

**DISABILITY RIGHTS CALIFORNIA
SAN BENITO COUNTY
SETTLEMENT AGREEMENT**

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I. INTRODUCTION

This Settlement Agreement (“Agreement”) is entered into by and between San Benito County, including its subsidiary San Benito County Behavioral Health (“SBCBH”), (the “County”); and Disability Rights California (“DRC”). Collectively the County and DRC are sometimes hereafter referred to as “the Parties.”

The purpose of this Agreement is to settle disputes and controversies regarding DRC’s claims concerning SBCBH’s policies, practices, and procedures regarding: (1) detention, treatment, and protection of patients’ rights for individuals held under the Lanterman-Petris-Short (“LPS”) Act, in accordance with the requirements of the LPS Act, Medicaid Act, and California and U.S. Constitutions; (2) access to adequate and timely mental health services, including home and community-based services, including in accordance with the Medicaid Act and its Early and Periodic Screening, Diagnostic and Treatment (“EPSDT”) requirements; and (3) access to services and treatment in the most integrated setting for people with psychiatric disabilities, in accordance with federal and state law.

II. RECITALS

WHEREAS, DRC performed an investigation into the provision of mental health services in San Benito County and concluded that SBCBH detained individuals on LPS holds in the local non-LPS designated emergency room at Hazel Hawkins Hospital, including on multiple 72-hour (Welf. & Inst. Code § 5150) holds.

WHEREAS, DRC informed the County in December 2018 that it had probable cause to believe that individuals with mental health disabilities in San Benito County were subjected to abuse and/or neglect because of the lack of timely access to inpatient care, failure to provide appropriate mental health care, and denial of statutory and constitutional due process protections.

WHEREAS, the County disagreed with DRC’s probable cause determination.

WHEREAS, the Parties entered a Structured Negotiation Agreement (“SNA”) on

January 17, 2020 for the purpose of protecting the interests of all Parties during the negotiation process, providing an alternative to litigation in the form of an expert assessment and good faith negotiations, and exploring whether the Parties' disputes could be resolved without litigation.

WHEREAS, the SNA provided that the Parties expressly recognized and agreed that entering into the agreement did not in any way constitute an admission of liability or wrongdoing by any Party.

WHEREAS, as called for in the SNA, the County retained an independent subject matter expert to conduct a review of the County's behavioral health system and provide recommendations.

WHEREAS, DRC and the County, with its attorneys, have engaged in considerable discussions regarding the expert's report and DRC's claims. The aforementioned discussions were engaged in, within the purview of California Evidence Code, sections 1115-1128, 1152, 1154 and Federal Rules of Evidence 408, and 501, to resolve their disputes and differences regarding DRC's investigation.

WHEREAS, the Parties enter into this Settlement Agreement in order to settle DRC's claims and to avoid additional expense, uncertainty, and diversion of resources caused by protracted litigation;

WHEREAS, the Parties expressly intend that, by executing this Settlement Agreement that the terms and conditions of the SNA are terminated.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals, and the following terms and conditions, and for good and valuable consideration, the receipt and adequacy of which is hereby expressly acknowledged by each of the Parties, the Parties covenant and agree as follows:

III. DEFINITIONS

The following definitions apply to this Settlement Agreement:

- A. Crisis Diversion Resources (“CD Resources”): Includes Crisis Residential Provider (as defined herein), and other diversion resources and services, such as residential or adult treatment facilities and the warm room, that may be used to divert individuals experiencing a mental health crisis from being placed on an involuntary hold at Hazel Hawkins Hospital or other facility and/or as a step-down resource following inpatient care, as appropriate to limit the time spent in inpatient care and facilitate timely and successful discharge to the community.
- B. LPS Act: The Lanterman-Petris-Short Act, codified in Welfare and Institutions Code §§ 5000 *et seq.*
- C. 5150: A 72-hour involuntary psychiatric hold for evaluation and treatment initiated pursuant to California Welfare and Institutions Code § 5150.
- D. Effective Date: The date this Agreement is signed by all Parties.
- E. Federally Qualified Health Center (“FQHC”): The FQHC located at 351 Felice Dr., Hollister, CA 95023.
- F. Full Service Partnership (“FSP”): Intensive community-based services for individuals with serious mental health disabilities, provided through multidisciplinary teams that develop a collaborative relationship with a client and provide a full spectrum of community-based services so the client can achieve identified goals, doing “whatever it takes” to help individuals on their path to recovery and wellness.
- G. Lived experience: Experience as a person with a mental health disability.
- H. Hazel Hawkins Hospital: The hospital located at 911 Sunset Dr., Hollister, CA 95023, which is not owned or operated by the County, but has a Memorandum of Understanding with the County, dated 1999.
- I. Substantial Compliance: Adherence to the requirements of the Agreement in all material respects, recognizing that 100% compliance is not required.

