PROGRAM IMPROVEMENT PLAN

Preamble

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

The Agreement and attached Technical Addenda (incorporated by reference) will be executed, implemented, and applicable to all ICF/IID units of FDC and PDC except for the Secure Treatment Program at PDC. Further, this Agreement will be effective and binding on the parties beginning **January 16, 2014,** and will continue in effect through the date of the full Medicare/Medi-Cal certification survey referenced in Section 5 below for FDC and PDC, unless any of the following occurs earlier: (1) the Parties jointly agree in writing that the material terms of the Agreement have been fulfilled; (2) DDS voluntarily withdraws one of these ICF/IIDs from Medi-Cal participation; (3) FDC or PDC breaches any material provision of its obligations herein (in which case, this Agreement will be null and void only with the facility that has breached its obligations); or (4) CDPH or the United States Department of Health and Human Services terminates the Medi-Cal provider agreement of one or more of these ICFs/IIDs. This Agreement and the respective Technical Addenda shall apply to each and all of the identified Parties separately, such that each ICF/IID will be held separately accountable for compliance with this Agreement and failure to fulfill requirements of the Agreement that pertain to a specific ICF/IID will be solely the responsibility of that facility and the consequences for failure to fulfill those requirements will be limited to that facility alone.

The Agreement may only be amended, or extended beyond the date of the full Medicaid/Medi-Cal survey for FDC and PDC by joint and mutual written agreement of the Parties.

All timelines in this Agreement are to be measured by calendar days unless otherwise specified. If a deadline falls on a weekend or holiday, it will be extended to the next working day.

FDC Recitals

Whereas, a CDPH ICF/IID Medicaid compliance survey of FDC completed by CDPH on May 17, 2013, found noncompliance with two (2) of the applicable CoPs, including deficiencies negatively affecting or with the potential to negatively affect the health and safety of clients;

Whereas, on June 12, 2013, CDPH notified FDC by letter (1) that CDPH was initiating a process that would lead to termination of FDC's Medicaid/Medi-Cal certification and, thereby, FDC's participation in the Medi-Cal program as a provider of ICF/IID services; and (2) CDPH would only conduct a follow-up survey of the ICF/IID facility based on FDC's timely submission of credible evidence that the deficiencies cited by the May 17, 2013, survey had been fully corrected;

Whereas on June 21, 2013, CDPH accepted FDC's Plan of Correction;

Whereas, on August 9, 2013, a CDPH follow-up survey of FDC found continued condition-level noncompliance with four (4) of the CoPs applicable to ICF/IIDs, including deficiencies that posed immediate jeopardy to client health and safety that were found to have been abated on August 16, 2013;

Whereas, CDPH has determined that it is in the best interest of the Medi-Cal program and ICF/IID clients in particular, and the community served by FDC generally, to allow FDC a further opportunity to achieve and maintain compliance in view of: (1) the impact that the immediate termination of FDC as a provider of ICF/IID services would have on the clients, staff and community; (2) FDC's acknowledgment of deficiencies identified during the survey process and commitment to undertake the comprehensive action necessary to correct and make sustainable improvements in these areas; and (3) the commitment by the State of California to provide the financial and human resources needed to implement the systemic changes required to achieve and maintain substantial compliance with all applicable Medi-Cal requirements;

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

PDC Recitals:

Whereas, a CDPH ICF/IID Medicaid compliance survey of PDC completed by CDPH on July 19, 2013, found noncompliance with three (3) of the applicable CoPs, including deficiencies that posed immediate jeopardy to the health and safety of clients that were abated prior to survey conclusion;

Whereas, on August 8, 2013, CDPH notified PDC by letter that (1) CDPH was initiating a process that would lead to termination of PDC's Medicaid/Medi-Cal certification and, thereby, PDC's participation in the Medi-Cal program as a provider of ICF/IID services; and (2) CDPH would only conduct a follow-up survey of the ICF/IID facility based on PDC's timely submission of credible evidence that the deficiencies cited by the July 19, 2013, survey had been fully corrected;

