furnishing of health care, utilization review, medical social work, administrative services, management, or provision of medical services, or the establishment of policies or provision of operational support for such services [42 C.F.R. § 438.808(b)(3)].

B. Ineligible/Excluded Persons

IEHP shall comply with the United States Department of Health and Human Services, Office of Inspector General (OIG) requirements related to eligibility for participation in Federal and State health care programs.

ADDENDUM II

1. Ineligible Persons may include both entities and individuals and are defined as any individual or entity who:
 - a. Is currently excluded, suspended, debarred or otherwise ineligible to participate in the Federal and State health care programs; or
 - b. Has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the Federal and State health care programs after a period of exclusion, suspension, debarment, or ineligibility.
2. IEHP shall comply with the United States General Services Administration's System for Award Management (SAM) and ensure that Ineligible Persons are not employed or retained to provide services related to this agreement. IEHP shall also comply with the OIG's List of Excluded Individuals/Entities (LEIE) and ensure that Ineligible Persons are not employed or retained to provide services related to this agreement. IEHP shall conduct these reviews before hire or agreement start date and then no less than once a month thereafter.
 - a. SAM can be accessed at <http://www.sam.gov/portal/public/SAM>.
 - b. LEIE can be accessed at <http://oig.hhs.gov/exclusions/index.asp>.
3. IEHP shall review its eating disorder contractors, agents and physicians for eligibility against the California Department of Health Care Services Suspended and Ineligible Provider (S&I) List to ensure that Ineligible Persons are not employed or retained to provide services related to this ADDENDUM. IEHP shall conduct this review before hire or contract start date and then no less than once a month thereafter.
 - a. S&I List can be accessed at: <http://medi-cal.ca.gov/default.asp>.
4. IEHP shall certify that no eating disorder contractor is "excluded" or "suspended" from any federal health care program, federally funded contract, state health care program or state funded contract. This certification shall be documented by completing the Attestation Regarding Ineligible/Excluded Persons (Attachment A) at time of the initial contract execution and annually thereafter. The Attestation Regarding Ineligible/Excluded Persons shall be submitted to the following program and address:

DBH Office of Compliance
303 East Vanderbilt Way
San Bernardino, CA 92415-0026

Or send via email to: Compliance_Questions@dbh.sbcounty.gov.
5. IEHP acknowledges that Ineligible Persons are precluded from providing Federal and State funded health care services by contract with County.

ADDENDUM II

6. If IEHP subcontracts an excluded party, DBH has the right to withhold payments, disallow costs, or issue a corrective action plan, as appropriate pursuant to HSC Code 11817.8(h).
- C. IEHP shall not engage in any unlawful discriminatory practices on the basis of race, color, gender, gender identity, religion, marital status, national origin, age, sexual orientation, or mental or physical handicap, or disability. IEHP agree to and shall comply with the County's Equal Employment Opportunity Program, Employment Discrimination, and Civil Rights Compliance requirements.
- D. Privacy and Security
 1. IEHP shall comply with all applicable State and Federal regulations pertaining to privacy and security of client information including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, and Code of Federal Regulations, Title 42, Part 2, as applicable. Regulations have been promulgated governing the privacy and security of individually identifiable health information (IIHI) and/or Protected Health Information (PHI) or electronic Protected Health Information (ePHI).
 2. In addition to the aforementioned protection of IIHI, PHI and e-PHI, the County requires IEHP to adhere to the protection of personally identifiable information (PII) and Medi-Cal PII, and in accordance to 42 C.F.R. §2.13 Confidentiality Restrictions and Safeguards and HIPAA Privacy and Security rules. PII includes any information that can be used to search for or identify individuals such as but not limited to name, social security number or date of birth. Whereas Medi-Cal PII is the information that is directly obtained in the course of performing an administrative function on behalf of Medi-Cal, such as determining or verifying eligibility that can be used alone or in conjunction with any other information to identify an individual.
 3. Reporting of Improper Access, Use or Disclosure or Breach

IEHP shall report to DBH Office of Compliance and SBDBH shall report to IEHP any unauthorized use, access or disclosure of unsecured Protected Health Information or any other security incident with respect to Protected Health Information no later than one (1) business day upon the discovery of a potential breach consistent with the regulations promulgated under HITECH by the United States Department of Health and Human Services, 45 CFR Part 164, Subpart D. Upon discovery of the potential breach, the IEHP and SBDBH shall complete the following actions:

ADDENDUM II

- a. Provide the other party with the following information to include but not limited to:
 - i. Date the potential breach occurred;
 - ii. Date the potential breach was discovered;
 - iii. Number of staff, employees, subcontractors, agents or other third parties and the titles of each person allegedly involved;
 - iv. Number of potentially affected patients/clients; and
 - v. Description of how the potential breach allegedly occurred.
- b. Provide an update of applicable information to the extent known at that time without reasonable delay and in no case later than three (3) calendar days of discovery of the potential breach.
- c. Provide completed risk assessment and investigation documentation to the other party within ten (10) calendar days of discovery of the potential breach with decision whether a breach has occurred, including the following information:
 - i. The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
 - ii. The unauthorized person who used PHI or to whom it was made;
 - iii. Whether the PHI was actually acquired or viewed; and
 - iv. The extent to which the risk to PHI has been mitigated.
- d. Parties are responsible for notifying the client and for any associated costs that are not reimbursable under this Contract, if a breach has occurred. Parties must provide the client notification letter to each other for review and approval prior to sending to the affected client(s).
- e. Make available to the County and governing State and Federal agencies in a time and manner designated by the County or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a potential breach for the purposes of audit or should the County reserve the right to conduct its own investigation and analysis.

