

**SECOND SYSTEMS IMPROVEMENT AGREEMENT BETWEEN THE
CENTERS FOR MEDICARE AND MEDICAID SERVICES, WESTERN
STATE HOSPITAL, THE WASHINGTON DEPARTMENT OF SOCIAL
AND HEALTH SERVICES AND
THE WASHINGTON DEPARTMENT OF HEALTH**

This Second Systems Improvement Agreement (the “Second SIA” or the “Agreement”) between the Centers for Medicare & Medicaid Services (“CMS”), a division of the United States Department of Health and Human Services (“DHHS”), Western State Hospital (“WSH”), Washington State Department of Social and Health Services (“WDSHS”), and the Washington Department of Health (“WDoH”) (together known as the “Parties”) supersedes and replaces both the original Systems Improvement Agreement and all amendments to it, first implemented on June 2, 2016 (together known as the “First SIA”). The Parties enter this Second SIA to further the objectives of Titles XVIII and XIX of the Social Security Act, to facilitate the delivery of quality hospital services to the community served by WSH, and to promote WSH’s consistent compliance with the Medicare Conditions of Participation (“CoPs”) for Hospitals at 42 C.F.R. §§ 482.11-482.57, and Special Psychiatric Hospital CoPs at §§482.60-482.62.

Recitals

Whereas Western State Hospital (CCN#50-4003) is a psychiatric hospital with 842 beds of which 771 are Medicare certified beds and WSH is owned and operated by WDSHS, and has participated in the Medicare program as a provider of services to Medicare beneficiaries.

Whereas The DHHS requires Medicare providers to be in substantial compliance with its CoPs and DHHS has delegated CMS responsibility for verifying that hospitals achieve and sustain compliance with the Medicare CoPs. To verify compliance with the Medicare CoPs, CMS surveys directly or works through WDoH to survey WSH periodically. WDoH, an agency for the State of Washington, performs these surveys on CMS’s behalf pursuant to an agreement under Section 1864 of the Social Security Act.

Whereas After a complaint investigation and six (6) revisit surveys, CMS determined that WSH was unable to achieve and sustain compliance with the Medicare CoPs. Through these surveys, CMS discovered multiple episodes of immediate jeopardy and determined that WSH had failed to implement and sustain systems to provide treatment interventions, ensure patient safety and implement quality controls including:

1. On September 3, 2015, a complaint investigation determined that WSH did not meet certain Medicare CoPs.
2. A combined DHHS-WDoH survey on October 26, 2015, determined that WSH had not met six (6) CoPs at the immediate jeopardy level.
3. A revisit survey on November 24, 2015, determined that WSH had

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abated the six (6) immediate jeopardy situations, but remained out of compliance with the six (6) underlying CoPs.

4. A follow up survey on February 8, 2016, to assess for compliance with the two (2) special CoPs for psychiatric hospitals determined WSH did not meet one (1) of the two (2) special psychiatric hospital conditions.
5. A survey was conducted on March 3, 2016, to determine whether the facility had made all necessary corrections, found WSH out of compliance with five (5) CoPs. The findings included immediate jeopardies, which were abated, but WSH remained out of compliance with the underlying CoPs.
6. On April 29, 2016, a complaint investigation survey of WSH was conducted and CMS cited immediate jeopardy level violations of the Medicare CoPs for Physical Environment and Patient Rights. WSH abated the immediate jeopardy situations.

Whereas CMS issued a termination notice to WSH dated March 1, 2016, that was effective April 1, 2016. To provide additional time to complete the administrative requirements for termination, CMS extended WSH's termination date to June 3, 2016.

Whereas after receiving CMS's notice of WSH's impending termination from Medicare, WSH officers and directors pledged to correct its deficiencies and committed additional personnel and financial resources to achieving and sustaining compliance with all Medicare CoPs. Furthermore, WDSHS, the Washington State Legislature, and the Washington State Governor committed to supporting sustainable systemic improvements that induced WSH to deliver quality care in a safe setting that meets all Medicare CoPs.

Whereas during the events described in these Recitals, which are ongoing, WDSHS has endeavored to improve the quality and safety of WSH including, but not limited to, the engagement of a new Chief Executive Officer and expert consultants to assist it to identify and to carry out activities to improve quality and safety and simultaneously to satisfy all Medicare CoPs.