Whereas, on September 9, 2013, CDPH accepted PDC's Plan of Correction;

Whereas, CDPH completed a follow-up survey of PDC on October 25, 2013, and found continued noncompliance with six (6) of the CoPs applicable to ICF/IIDs, including deficiencies that posed immediate jeopardy to client health and safety that were abated prior to survey conclusion;

Whereas, CDPH has determined that it is in the best interest of the Medi-Cal program and ICF/IID clients in particular, and the community served by PDC generally, to allow PDC a further opportunity to achieve and maintain compliance in view of: (1) the impact that the immediate termination of PDC as a provider of ICF/IID services would have on the clients, staff and community; (2) PDC's acknowledgment of deficiencies identified during the survey process and commitment to undertake the comprehensive action necessary to correct and make sustainable improvements in these areas; and (3) the commitment by the State of California to provide the financial and human resources needed to implement the systemic changes required to achieve and maintain substantial compliance with all applicable Medi-Cal requirements;

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

Commitments:

Each ICF/IID (FDC and PDC), and DDS, as their agent, do separately commit, as indicated, to the following:

1) **Plan of Correction (POC):** Immediately upon signing this Agreement, if not already begun, each ICF/IID will begin implementing corrective action in accordance with the CDPH-accepted POC. CDPH will begin unannounced monitoring visits to validate evidence of ongoing correction, as proposed by the facility, immediately upon execution of this PIP.

2) **Technical Addendum:** Immediately upon signing this Agreement, each ICF/IID will begin implementing the requirements identified in its respective Technical Addendum. In no way will this limit the scope of the Root Cause Analysis to be performed as set forth in section (3) below.

3) **Contract for Independent Consultative Review Experts ("ICREs")**:
Within **twenty-five (25)** days after the effective date of this Agreement, DDS will have selected a third party hereinafter designated as the Independent Consultative Review Expert ("ICRE") with which DDS will prepare a draft contract. CDPH will actively participate with DDS in the ICRE selection process and will approve the ICRE selection. The ICRE must have expertise in the design, implementation, management and evaluation of ICF/IID services or similar complex healthcare delivery systems.

Within **twenty (20)** days following the selection of the ICRE, DDS will provide CDPH with a draft contract between DDS and the ICRE. The draft contract must set forth the composition and credentials of the ICRE team consistent with the following:

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

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

In addition, the contract between DDS and the ICRE will include a requirement that the ICRE must provide the services of one or more Compliance Officers sufficient to meet the duties set forth in section (4), below, for each ICF/IID.

The contract must specify that the ICRE's recommendations are to be designed to ensure compliance with all Medicaid CoPs applicable to ICFs/IID and make specific provision for the development of a Root Cause Analysis ("RCA') and Action Plan as described hereinafter for each ICF/IID, including identifying the timeline by which each ICF/IID's RCA and Action Plan will be completed with the specified timeline limitations provided hereinafter.

Further, the terms of the contract must allow the ICRE to provide technical assistance within the scope of the ICRE's contract deliverables and budget, as needed, and to monitor facility training provided to ensure it achieves compliance with the Action Plan and federal requirements.

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

Within twenty (20) days of the approval of the draft contract, DDS must have an executed contract with the ICRE.

Within **sixty (60)** days from the start date of the contract the ICRE will have submitted to CDPH an RCA report for each ICF/IID by dates identified in the signed Contract. While the ICRE shall begin work at all ICF/IIDs as simultaneously as possible, the Contract will indicate that one RCA will be due no more than forty-five (45) days from the date of the executed contract, and the other one will be due no more than sixty (60) days from the date of the executed contract.

The RCAs for PDC and FDC shall include, at a minimum, the following elements:
Based on previous survey deficiencies, each ICF/IID's approved POC, and in accordance with each ICF/IID's respective Technical Addendum, as attached to this document, the ICRE will conduct an RCA of process and system failures and will determine and document deficiencies in care and services as well as what must be improved in order to meet the intent of system-wide correction based on all federal regulations for ICFs/IID. The report must provide details of identified obstacles and system failures that are preventing or inhibiting FDC and PDC from attaining and/ or maintaining safe and acceptable standards of practice to ensure compliance with all the applicable Medicaid CoPs.