Non-systemic deviations from the requirements of the Agreement shall not prevent a finding of substantial compliance, provided that the County demonstrates that they have (a) implemented a system for tracking compliance, where appropriate, and a practice for taking corrective measures in response to individual instances of non-compliance, and (b) that the County has instituted policies and practices designed to achieve durable and sustained compliance. Substantial compliance shall govern all requirements for the Agreement.

- J. Virtual Responder: Mental health professional who remotely responds via telephone and/or video link to a mental health crisis in the home or community.

IV. SBCBH ORGANIZATION

SBCBH shall make the following structural and personnel changes:

- A. SBCBH caseload determination shall reflect the reality that FSP clients require additional time and resources. SBCBH shall assign caseloads accordingly.
- B. SBCBH shall establish a hospital liaison responsibility within the department whose duties will include: keeping track of existing psychiatric inpatient and social model resources; conducting patient follow-up when there are clients at Hazel Hawkins Hospital; and providing regular follow-up and training to Hazel Hawkins Hospital staff.
- C. SBCBH shall assign clinical staff to evaluate patients at Hazel Hawkins Hospital. Those staff will coordinate regularly with the designated hospital liaison.
- D. SBCBH shall establish and maintain an e-prescribe module for tele-psychiatry that will be available for use at the Esperanza Center. SBCBH shall ensure that its internet connection provides sufficient bandwidth to

support the module. At Hazel Hawkins Hospital, SBCBH shall ensure that all physicians and nurses receive timely access to prescribing history for all SBCBH clients that are seen in the ED for behavioral health issues.

- E. SBCBH shall increase nursing time to the amount necessary for nurses to be available to be part of the tele-psychiatry model. The County shall complete a salary survey to inform regional pay scales for nursing staff.
- F. SBCBH shall acquire a high-speed reliable fax machine to allow fast identification of available resources.
- G. SBCBH shall ensure that clinical staff cover shifts to provide services to high-need, acute clients and their families outside of normal weekday business hours (i.e. 9am to 5pm).
- H. SBCBH will ensure that there is sufficient onsite mental health staffing at the Federally Qualified Health Center ("FQHC") to provide mental health care to clients.
- I. The County shall use best efforts to complete all structural and personnel changes within six months of the date this Agreement is executed and shall achieve substantial compliance prior to the termination of the monitoring and reporting period in accordance with paragraph VIII(D).

V. EXPANSION OF SERVICES

The County shall provide the following mental health services:

- A. **Crisis Response**
 - 1. The County shall utilize a Crisis Hot-Line and a Crisis Response Team (CRT) to respond to the needs of individuals experiencing a mental health crisis in the home, workplace, or other community-based location in a timely manner.
 - 2. **Crisis Hot-Line**
 - a. The Crisis Hot-Line shall be available and staffed 24

hours a day, seven days a week.

- b. The County shall communicate the availability of the Crisis Hot-Line to the County's residents.
- c. In response to calls from individuals experiencing a mental health crisis in the home, workplace, or other community-based location, SBCBH case managers or its on-call service if after-hours or on the weekend, will attempt interventions for any crises by phone and will escalate to on-call clinicians, if necessary.
- d. In the event that a phone intervention does not address an individual's crisis, case managers will respond to the location where the individual is, unless security or safety concerns or special circumstances warrant law enforcement involvement.
- e. The County's policies regarding the Crisis Hot-Line shall indicate the policy to involve law enforcement only when security concerns or special circumstances are present, and that treatment shall be in the least restrictive environment appropriate for the individual's needs.

3. Crisis Response Team (CRT)

- a. The CRT shall be available to respond to Crisis Hot-Line and 9-1-1 calls from all geographic areas of San Benito County.
- b. The CRT shall include at least one full-time licensed mental health clinician for consultation and one full-time case manager. SBCBH shall also include a peer advocate when possible. The peer advocate shall receive specialized

training in responding to behavioral health crises. The Peer Advocate will have lived experience, to support the needs of the individual in crisis and family/support persons(s)/loved ones.

- c. The CRT's case manager shall be part of a specific team of SBCBH case managers that receive regular crisis intervention training.
- d. The CRT will meet the cultural and linguistic needs of the community.
- e. The CRT shall be available during the times that crisis services are most needed in the County. The County shall regularly assess and expand the CRT's available hours, as necessary to provide crisis services when most needed, including nights and weekends. Virtual responders may be used outside of the CRT's regular hours to remotely respond to mental health crises in the home or community.
- f. The CRT shall respond without law enforcement accompaniment, when it can be determined that there is a non-criminal, non-violent crisis and security requirements do not warrant their presence. The CRT may include a Hollister police department officer when it cannot be determined that there is a non-criminal, non-violent crisis and security requirements do not warrant law enforcement presence. Any law enforcement officers that accompany the CRT shall have received specialized training in responding to behavioral health crises.
- g. The CRT shall engage individuals in counseling

throughout the encounter and intervene to de-escalate the crisis. The CRT shall provide support to the individual and family to help de-escalate so the crisis can be resolved in the community, to avoid psychiatric facility commitment or arrest whenever possible. The CRT shall spend time with the individual and family to provide additional support and to develop a safety plan, when appropriate, as well as develop a plan for ongoing services, as needed, including scheduling outpatient follow-up appointments.