Whereas CMS has determined that terminating WSH's Medicare Certification would have a detrimental impact on the communities WSH serves as well as the Medicare Program and its beneficiaries. In view of WSH's pledge to correct its deficiencies, CMS has decided that giving WSH another opportunity to achieve and sustain substantial compliance with all the Medicare CoPs would be in the best interests of the Medicare program and the communities that WSH serves. CMS decided to grant WSH that opportunity under conditions that enabled CMS to closely monitor patient

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wellbeing and the facility's improvement efforts.

Whereas CMS, WSH, WDSH and WDoH signed a thirteen (13) month SIA on June 2, 2016, and extended it under three amendments to November 2, 2017. In accordance with that SIA, Western endeavored to correct its deficiencies through several activities including: (1) hiring managerial and operations staff; (2) contracting with independent expert consultants and oversight consultants; and (3) investing additional state funding in facility operations.

Whereas CMS-approved surveys of WSH were conducted between May 8 and June 5, 2017 and these surveys determined that WSH had improved, but still had not returned to substantial compliance with the Medicare CoPs.

Whereas upon receiving the results of these surveys, WSH management, with the backing of the State Governor has resolved to continue improving WSH's operations.

Whereas the Washington State Legislature has demonstrated continued commitment to improving WSH by enacting a 2017-2019 Biennial budget that includes \$40,468,000 in continued appropriations for fulfilling the SIA. Furthermore WDSHS is requesting authority to move ahead immediately with: (1) an investment of over \$26 million dollars for addressing violence reduction and prevention initiatives and medical care needs; and (2) engaging a contractor with expertise and resource capacity to assist with building and sustaining a Quality Assurance and Performance Improvement ("QAPI") program for WSH.

Whereas WSH continues to play a vital role in the Washington State health care community and CMS continues to believe terminating WSH is neither in the best interests of the communities WSH serves nor the Medicare program.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises, and covenants set forth by this Agreement, the Parties agree as follows:

1. **Term and Scope of the Agreement:** Upon the execution of this Second SIA, the First SIA is superseded and replaced. The term of the Second SIA is eight months. The term of the First SIA and Second SIA, together is twenty-five months beginning June 2, 2016 (the "Effective Date") and lasting until July 2, 2018 (the "Completion Date"), unless the Parties agree to extend it or any one party terminates it in accordance with the provisions contained herein. The Parties agree that DSHS, the parent agency for WSH, will work to ensure that WSH meets its obligations under this Agreement.
2. **CMS Will Refrain from Reissuing the Medicare Termination of WSH:** CMS will refrain from reissuing the termination of its Medicare Provider Agreement with WSH for up to the full term of this Second SIA as long as CMS finds that WSH is progressing toward

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full compliance with the Medicare CoPs. CMS can reissue the termination if CMS determines that proceeding with termination is in the best interests of the Medicare

Program. If CMS decides to proceed with terminating its Medicare Provider agreement, it will issue a Notice of Termination in accordance with requirements in 42 C.F.R. § 489.53(d).

AND IN CONSIDERATION for CMS continuing to hold in abeyance the termination of its Medicare Provider Agreement, WSH agrees to do the following at its own expense:

3. In order to sustain adequate numbers of professional and supportive staff as required by 42 C.F.R. §482.62 and to promote a safe and secure environment for all staff and patients, for the term of this Agreement, WSH agrees that it will not expand the current certified number of staffed and operated beds at WSH without submission of an application to the Medicare Administrative Contractor (MAC) and to CMS for approval.

4. WSH Will Retain an Independent Expert Consultant or Consultants' Services to Review its Operations and Provide Oversight of its Corrective Actions: For the term of this Second SIA, WDSHS will continue to retain the services of one or more Independent Expert Consultants to assist in carrying out the actions described in this Second SIA. WDSHS may continue to use the Independent Expert Consultant Team that provided services during the First SIA or WSH may replace or supplement the original Independent Expert Consultants.

a. If WSH changes the composition of the Independent Expert Consultant Team, it must notify CMS and allow CMS five (5) days to review and approve those changes. CMS will inform WSH in writing of its decision whether to approve any changes to the Independent Expert Consultant team WSH proposes. CMS will not unreasonably withhold its approval of changes in team members that WSH proposes. However, if CMS withholds approval of any changes in the team members, including the addition or termination of a particular consultant, then WSH will propose alternate candidates until CMS approves the Independent Expert Consultant Team.

b. The Independent Expert Consultant Team will designate a Lead Expert Consultant.

c. The Independent Expert Consultant Team will designate an Oversight Consultant to oversee and monitor WSH's operations for the term of this Agreement. The "Oversight Consultant" will be subject to the same CMS approval process that applies to selecting the Independent Expert Consultant Team under this agreement. The Oversight Consultant will work on-site as needed to accomplish the oversight and monitoring duties necessary to ensure

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WSH returns to compliance with the Medicare CoPs.