The ICRE will make a preliminary presentation of each ICF/IID's findings to the DDS-appointed representatives of that ICF/IID. If the ICRE finds that appropriate and sustainable changes to address systemic issues and/or findings from the ICF/IID's most recent federal survey have been made by the facility prior to the ICRE's RCA, the RCA report will reflect these findings.

Subsequently, each RCA will be submitted to CDPH by the ICRE and will be presented in conjunction with an oral briefing on the report's findings. The RCA will be issued to DDS concurrently with submission to CDPH.

Upon receipt, CDPH, within 10 days, will review each RCA and, at CDPH's discretion, accept, reject or require DDS to direct the ICRE to revise the RCA. If CDPH accepts the RCA, it will be issued no later than two days after the date CDPH accepts it. If CDPH finds an RCA to be unacceptable in whole or in part, CDPH promptly will notify DDS of this finding.

Within **thirty (30)** days from approval of each RCA, the ICRE will submit an Action Plan for the appropriate ICF/IID which must address all areas detailed in the respective Technical Addendum attached to and incorporated in this Agreement. The Action Plan must specify timeframes and measurable objectives. The Action Plan must explain how improvements will be monitored, how effectiveness will be determined and how staff will determine a course change is needed.

CDPH may require the ICRE to revise an Action Plan, at DDS's expense, before CDPH will accept the Action Plan.

Upon receipt, CDPH, within 30 working days, will review the Action Plan and, at CDPH's discretion, accept, reject or require DDS to direct the ICRE to revise the plan.

Failure by any of the ICFs/IID and/or by DDS to timely implement the CDPH-approved Action Plan, without good cause, as determined by CDPH, will constitute a material breach of the PIP within the meaning of the second paragraph of the preamble hereinabove.

The ICRE will submit monthly reports and updates to CDPH until the month of the full Medicaid/Medi-Cal certification survey for FDC and PDC, as described in section 4(b) below. Such reports and updates will detail the progress and status of each ICF/IID's implementation of its respective Action Plan including identification of problems that may jeopardize the successful implementation of the plan and actions underway to address those problems. Updates shall be due by the **tenth** (10th) calendar day of each month. The reports and updates will be forwarded to DDS and the DDS-appointed representative of each ICF/IID concurrent with submission to CDPH. At the discretion of CDPH, these reports may be followed by face-to-face or telephone conference discussions between the ICRE and CDPH as necessary and at the expense of DDS.

4) Compliance Officer(s): The ICRE Compliance Officer(s) will be charged with assuring that each ICF/IID's Action Plan is followed and timelines specified therein are met. CDPH will have the authority to dialogue with any member of the ICRE including the Compliance Officer. The terms of DDS' Contract with the ICRE that address the Compliance Officer shall specify that:
   a) For the duration of this Agreement, the Compliance Officer(s) will report directly to

CDPH on the level of engagement of each ICF/IID's Governing Body, administrative officials, and the treatment and care by staff in a client-centered manner. Accordingly, the Compliance Officer shall attend, as necessary and appropriate, Governing Body and/or other meetings, and shall have access, as necessary, to client and staff records.

b) The Compliance Officer is responsible for overseeing the Monthly Compliance reports for the RCA and the Action Plans.

The reports shall be submitted to CDPH, and concurrently to the Centers for Medicare & Medicaid Services ("CMS") Regional Office of the United States Department of Health and Human Services (USDHHS) and DDS. CDPH will continue monitoring visits at each ICF/IID during the period of ICRE monitoring to review and validate the Compliance Officer's findings and sustained correction, as relevant, for each ICF/IIDs POC.