- h. The CRT team policies shall indicate treatment in the least restrictive environment appropriate for their needs and that institutional placements should be used as a last resort.
- i. The CRT, or other assigned case manager, shall follow up with individuals within 10 days of the crisis incident. The CRT will work with the individual to determine if the services to which they were referred were timely provided and are meeting their needs, and to ensure arrangement of outpatient follow-up appointments and other ongoing care, including addressing any logistical or transportation needs regarding such care.
- j. The CRT shall coordinate transportation for individuals when further treatment is needed and the family is unable to provide transportation. A police car or ambulance shall not be used for this transportation, unless no other alternative is feasible under the circumstances.

- 2. If the CRT is unavailable for any reason, the County shall require assessments to be conducted at a client's place of residence or in a

clinical setting, whenever possible, and update County policies accordingly, including but not limited to CLN: 10:00.

3. The County shall implement written policies regarding the structure, use, and function of the CRT, consistent with the terms of this Agreement. Other relevant County policies, including but not limited to CLN: 10:00, shall be updated to require the deployment of the CRT in response to a mental health crisis instead of referral to Hazel Hawkins Hospital, whenever possible.
4. The County shall establish and implement the CRT in accordance with this Agreement within six months of the date this Agreement is executed.

B. Crisis Residential

1. The County shall contract with an entity (or entities) that provides Crisis Residential services on a fee-for-service basis (“Crisis Residential Provider”) for adults and children and youth.
2. The Crisis Residential Provider shall:
 - a. Accept referrals when there is a bed available and the individual to be referred meets admitting criteria;
 - b. Provide services to address mental health and/or substance use crisis issues;
 - c. Provide short-term, intensive and supportive services in a home-like environment through an active social rehabilitation program that is certified by the California Department of Health Care Services and licensed by the California Department of Social Services, Community Care Licensing Division and are designed to improve the lives and adaptive functioning of those they serve.

3. The County shall use the Crisis Residential Provider resource, or other diversion service or resource (together, “CD Resources”), instead of placing individuals on an involuntary hold at Hazel Hawkins Hospital or other facility, whenever possible.
4. For individuals placed on an involuntary hold at Hazel Hawkins Hospital, the County shall continually assess for whether they may be transferred to CD Resources. CD Resources shall always be considered before placement in inpatient psychiatric care, where voluntary placement is appropriate. Where the family is unable to provide transportation, the County shall coordinate transportation to CD Resources, if possible. A police car or ambulance shall not be used for this transportation, unless no other alternative is feasible under the circumstances.
5. For individuals placed in inpatient psychiatric care, the County shall use CD Resources as a step-down resource following inpatient care, as appropriate to limit the time spent in inpatient care and facilitate timely and successful discharge to the community.
6. The County shall follow up with individuals within 10 days of their stay at CD Resources to ensure arrangement of outpatient follow-up appointments and other ongoing care, including addressing any logistical or transportation needs regarding such care.
7. The County shall implement written policies regarding the use of Crisis Residential Provider services, consistent with the terms of this Agreement. Other relevant County policies shall be updated to address the use of the Crisis Residential Provider resource, consistent with the terms of this Agreement.
8. The County shall establish and implement the Crisis Residential

Provider services in accordance with this Agreement within six months of the date this Agreement is executed.

C. Warm Room

1. The County shall provide a Warm Room for individuals in crisis who may benefit from a calm environment supported by peers, as available. The County will provide appropriate physical space for the Warm Room with appropriate staffing, which may include a licensed and/or credentialed clinician, case manager, and/or peer support. The County may also accomplish this through a contract with the entity (or entities) providing Crisis Residential services to include a setting designated as a Warm Room.
2. The County shall use the Warm Room resource instead of placing individuals on an involuntary hold at Hazel Hawkins Hospital or other facility, whenever possible.
3. The Warm Room shall be available, at a minimum, 40 hours per week. The County shall assess what resources may be offered to individuals using the Warm Room to avoid a further escalation resulting in an involuntary placement, including providing appropriate staffing. The County shall permit the continued use of the Warm Room outside of weekday business hours as needed to avoid a further escalation resulting in an involuntary placement. The County shall regularly assess the Warm Room's available hours, as necessary, to provide crisis services when most needed.
4. The County shall follow up with individuals within 10 days of their visit to the Warm Room to ensure arrangement of outpatient follow-up appointments and other ongoing care, including addressing any logistical or transportation needs regarding such care.