- d. DSHS must ensure that:
 - i. The members of the Independent Expert Consultant Team(s) are experts in conducting onsite review of psychiatric hospitals' performance and Medicare compliance. At a minimum, the team of experts will have qualifications and national certifications, as appropriate, related to their respective fields and areas of expertise. The experts may be obtained from more than one source.
 - ii. No person or entity that WSH, WDSHS or any other State Agency employs, or affiliates with, currently or in the past twelve (12) months, may be included on the Independent Expert Consultant Teams. No member of the Independent Expert Consultant Team including the Oversight Consultants may have a conflict of interest, unless CMS waives this requirement in writing. For this Agreement, a person has a conflict of interest if there is any situation involving a financial, private or personal interest that may affect or appear to affect that person's professional and objective exercise of their duties or obligations as specified in this Agreement. If WSH believes that successful performance of this Agreement requires using a person as a member of the Independent Expert Consultant Teams who may have a conflict of interest, then it will write CMS and:
 - 1. identify that person;
 - 2. explain the nature and scope of the conflict;
 - 3. explain why WSH cannot obtain this person's skills from another source; and
 - 4. explain the steps WSH will take to monitor and mitigate the conflict of interest.
- e. WSH and its Independent Expert Consultant(s) will take all steps necessary, including signing Business Associate Agreements, to ensure compliance with the Health

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Insurance Portability and Accountability Act.

5. DSHS Will Direct the Independent Expert Consultant to Perform Certain Duties at WSH: WSH will direct the Independent Expert Consultant team to perform the following activities and analyses:

a. Independent Expert Consultant Must Update Its Original Report and Recommendations: Within twenty-eight (28) days after the Parties sign this Second SIA, the Independent Expert Consultant must provide CMS an addendum to the original Report and Recommendations released on August 8, 2016. The addendum must update the Independent Expert Consultants original on-site Gap Analysis and Root Cause Analysis (the "Report Updates") In the Report Updates, the Independent Expert Consultant will diagnose and propose solutions for any ongoing root causes or barriers to WSH achieving and sustaining substantial compliance with the Medicare CoPs. This addendum shall be in writing and a copy must be provided to WDSHS. The addendum shall also include specific actions the Independent Expert Consultant recommends WSH implement immediately to address and mitigate any ongoing limitations or obstacles to WSH achieving and sustaining compliance with the Medicare CoPs.

b. CMS will have five (5) days to review and approve the Report Updates to the original on-site Gap Analysis and Root Cause Analysis. CMS will respond in writing describing any comments, suggestions or directives for modifying the Report Updates.

c. The Independent Consultant(s) must designate an Oversight Consultant to provide oversight of WSH's performance under this Second SIA paying particular attention to WSH's corrective action to return the facility to substantial Compliance with Medicare CoPs. The Oversight Consultant will work on-site as needed at WSH to accomplish its monitoring, oversight and reporting duties.

i. The Oversight Consultant will oversee and monitor WSH's performance and corrective actions.

d. The Oversight Consultant Will be the CMS Point of Contact: The Oversight Consultant will serve as the point of contact for CMS and CMS's designated agents. The Oversight consultant is responsible for:

i. Serving as the CMS point of contact. The Oversight Consultant will confer with CMS either in- person or by telephone as necessary to update CMS on the status of WSH operations and the actions necessary for it to achieve and sustain substantial compliance with the Medicare CoPs

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("Substantial Compliance"). The "Substantial Compliance" has the meaning that term is given in 42 CFR § 488.24(b) ("the deficiencies are of such character as to substantially limit the hospital's capacity to furnish adequate care or which adversely affect the health and safety of patients.")

ii. The Oversight Consultant will compile and submit to CMS monthly reports on the status of WSH's ongoing corrective actions as well as report any other material issues affecting WSH's efforts to achieve and sustain substantial compliance. The Oversight Consultant will deliver these reports to CMS before the 10th day of each month for the duration of this Second SIA. The Oversight Consultant will provide WDSHS a copy of each monthly report within five (5) days after submitting it to CMS. The Monthly Status Reports must describe the following:

1. Status of WSH's implementation of ongoing corrective actions, including a description of WSH's progress and any setbacks;
2. Any problems or other issues that jeopardize successful implementation of the corrective action;
3. Any actions underway to address identified problems; and
4. Documentation of the number of consultant hours onsite and the results achieved.

e. At CMS's request, the Oversight Consultant must be available to meet either in-person or by conference call. To encourage full and frank discussion of any issues affecting WSH's Medicare compliance, CMS's discussions with the Oversight Consultant and WDoH will be confidential.

f. WDSHS agrees to provide the level of managerial authority and supervision necessary to ensure that WSH staff timely implements the Independent Expert and Oversight Consultants' recommendations.

6. **Quality Assessment and Performance Improvement Program:**

Identification, Notification, and Action on Safety and Quality Issues: WSH will ensure that at all times there is an effective system for identifying and reporting and analyzing allegations or investigations of mistreatment, abuse, neglect, assault or other adverse events including immediate jeopardy or actual harm to patients at WSH. WSH agrees to analyze each such issue or event to identify systemic changes that can prevent recurrence, and timely action to implement such systemic changes.

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WSH agrees to address any urgent quality and safety concerns brought to its attention in enough time to prevent further harm to patients. Reporting requirements under this provision are in addition and do not negate the existing Medicare survey and certification requirements and processes.

a. WSH will build a Hospital-wide QAPI program that is proportionate to the size and complexity of the Hospital's patient population, organization and services. WDSHS and WSH must invest the necessary resources to develop the structures, processes, strategies and tools needed to build an effective, Hospital-wide QAPI program. The QAPI program must involve all of WSH's departments and services (including those services furnished under contract or arrangement). The QAPI program must focus on indicators related to improving health outcomes; preventing and reducing negative outcomes to patients and staff as well as achieving, monitoring and sustaining compliance with the Medicare CoPs for acute care and psychiatric hospitals.

b. To address quality, WSH must build multidisciplinary systems and programs that elicit participation by all WSH leadership and staff. WSH's QAPI program must:

- i. Proactively identify all barriers to providing safe and high quality care; and
- ii. Analyze and triage information from all available sources regarding unsafe situations, near misses and adverse events and use this information to identify system changes that anticipate and prevent recurrence in the future.

c. Identification, Investigation, Notification, and Action on Safety and Quality Issues: WSH must ensure that at all times there is an effective system for identifying, investigating and reporting issues related to all Serious Reportable Events ("SRE"), which includes allegations of mistreatment, abuse, neglect and assaults of patients or staff. This system must also address any operational and maintenance events that affect patient care.

d. Serious Reportable Events: WSH must notify CMS's designated contact person in writing within twenty-four hours after any SRE as defined by the 2011 or most current version National Quality Forum's list of SRE's. See https://www.qualityforum.org/Topics/SREs/List_of_SREs.aspx (last viewed October 24, 2017).

- i. WSH must follow up on all SREs with a root cause analysis, to be completed within 45 days following the event, which will be made available for review upon request. In addition to the SRE reporting requirement, WSH will report all incidents associated with patient elopement.

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e. Reports of mistreatment, abuse, neglect or assault of patients and/or staff must be thoroughly internally investigated by WSH and/or WDSHS to substantiate allegations. If the incident is determined to meet the criteria of an SRE, then it must be reported as outlined above. If allegations are made against a licensed professional, a report must be done in accordance with Washington State Uniform Disciplinary Act, to include but not limited to Chapter 18.130.080 (1) (b) (i) Revised Code of Washington.

f. Reportable Operational or Maintenance Events. WSH must notify CMS's designated contact person in writing within forty-eight (48) hours after any Reportable Operational or Maintenance Events occur. Reportable operational or Maintenance events include failure or malfunction of facility systems such as the heating, ventilation, fire alarm, fire sprinkler, electrical, electronic information management or water supply affecting patient diagnosis, treatment, or care within the facility; or a fire negatively affecting patient diagnosis, treatment, or care within the facility.

g. WSH agrees to:

- i. analyze all issues or events of the sort named here in paragraphs 6d to 6f above;
- ii. identify systemic changes that can prevent recurrence; and
- iii. immediately implement such systemic changes to prevent further harm to residents.

h. The reporting requirements in this paragraph supplement, but do not replace the existing Medicare survey and certification laws and processes which still apply.