VI. MUTUAL RESPONSIBILITIES

- A. Both Parties agree to comply with all relevant Federal and State laws and regulations.
- B. Both Parties agree to comply with confidentiality requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), commencing with Subchapter C, and all State and Federal statutes and regulations regarding confidentiality, including but not limited to applicable provisions of Welfare and Institutions Code Sections 5328 et seq. and 14100.2, Title 22, California Code of Regulations Section 51009 and Title 42, Code of Federal Regulations Part 2.

VII. INDEMNIFICATION AND INSURANCE

IEHP shall, at its own expense, secure and maintain for the term of this Agreement, Cyber Liability Insurance with limits of not less than \$1,000,000 for each occurrence or event with an annual aggregate of \$5,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall cover breach response cost as well as any regulatory fines and penalties.

VIII. COMPENSATION PROVISIONS

A. The ADDENDUM shall be effective February 13, 2018 through December 31, 2020.

B. Payment to IEHP will be made pursuant to the compensation schedule below:

FY 2017-18	\$48,013
FY 2018-19	\$525,000
FY 2019-20	\$550,000
FY 2020-21	<u>\$325,000</u>
TOTAL	\$1,448,013

C. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IX. RIGHT TO MONITOR AND AUDIT

A. IEHP and SBDBH staff or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Inspector General, shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of each other in the delivery of services provided under this ADDENDUM. Full cooperation shall be given to each other in any auditing or monitoring conducted.

B. IEHP and SBDBH shall cooperate with each other in the implementation, monitoring, and evaluation of this ADDENDUM and comply with any and all reporting requirements as established by this ADDENDUM.

C. All records pertaining to service delivery and all fiscal, statistical and management books and records shall be available for examination and audit by IEHP staff, SBDBH staff, Federal and State representatives for a period of ten (10) years after final payment under the ADDENDUM or until all pending County, State, and Federal audits are completed, whichever is later. Records which do not pertain to the services under this ADDENDUM

ADDENDUM II

shall not be subject to review or audit unless otherwise provided in this ADDENDUM. Technical program data shall be retained locally and made available upon reasonable advance written notice or turned over to IEHP or SBDBH.

- D. Parties shall provide all reasonable facilities and assistance for the safety and convenience of IEHP and SBDBH's representative in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work of IEHP or SBDBH.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

--REMAINDER OF PAGE INTENTIONALLY LEFT BLANK--

ADDENDUM II

IN WITNESS WHEREOF, the parties hereto have signed this THIRD AMENDMENT as set forth below.

INLAND EMPIRE HEALTH PLAN

By:

Jarrold McNaughton
Chief Executive Officer

Date:

By:

Curt Hagman, Chairman
San Bernardino County
Board of Supervisors

By:

Chair, IEHP Governing Board

Print

Name

Date:

Date:

Attest:

Annette Taylor, Secretary
IEHP Governing Board

Date:

Approved as to Form and Consent:

Approved as to Form and Consent:

By:

Dawn Martin
Deputy County Counsel
San Bernardino County

By:

Anna W. Wang
Senior Legal Counsel
Inland Empire Health Plan

Date:

Date:

ATTESTATION REGARDING INELIGIBLE / EXCLUDED PERSONS

Inland Empire Health Plan shall:

To the extent consistent with the provisions of this Agreement, comply with regulations found in Title 42 Code of Federal Regulations (CFR), Parts 1001 and 1002, et al regarding exclusion from participation in Federal and State funded programs, which provide in pertinent part:

1. IEHP certifies to the following:
 - a. it is not presently excluded from participation in Federal and State funded health care programs,
 - b. there is not an investigation currently being conducted, presently pending or recently concluded by a Federal or State agency which is likely to result in exclusion from any Federal or State funded health care program, and/or
 - c. unlikely to be found by a Federal and State agency to be ineligible to provide goods or services.
2. As the official responsible for the administration of IEHP, the signatory certifies the following:
 - a. all of its eating disorder contractors and/or persons having five percent (5%) or more of direct or indirect ownership or control interest of IEHP are not presently excluded from participation in any Federal or State funded health care programs,
 - b. there is not an investigation currently being conducted, presently pending or recently concluded by a Federal or State agency of any such officers, employees, agents and/or sub-contractors which is likely to result in an exclusion from any Federal and State funded health care program, and/or
 - c. its contractors are otherwise unlikely to be found by a Federal or State agency to be ineligible to provide goods or services.
3. IEHP certifies it has reviewed, at minimum prior to hire or contract start date and monthly thereafter, the following lists in determining the organization nor its contractors and/or persons having five percent (5%) or more of direct or indirect ownership or control interest of IEHP are not presently excluded from participation in any Federal or State funded health care programs:
 - a. OIG's List of Excluded Individuals/Entities (LEIE).
 - b. United States General Services Administration's System for Award Management (SAM).
 - c. California Department of Health Care Services Suspended and Ineligible Provider (S&I) List, if receives Medi-Cal reimbursement.
4. IEHP certifies that it shall notify DBH immediately (within 24 hours) by phone and in writing within ten (10) business days of being notified of:
 - a. Any event, including an investigation, that would require IEHP or any of its contractors exclusion or suspension under Federal or State funded health care programs, or
 - b. Any suspension or exclusionary action taken by an agency of the Federal or State government against IEHP, or one (1) or more of its contractors, barring it or its officers, employees, agents and/or sub-contractors from providing goods or services for which Federal or State funded healthcare program payment may be made.