5. The County shall implement written policies regarding the use of the Warm Room, consistent with the terms of this Agreement. Other relevant County policies, including but not limited to CLN: 10:00, shall be updated to address the use of the Warm Room resource, consistent with the terms of this Agreement.
6. The County shall establish and implement a Warm Room in accordance with this Agreement in the new County Behavioral Health Department Building that is estimated to be completed in March 2021 within 30 days of its completion.

D. Permanent and Transitional Supportive Housing

1. The County shall explore the availability of additional permanent and transitional supportive housing for individuals in need of mental health services, particularly for those who are experiencing homelessness, chronic homelessness, or who are at risk of chronic homelessness.
2. The County shall work with the Community Housing Improvement Systems and Planning Association, Inc. (CHISPA) to file an application with the California Department of Housing and Community Development for a No Place Like Home building project no later than February 15, 2021, provided that CHISPA has required authorizations and site for such project.
 - a. In the event that the No Place Like Home building project application is submitted and approved, the County shall make mental health supportive services available to the No Place Like Home building project's tenants for at least 20 years, and coordinate the provision of, or referral to, other services (including, but not limited to, substance use

services) in accordance with the County's relevant supportive services plan in accordance with Welfare and Institutions Code section 5849.9(a).

b. If the No Place Like Home building project is not applied for or approved, the County shall continue to work with CHISPA or another entity to explore the availability of permanent and transitional supportive housing for individuals in need of mental health services.

3. The County shall update relevant written policies to prioritize the expansion of permanent and transitional supportive housing for individuals in need of mental health services, particularly for those who are experiencing homelessness, chronic homelessness, or who are at risk of chronic homelessness, consistent with the terms of this Agreement.

E. Discharge Planning from Jail

The County recognizes that people with mental health disabilities discharging from incarceration are at heightened risk for mental health crisis and psychiatric commitment. Jail discharge planning is an important component of the County's community mental health system and efforts to prevent unnecessary psychiatric institutionalization. Accordingly:

1. The County shall ensure that individuals receiving mental health services released from San Benito County Jail have documented discharge planning.
2. The County shall ensure that people taking prescribed psychiatric medications at the time of discharge from San Benito County Jail have continuity of medications, as well as appropriate follow-up appointments with providers.

3. The County shall update the memorandum of understanding between SBCBH and San Benito County Sheriff's Department regarding mental health services in the jail to include the following:
 - a. The Sheriff's Department will notify SBCBH of all clients discharged from the jail with mental health needs, as soon as possible.
 - b. SBCBH will provide a follow-up plan for medication and a clinical appointment within 10 days of the client's discharge from jail.
4. The County shall update the memorandum of understanding between SBCBH and San Benito County Sheriff's Department, and any other relevant policies in accordance with this Agreement, within six months of the date this Agreement is executed.

F. Children and Youth Services

1. The County shall prioritize and promote the use of Therapeutic Behavioral Services (TBS), Intensive Care Coordination (ICC), Intensive Home-Based Services (IHBS), and Therapeutic Foster Care (TFC), among other Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.
 - a. The County shall create an assessment tool, or update existing tools, to assist staff in determining when TBS, ICC, IHBS, and TFC resources are needed, and to promote their consistent use. The County shall consider input regarding the assessment tool from schools within the County with students who are receiving or may require SBCBH services, and the service providers for TBS, ICC, IHBS, and TFC. Regular trainings shall be provided on the use of this

assessment tool.

- b. The County shall establish a weekly case conference to review and staff cases of at-risk children and youth, ensure provision of appropriate home and community-based services, including TBS, ICC, IHBS, and TFC, to address the risk of the child or youth requiring inpatient care, and to review outcomes.
- c. The County shall offer a social gathering at least quarterly, virtually or, if available, in person, of SBCBH staff that work with children and youth and Child Welfare Services (CWS) to promote communication and efficient coordination of services. This gathering shall include, on occasion, trainings on services and procedures for cases SBCBH shares with CWS.
- d. The County shall update its PATHS Program brochure and other relevant educational or promotional materials to explicitly discuss the availability of and eligibility criteria for TBS, ICC, IHBS, TFC, and other EPSDT services. The PATHS Program brochure and other educational or promotional materials shall be made available in all threshold languages. These materials shall be regularly distributed to schools, CWS, Hazel Hawkins Hospital, nonprofit partners, and other agencies and organizations within the community that provide services to children and youth. These materials shall include information on how to identify and refer children and youth for these intensive services. The materials shall make clear that children and

youth should have access to these services when clinically appropriate, and need not be a member of the *Katie A.* subclass, *Katie A., ex rel. Ludin v. Los Angeles Cty.*, 481 F.3d 1150 (9th Cir. 2007), or have an open child welfare services case to be eligible.