7. WSH Will Implement All Corrective Actions Necessary to Achieve Substantial Compliance: WSH must analyze and integrate all available information and implement any corrective actions necessary to attain and sustain substantial compliance.

a. WSH must identify the actions it will take to correct all deficiencies found in each service/functional area; and

b. WSH must establish a timeline listing the corrective actions WSH must take to correct all deficiencies (the "Timeline"). The Timeline must include a detailed list of milestones and completion dates for each corrective action:

i. The Timeline must be approved by the CMS before it is adopted. WSH will submit to CMS for review and approval a CAP and Timeline within fourteen

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(14) days after approval of the Reports Updates described in paragraph 5b.

- ii. The Timeline will leave window of at least sixty (60) days (the “Survey Window”) before the end of this Second SIA for CMS or its agent to conduct Federal survey activities; and
- iii. The Timeline will include a schedule of meetings among the designated contacts and other representatives as necessary for CMS and WDOH, WDSHS and WSH. These meetings can be conducted by conference call or in person - to discuss WSH's progress in implementing the corrective actions. The Parties may agree in advance to change the frequency of the scheduled meetings without amending this Agreement.

c. Revisions to the Timeline for Corrective Actions: CMS may require revisions to the Timeline for corrective actions before CMS accepts it. Within five (5) days after CMS approves the corrective actions, the Oversight Consultant will give the approved version to WSH. The Parties agree CMS’s acceptance of the Timeline for corrective action will amend this Agreement by incorporating the Timeline including the Survey Window described above.

8. Federal Certification Survey: At any time during the Survey Window, CMS may authorize a federal certification survey to assess WSH’s compliance with the Medicare CoPs.

a. The Parties acknowledge that WDoH and its sibling agency WDSHS are components of the Washington State Government, accountable to its Governor. By virtue of its 1864 agreement, however, WDOH is also under contract with CMS to conduct Federal Survey and Certification activities at WSH. The parties acknowledge and agree on the need to maintain the validity of the Federal survey process. The Parties agree that until CMS authorizes release, WDoH will keep confidential all aspects of ongoing Federal survey, certification, and enforcement actions at WSH including the planning, execution and documentation of Federal survey findings.

9. The Parties further understand and agree that:

a. CMS Retains its Survey Certification and Enforcement Authority: Notwithstanding any provision of this Second SIA or any document generated pursuant to it, CMS retains full legal authority for CMS or its designated agents, including WDoH under the Section 1864 Agreement, to investigate complaints, conduct unannounced surveys and otherwise evaluate WSH’s compliance with Medicare CoPs at any time. Nothing in this

Second SIA should be construed as limiting or otherwise interfering with CMS’s

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enforcement authority in the event that CMS finds WSH is not in substantial compliance with the Medicare CoPs. To this end, CMS or its designated agents can survey WSH and take any legally authorized enforcement action up to and including terminating Medicare's provider agreement with WSH in accordance with the notice requirements in 42 C.F.R. § 489.53(d). After notifying WSH of any survey findings, however, CMS will give WSH an opportunity to meet with CMS to provide information and discuss any deficiencies.

b. **CMS May Share Information with the Consultants:** CMS may provide the Independent Expert Consultants and/or Oversight Consultant with information acquired during the course of this Second SIA that may be relevant to developing or implementing corrective actions. CMS will provide WSH with the opportunity to provide information about any deficiencies identified during any investigation or survey and to meet with CMS to discuss the findings.

c. **A Successful Survey will Establish Compliance and End this Enforcement Action:** If a Medicare certification survey during the Survey Window demonstrates that WSH is in substantial compliance with all Medicare CoPs, CMS will promptly send notice ending the enforcement action that prompted this Second SIA.

d. **After an Unsuccessful Survey CMS will Reinstate the Medicare Termination:** If a Medicare certification survey during the Survey Window demonstrates that WSH has Condition-level non-compliance in one or more of the Medicare CoPs, CMS will reissue the Medicare termination. If CMS reissues the termination, it will give WSH written notice consistent with requirements of 42 C.F.R. § 489.53(d). In determining whether to reissue the termination, CMS will rely solely on the results of the Medicare certification surveys during the term of this Second SIA as the basis for termination and CMS will not use the deficiency findings from the prior surveys.