DDS, and/or each ICF/IID, may secure additional personal and professional services at its own discretion and expense to fulfill the terms of this Agreement

Each ICF/IID shall remain solely and separately responsible for achieving and maintaining compliance with all applicable Medicaid CoPs and may not transfer this responsibility to any third party.

5) The parties further understand and agree:

a) Notwithstanding any provision of this Agreement, or any document generated pursuant hereto, CDPH and its agents retain full legal authority and responsibility to investigate complaints and entity-reported events and otherwise evaluate compliance with applicable Medicaid/Medi-Cal requirements and performance of PIP commitments, including through unannounced monitoring visits for the duration of this Program Improvement Plan. To this end, CDPH and its agent may survey FDC and PDC and take enforcement action including, but not limited to, termination pursuant to CDPH's statutory and regulatory authority.

b) CDPH will conduct unannounced Medicaid/Medi-Cal certification surveys at FDC and PDC of all applicable CoPs no sooner than 150 days from the respective date of CDPH's acceptance of each ICF/IID's Action Plan, unless this Agreement is otherwise terminated earlier for cause with one or both facilities.

c) In the event the full survey referenced in Section 5(b) herein demonstrates that the ICF/IID is in compliance with all applicable Medicaid/Medi-Cal CoPs, CDPH will promptly rescind the pending termination of that specific ICF/IID.

d) Subject to the provisions of Section 5(a), in the event that the full survey referenced in 5(b) herein demonstrates that an ICD/IID remains out of compliance with one or more Conditions of Participation, CDPH will promptly notify DDS and the DDS-appointed representative of that ICF/IID of these findings and, based on the results of the full Medicaid/Medi-Cal survey, may initiate a termination action of that ICF/IID from the Medicaid/Medi-Cal Program, consistent with the notice requirements at 42 C.F.R. 489.53(d).

e) FDC and PDC will not receive payment for any new Medicare and Medicaid admissions until FDC's and/or PDC's respective survey, referenced in section 5(b), establishes that the ICF/IID is in substantial compliance with all applicable Medicaid/Medi-Cal CoPs. This section shall not apply to readmissions or crisis admissions at FDC.

6) This Agreement shall be final and binding upon the Parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties hereto.

7) In the event either ICF/IID voluntarily ceases operations or is involuntarily terminated from participation as a Medicaid provider, such facility will comply with Federal and State requirements governing the discharge and/or transfer of ICF/IID clients, including federal regulations at 42 C.F.R. §§ 483.75(r), 483.440(b), and 488.426 and California State Health & Safety Code, Division 2, Article 8.5 (§1336 et seq.).

8) Each person executing the Agreement in a representative capacity on behalf of a named party warrants that he or she is duly authorized to do so and to bind the party he or she represents to the terms and conditions of the Agreement.

9) CDPH and DDS and its appointed ICF/IID representatives represent that this Agreement is entered into voluntarily with knowledge of the facts described herein and upon the advice of legal counsel.

10) This Agreement contains a complete description of the bargain between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement.

11) The Agreement is not binding on CMS, USDHHS or any other component of the United States Government nor does it in any way define, limit or circumscribe Federal civil or criminal authority.

12) For the purposes of this Agreement, all documents, reports and notices specified in this Agreement shall be forwarded to the following representatives:

Contact Information for California Department of Developmental Services:

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

Contact Information for California Department of Developmental Services, FDC:

Dwayne LaFon, Executive Director
Fairview Developmental Center
2501 Harbor Boulevard
Costa Mesa, CA 92626

Contact Information for California Department of Developmental Services, PDC:

Theresa Billeci, Executive Director
Porterville Developmental Center
26501 Avenue 140
Porterville, California 93258-2000

Contact Information for California Department of Public Health:

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

SIGNED THIS DAY BELOW:

FOR California Department of Developmental Services,

Printed Name: Michael Wilkening

By: Michael Wilkening Date Signed: 1/15/14

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

FOR California Department of Public Health,

Printed Name: Pam Dickfoss

By: Pam Dickfoss Date Signed: 1/15/14

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