- e. The County shall create and provide regular trainings for schools within the County with students who are receiving or may require SBCBH services, CWS, Hazel Hawkins Hospital, nonprofit partners, law enforcement, and other agencies and organizations within the community that provide services to children and youth on the availability of, eligibility for, and referral process for TBS, ICC, IHBS, TFC, and other EPSDT services. These trainings shall also include information on de-escalation techniques and information on other County resources for home and community-based intervention, including but not limited to the CRT, Crisis CD Resources (which may include Crisis Residential), and the Warm Room.
2. The County shall review and update its policies as necessary to make the provision of services in the home, school, and community its leading philosophy. The County's policies shall ensure that services and supports are delivered in the least restrictive environments that are clinically appropriate. The County's policies shall also ensure provision of in-home services that are family driven and youth guided.
3. The County shall update its services and policies for children and youth in accordance with this Agreement within six months of the

date this Agreement is executed.

- G. The County shall continue to explore additional home and community-based diversion resources, including but not limited to Mental Health First and crisis respite services.
- H. SBCBH shall provide DRC copies of any and all policies created or updated in relation to this Agreement, in advance of finalization and distribution, where possible. The County shall review and give all DRC comments due consideration, revising the policies accordingly.

VI. SBCBH 5150 POLICIES

- A. SBCBH shall revise its 5150 policy to include:
 - 1. Requirement that assessments be conducted at a client's place of residence or in a clinical setting, whenever possible.
 - 2. The longer a bed at a LPS-designated facility is not identified for a patient on a 5150, additional SBCBH staff will be notified and additional alternative placements considered. Specifically:
 - a. If a bed is not identified within 24 hours, the SBCBH hospital liaison will be notified, if they had not been previously.
 - b. If a bed is not identified within 48 hours, SBCBH managerial staff will be notified. Prior to the 72-hour mark, SBCBH Director or designee will conduct a clinical case review to determine the least restrictive and safest plan for the individual.
 - c. Alternative placement locations, such as crisis residential facilities, crisis stabilization units (CSU), shelters, room and board facilities, motel rooms, or family residences, shall be considered as temporary placement on a voluntary basis for

individuals for whom placement in an LPS-designated facility is not indicated. If an alternative placement is deemed appropriate, the individual will be released from the involuntary hold to facilitate voluntary placement planning.

3. Requirement that SBCBH staff will visit individuals held on 5150s at Hazel Hawkins Hospital at least once per SBCBH staff shift, and more frequently for children and youth.
4. Requirement that SBCBH staff will confer with the Hazel Hawkins Hospital Emergency Department charge nurse at least once per SBCBH staff visit to give a status report and ensure that medical staff have access to forms and appropriate records.
5. Requirement that SBCBH staff will attempt to obtain consent from individuals held on 5150s at Hazel Hawkins Hospital, or their legal representatives, for evaluation or treatment on a voluntary basis, if possible.
6. Requirement to take all possible steps to either release a 5150 hold or transfer an individual on a 5150 hold to an LPS designated facility or alternative placement prior to the expiration of 72 hours, acknowledging that Welfare and Institutions Code section 5150 provides that a person may be taken into custody for a period of “up to 72 hours” only.
7. Requirement that the Patients’ Right Advocate be immediately notified of any individual held involuntarily at Hazel Hawkins Hospital for more than 72 hours.
8. Requirement that SBCBH verify that all SBCBH clients have a primary care physician, and, if a client does not, refer client to the FQHC and provide assistance, as necessary.

B. SBCBH shall request that Hazel Hawkins Hospital agree to an updated Memorandum of Understanding (“MOU”), taking all feasible steps to obtain Hazel Hawkins Hospital’s agreement to this request.

1. The requested updated MOU will include:

a. Written expectation that Hazel Hawkins Hospital will ensure the statutory rights of individuals detained under the LPS Act, including but not limited to Welf. & Inst. Code § 5325.1 and Welf. & Inst. Code §5325, such as:

- i. A right to treatment services which promote the potential of the person to function independently. Treatment should be provided in ways that are least restrictive of the personal liberty of the individual.
- ii. A right to dignity, privacy, and humane care.
- iii. A right to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect. Medication shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program.
- iv. To wear his or her own clothes;
- v. To keep and use his or her own personal possessions including his or her toilet articles;
- vi. To have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them;

- vii. To see and receive the services of a patient advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services.
 - b. Provision for monthly “grand rounds” with SBCBH staff and Hazel Hawkins Hospital Emergency Department staff.
 - c. Provision of access, if requested, to the Anasazi medical records system to Hazel Hawkins Hospital staff.
 - d. Requirement of annual training for Hazel Hawkins Emergency Room staff, including on the rights of individuals detained under the LPS Act.
- 2. SBCBH shall provide DRC a draft copy of the MOU prior to proposal with Hazel Hawkins Hospital. The County shall review and give all DRC comments due consideration, revising the MOU accordingly.
- C. SBCBH shall revise its 5150 training materials in accordance with this Agreement.
- D. SBCBH shall provide DRC copies of its revised 5150 policies. The County shall review and give all DRC comments due consideration, revising the policies accordingly.