e. **WSH is Responsible for its Medicare Compliance:** WSH remains solely responsible for achieving and sustaining substantial compliance with all applicable Medicare CoPs and may not transfer this responsibility to any third party.

f. **CMS is not Required to Give Technical Assistance:** CMS is not responsible for providing WSH, its Independent Expert Consultants or its Oversight Consultant with technical advice or resources for meeting WSH's obligations under its existing Medicare Provider Agreement.

g. **Time Counts are Calendar Days not Business Days:** Unless provisions of this Second SIA specifically indicate otherwise, a reference to the number of days refers

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to "calendar days" according to Pacific Time rather than to "business days." When a deadline falls on a weekend, the deadline will shift to the following Monday. When a deadline falls on a holiday, the deadline will shift to the following business day. Any deadlines or time parameters referenced in this Second SIA may be extended at the sole discretion and written approval of CMS. WSH, the Independent Expert Consultant or Oversight Consultant as applicable shall submit a written request for a deadline extension to CMS that states the amount of time sought and explains why an extension is needed.

h. WSH Waives its Administrative Appeal and Other Litigation Rights: Other than submitting a request to CMS for informal reconsideration, which CMS has discretion to may grant or deny, neither WDSHS or WSH shall file or otherwise start any action or suit against the United States, WDoH, CMS (including its officers, employees, and agents, which includes WDSHS when acting solely as an agent of CMS), or any other component of the Federal Government in any administrative or judicial forum with respect to the Medicare surveys and enforcement actions regarding WSH, during the term of this Second SIA. If WSH or WDSHS wishes to dispute any action taken by or on behalf of CMS under this Second SIA, as it relates to WSH, it agrees to submit a written statement with supporting evidence to CMS within ten (10) days after receiving written notice of such action. CMS will review any such submission and promptly issue a written final determination. This provision regarding Medicare surveys and enforcement actions at WSH as they relate to the terms of this Agreement shall survive the termination of this Second SIA. By signing this Second SIA, WDSHS and WSH waive all appeal rights, including those provided by 42 CFR, Part 498. WSH does not waive future Administrative Appeal and other Litigation Rights related to future federal surveys following successful Federal Survey and the issuance of a rescinded termination notice as described in subsection c of this Section.

- i. Each Party has a Designated Contact Person: All reports and notices referenced in this Second SIA are to be submitted to the Parties as follows:

For CMS:
Julius Bunch,
Survey and Certification Manager CMS Region X
Division of Survey & Certification
Department of Health and Human Services
701 Fifth Avenue, Suite 1600
Seattle, WA 98104

For WSH:

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MaryLouise Jones, Ph.D.,
Acting Chief Executive Officer
Western State Hospital
9601 Steilacoom Blvd SW
Lakewood, WA 98396

For WDSHS:
Carla Reyes
Assistant Secretary
Behavioral Health Administration
Washington Department of Social and
Health Services
P.O. Box 45050
Olympia, WA 98504-5050

For WDoH:
Ramiro R. Cantu,
Executive Director
Facilities Survey and Investigations
Washington State Department of Health
Office of Investigation and Inspection
111 Israel Road SE
P.O. Box 48774
Olympia, WA 98504-7874

j. **Public Disclosure:** The parties recognize that this Second SIA is a public document and as such, it may be released upon written request.

k. **Notice will be Provided Before Communication with the Public:** Each Party agrees to provide the Contact Persons named in this Second SIA an advance copy of any written statements they elect to share with any members of the public, including but not limited to members of the news media, regarding the Second SIA or the WSH's status with respect to Medicare Certification, participation or termination.

l. **Federal and State Privacy Law Applies:** The Parties hereby agree all documents, information and data produced or prepared in accordance with this Second SIA are subject to applicable federal and state law privacy and confidentiality protections including, but not limited to, statutes and regulations protecting the privilege and/or privacy of medical records, quality assurance, patient safety, peer review and performance improvement activities. Consequently, any documents, information and data created or compiled under this Second SIA may be redacted or otherwise protected from public

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disclosure by the Privacy Act, 5 U.S.C. § 552a; exemptions to the Freedom of Information Act, including but not limited to, 5 U.S.C. § 552(b), and 45 C.F.R. §§ 5.61, 5.64, and 5.69; and the Health Insurance Portability and Accountability Act. This provision, however, provides no basis for WDSHS or WDoH to withhold from CMS relevant information that is necessary to confirm WSH's compliance with the Medicare CoPs. Any exemptions that protect inter-agency or intra-agency memoranda, letters or other

records, which would not be available by law even to parties in litigation, would continue to apply, notwithstanding this Second SIA.