VII. TRAININGS

- A. SBCBH shall provide an annual training on the 5150 process, including philosophy of diversion and knowledge of resources for SBCBH staff, Hazel Hawkins Hospital staff, and law enforcement.
- B. SBCBH will incorporate into their staff onboarding and training materials the philosophy that clients should be treated in the least restrictive environment appropriate for their needs and that institutional placements

should be used as a last resort.

- C. SBCBH shall develop or revise its trainings in accordance with this Agreement, including the trainings provided for in paragraphs IV(B) (hospital liaison trainings), V(A)(3)(c) (crisis intervention trainings for case managers), V(F)(1)(a) (assessment tool trainings), V(F)(1)(c) (trainings with CWS), V(F)(1)(e) (trainings on children and youth services), VI(B)(1)(d) (Hazel Hawkins Emergency Room staff trainings).
- D. The County shall provide a copy of applicable training materials to DRC for review and comment. The County shall review and give all DRC comments due consideration, revising trainings accordingly.

VIII. MONITORING AND TERMINATION OF AGREEMENT

- A. The County shall provide DRC with quarterly status reports as to progress on implementation of each provision of this Agreement. In addition to providing status updates, the reports shall include data as specified in Appendix A. The parties agree the data provided in Appendix A shall be used to monitor SBCBH's progress on implementation of this Agreement and substantial compliance with its terms, as defined herein.
- B. The County shall provide DRC with any reasonable information or data requested related to the implementation of this Agreement within 15 business days of the request.
- C. Data and any information provided pursuant to this Agreement shall not include information that is protected by state and Federal privacy laws, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other applicable federal or state patient privacy laws, statutes or regulations. If the County is unable to provide any data or information pursuant to this Agreement due to privacy laws, it shall inform DRC, and the parties shall discuss whether redacted or alternative

data or information can be shared that would achieve the same purpose. If the parties disagree as to whether redacted or alternative data or information can be shared that would achieve the same purpose, the parties shall engage in the dispute resolution process provided in this Agreement. Nothing in this paragraph shall be interpreted to preclude DRC from using its access authority as California's designed protection and advocacy agency to request records, data, or any other information governed by its access authority, including but not limited to 42 U.S.C. § 10801, *et seq.* Further, nothing in this paragraph shall be interpreted as the County waiving its rights to challenge DRC's access authority as referenced herein.

- D. The County shall provide DRC an in-person tour of the new County Behavioral Health Department Building, the warm room, and other locations relevant to the implementation of this Agreement within 6-12 months from the date this Agreement is executed. If conditions remain unsafe due to COVID-19, the tour may be conducted virtually. SBCBH leadership shall meet with DRC to discuss the progress of implementation of this Agreement before or after this tour.
- E. Monitoring of this Agreement, including the quarterly status reports, shall continue for a period of 12 months from the date this Agreement is executed.
 - 1. The monitoring and reporting period shall cease after 12 months if the parties agree that the County is in substantial compliance with the provisions of this Agreement.
 - 2. If the parties agree that the County is not in substantial compliance with the provisions of this Agreement after 12 months, monitoring and reporting shall continue for a period of 6 months, or for a time

period agreed upon by the parties.

3. If the parties disagree as to whether the County is in substantial compliance with the provisions of this Agreement after 12 months, the parties shall engage in the dispute resolution process provided in this Agreement.
4. The County may request to terminate the monitoring and reporting period earlier than 12 months if the County has completed the implementation of this Agreement.

IX. ATTORNEYS' FEES AND COSTS

The Parties recognize that execution of this Agreement is in lieu of DRC filing a complaint in federal or state court or any other forum. The County agrees to pay DRC to cover its reasonable attorneys' fees and costs from the date of Execution of the SNA to the date of execution of this Agreement, which the parties hereby agree is \$50,000. DRC has submitted documentation to support its request for attorneys' fees and costs consistent with this agreement. Payment will be made to DRC within 60 days from the date of execution of this Agreement.

X. DISPUTE RESOLUTION PROCESS

The parties hereby agree to employ the following Dispute Resolution Mechanism (DRM) to initiate the process of addressing any concern, by any of the parties. Any claim, dispute, or other matter in controversy related to this agreement, or the breach, implementation, or performance thereof ("dispute") shall be settled or otherwise resolved according to the procedures set forth below. The County shall provide the following additional mental health resources:

- A. **Informal DRM:** The parties will initially raise their respective concerns informally with the other parties, with the understanding that a majority of disputes arising out of or related to this agreement will involve issues that can be resolved informally through the exchange of e-mail, letters,

and/or telephone calls.

B. **Formal DRM:** If a dispute cannot be resolved by the parties using the informal means described above, the parties will use the following formal DRM procedures.

1. The affected party shall send a letter to the other parties, notifying them that, for the particular dispute, the formal DRM is invoked, and explaining the concern that evaded resolution using informal DRM.
2. Upon the receipt of such a letter, the parties will agree to meet and confer at a mutually agreed-upon time and date, no later than 30 days from receipt of the letter. If an in-person meeting is not feasible, or if the parties mutually agree, the meet and confer may occur by telephone.
3. Following the initial meet and confer, the parties will have 30 days to resolve the issue, unless the parties agree otherwise. If the dispute remains unresolved after the meet-and-confer period, then the parties shall engage the services of a mutually agreed-upon mediator.
4. The DRM mediation period shall begin immediately after the conclusion of the meet-and-confer period and continue for 45 days, including the time to engage the mediator, unless the parties mutually agree to extend or shorten such time.
5. The Parties agree to share equally in the payment of the mediators' fees and costs relating to any proceeding under this DRM.
6. After the 45-day mediation period concludes, the parties may resort to state and/or federal legal action as they deem necessary and appropriate.

XI. RELEASE OF CLAIMS AND COVENANT NOT TO SUE

A. Except for proceedings to enforce the County's obligations contained in

this Agreement, DRC, and each of their heirs, executors, successors, affiliates, assigns, administrators, agents, directors, representatives, and attorneys, hereby fully, finally, and forever release, acquit, and discharge, and agree not to file a lawsuit or take other legal or administrative action, including any alternative dispute resolution action such as arbitration, against, the County and/or any of its present, former, or future successors, predecessors, parents, affiliates, subsidiaries, assigns, officers, directors, shareholders, employees, independent contractors, agents, and attorneys, of and from any and all claims and causes of action arising from or concerning the subject matters of this Agreement, as set forth in Section I, above, that accrued on or before the Effective Date. This release expressly includes claims regarding the subject matters set forth in Section I under the LPS Act, the California and U.S. Constitutions, the Americans with Disabilities Act, and any other applicable federal, state, or municipal law or regulation.

B. DRC and each of their heirs, executors, successors, affiliates, assigns, administrators, agents, directors, representatives, and attorneys, hereby fully, finally, and forever agree not to initiate, or cause to be initiated, any litigation on behalf of any other party related to any and all claims and causes of action arising from or concerning the subject matters of this Agreement, as set forth in Section I, that accrued on or before the Effective Date.

C. In furtherance of this Agreement, DRC expressly waives any rights it may have under California Civil Code Section 1542, or other similar statutes.

Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO
CLAIMS THAT THE CREDITOR OR RELEASING
PARTY DOES NOT KNOW OR SUSPECT TO

EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

XII. GENERAL TERMS

A. Confidentiality.

1. The Parties expressly agree that all information, documents, data, and communications received or exchanged between the Parties during the period of Structured Negotiations pursuant to the settlement privilege and/or pursuant to DRC's statutory access authority shall remain strictly confidential, and not be published or publicly distributed in any way or form, except as provided in the January 17, 2020 SNA. The Parties further agree that all such information, documents, data and communications, including any data, documents, or information provided pursuant to this Agreement, shall not be used for any purpose other than in relation to this Agreement, including its enforcement.
2. This Agreement, once fully executed, shall be a public document.
3. This Parties shall release a mutually agreed upon joint public statement regarding the Agreement.
4. The County expressly denies any liability related to the matters in this Agreement, and the Agreement should not be construed as an admission or evidence of liability in any other action or proceeding, excepting any action or proceeding to approve, interpret, or enforce this Agreement itself.

B. Representations and Warranties.

1. The Parties represent and warrant that they are voluntarily entering into this Agreement as a result of arm's-length negotiations.
2. Each individual executing this Agreement on behalf of any other Person or entity does hereby represent and warrant to the other Parties that he or she has the authority to do so.

C. Construction. Both parties to this Agreement have participated in its drafting and, consequently, any ambiguity shall not be construed for or against either party.

D. Notices. Any notice or communication provided under this Agreement shall be made in writing and shall be delivered or sent by email and/or by registered mail or Federal Express to the addresses below or to such other addresses as may be specified in writing by any party.

To DRC:

Anne Hadreas

Disability Rights California

1300 Broadway

Suite 500, Oakland, CA 94612

Phone: 510-267-1250

Fax: 510-267-1201

Email: Anne.Hadreas@disabilityrightsca.org

Nicholas Levenhagen

Disability Rights California

530 B Street, Suite 400

Suite 400, San Diego, CA 92101

Phone: 510-267-1250

Fax: 510-267-1201

Email: Nicholas.Levenhagen@disabilityrightsca.org

To County:

Barbara Thompson

Office of County Counsel

481 Fourth St., 2nd Floor

Hollister, CA 95023

831 -636- 4040 x. 12

831-636-4044 (Fax)

bthompson@cosb.us

Irma Valencia

Office of County Counsel

481 Fourth St., 2nd Floor

Hollister, CA 95023

831 -636- 4040

831-636-4044 (Fax)