Washington State law, RCW 43.70.510, protects information and documents from disclosure in discovery or the state Public Records Act if the information or documents are created specifically for, and collected and maintained by a coordinated quality improvement team.

m. **This Second SIA Survives Transfer:** The terms of this Second SIA shall be binding on the Parties hereto, including their successors, transferees, administrators, heirs, executors, designees, assigns, agents and contractors.

n. **Amendments Must Be Written and Signed by All Parties:** This Second SIA may be amended only by the written agreement of the Parties or their successors or assigns.

o. **Each Party is Responsible for its Own Costs:** This Second SIA and its attachments set forth the full and complete basis for the resolution of this matter by the Parties. Each of the Parties shall be responsible for its own costs including attorney fees associated with this Second SIA and any amendments.

p. **The Parties May Sign Separately:** This Second SIA may be executed in counterparts; when combined all duplicate originals signed by each Party will comprise the full agreement.

q. **Each Person Who Signs has Signatory Authority:** Each person executing this Second SIA in a representative capacity on behalf of a Party warrants that he or she is duly authorized to bind the Party for which he or she signs.

r. **Scope of Agreement:** The Parties agree nothing in this Second SIA is binding on any other component of the United States government nor does it in any way define, limit or circumscribe existing Federal legal authority.

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s. Each Party Participated: Each Party agrees that it participated in the drafting of this Second SIA. Any ambiguities shall not be construed against CMS in interpreting this Second SIA and shall not be applicable to or used in resolving any dispute over the meaning or intent of this Second SIA or any of its provisions.

t. Severability: If a provision of this Second SIA is held invalid, void, unenforceable or otherwise defective by a tribunal of competent jurisdiction; then all other provisions of the Second SIA will remain enforceable in accordance with their terms.

u. CMS Forbearance is not a Waiver: Failure by CMS to enforce any provision of this Second SIA or CMS's decision to refrain from terminating this Second SIA in the event of a breach or failure to meet any condition of this Second SIA by any of the parties hereto will not be deemed a waiver or consent to a subsequent breach or failure.

12. Breach of Agreement and Termination for Cause: WSH's failure to meet any terms of this Second SIA will constitute a breach. If such a breach occurs, CMS can exercise its authority to terminate its Medicare Provider Agreement with WSH in accordance with the notice requirements at 42 C.F.R. § 489.53(d). CMS reserves the right to terminate this Second SIA and proceed with termination if it finds that WSH has not fully disclosed material information about WSH's operations, personnel, activities, patient safety or patient outcomes as they relate to the WSH's compliance with Medicare CoPs and the terms of this Second SIA. If CMS finds that WSH has reneged, reduced or discontinued the level of commitment needed to implement

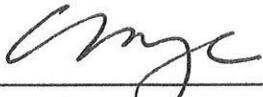
**SECOND SYSTEMS IMPROVEMENT AGREEMENT BETWEEN THE
CENTERS FOR MEDICARE AND MEDICAID SERVICES, WESTERN
STATE HOSPITAL, THE WASHINGTON DEPARTMENT OF SOCIAL
AND HEALTH SERVICES AND
THE WASHINGTON DEPARTMENT OF HEALTH**

this Second SIA without good cause, as determined by CMS, then CMS will treat this finding as a breach of this Second SIA.

WESTERN STATE HOSPITAL

By: 
Its: MaryLouise Jones, Ph.D.
Acting Chief Executive Officer

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

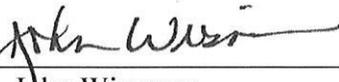
By: 
Its: Cheryl Strange,
Secretary

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

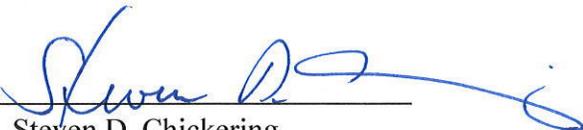
By: 
Its: Carla Reyes, Assistant Secretary

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WASHINGTON DEPARTMENT OF HEALTH

By: 
Its: John Wiesman,
Secretary

CENTERS FOR MEDICARE AND MEDICAID SERVICES

By: 
Its: Steven D. Chickering,
Associate Regional Administrator
CMS Western Division of Survey & Certification