IValencia@cosb.us

Alan Yamamoto

Behavioral Health Director

San Benito County Behavioral Health

1131 San Felipe Road

Hollister, CA 95023

Phone: 831-636-4020

Fax: 831-636-4025

Email: alan@sbcmh.org

- E. **No Admission of Liability.** The Parties understand and agree that this Agreement embodies a compromise and settlement of disputed claims, and that nothing herein shall be deemed to constitute an admission of any wrongdoing by or liability on the part of the County. The County expressly maintains that it has acted in accordance with applicable law and denies that it has violated federal, state, or any other law concerning the provision of mental health services.
- F. **Severability.** The provisions of this Agreement are severable. If any court holds any provisions of this Agreement invalid, that invalidity shall not affect the other provisions of this Agreement.
- G. **Amendment.** This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by both the County and DRC.
- H. **Binding Effect.** This Agreement binds and inures to the benefit of the Parties hereto, their assigns, heirs, administrators, executors, and successors-in-interest.
- I. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This Agreement may be executed by signature via facsimile transmission or electronic mail which shall be deemed the same as an original signature.

XIII. SIGNATURES

For the County:

Dated: 2-23-21 By: _____



Mark Medina
San Benito County Board of Supervisors


Approved as to form:

Dated: 2/23/21

By: Barbara Thompson
Barbara Thompson and/or Irma Valencia
San Benito County Counsel

For Disability Rights California:

Dated: 2/26/2021

By: 
Anne Hadreas
DISABILITY RIGHTS CALIFORNIA

Dated: 2/26/2021

By: 
Nicholas Levenhagen
DISABILITY RIGHTS CALIFORNIA

Appendix A

1. Data to be provided under this Appendix A shall not include information that is protected by state and Federal privacy laws, including the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and any other applicable federal or state privacy laws, statutes or regulations, subject to paragraph VIII(C) of this Agreement.
2. Data on Crisis Response Team (CRT) and Crisis Hot-Line activities:
 - a. Aggregate demographic data (hereinafter defined to include age, for patients under age 89, gender, ethnicity, and primary language);
 - b. Total number of client encounters and calls (Quarterly Summary);
 - c. Mode of service(s) delivered during encounters;
 - d. Number of 5150’s avoided through intervention;
 - e. Identification of any follow-up services that individuals are referred to in lieu of 5150 implementations;
 - f. Information on whether follow-up services that individuals were referred to were timely provided within 10 days of the crisis incident;
 - g. Number of CRT encounters where an individual is brought to Hazel Hawkins Hospital;
 - h. Number of CRT initiated 5150’s that require inpatient psychiatric hospitalizations;
 - i. Number of CRT initiated 5150’s that are subsequently Safety Planned off 5150 (*i.e.*, released off of a 5150); and,
 - j. Tracking of successful implementation of outpatient follow-up with CRT encountered clients referred to outpatient services in lieu of 5150 implementations.
3. Data on the use of Crisis Residential Providers (CR):
 - a. Number of individuals admitted to CR;

- b. Number of individuals admitted to other CD Resources (by type of CD Resource);
 - c. Aggregate demographic data;
 - d. Number of individuals at time of admission to CR that were previously on 5150 hold, released and deescalated down (Safety Plan implemented to the lower acuity level of CR admission as an alternative to inpatient psychiatric admission);
 - e. Number of individuals at time of admission to other CD Resources (by type of CD Resource) that were previously on 5150 hold, released and deescalated down (Safety Plan implemented to the lower acuity level of CR admission as an alternative to inpatient psychiatric admission);
 - f. Number of individuals using CR admission as a step down to accelerate discharge from an inpatient psych unit.
 - g. Number of individuals using admission to other CD Resources (by type of CD Resource) as a step down to accelerate discharge from an inpatient psych unit.
4. Data on Warm Room:
- a. Number of individuals who use the Warm Room;
 - b. Aggregate demographic data;
 - c. Services delivered during Warm Room stay;
 - d. Number of 5150's avoided through Warm Room stay;
 - e. Identification of any follow-up services that individuals are referred to in lieu of 5150 implementations;
5. Data on children and youth (a) referred for, (b) screened for, and (c) receiving each of the following services: TBS, ICC, IHBS, TFC, and other EPSDT services:
- a. Aggregate Demographic data; and,

- b. Aggregate service data (date, duration, type of service: TBS, ICC, IHBS, other outpatient services)
- 6. Update on availability of additional permanent and transitional supportive housing, including relevant details on any planned proposals or projects.
- 7. Data on jail discharges for persons served by SBCBH:
 - a. Number of clients receiving psychiatric medications through SBCBH Psychiatrist while in jail (Quarterly Summary);
 - b. Number of individuals that received psychiatric medications through SBCBH while in jail who are then successfully linked to a Case Manager at time of Jail Discharge;
 - c. Number of individuals who are assisted by Case Manager to link with pharmacy for a supply of discharge medication(s) after jail release;
 - d. Number of individuals who opt out of linkage to pharmacy and why. (Categorical identification, *i.e.* Refused, Left the County, Other pharmacy resource preferred);
 - e. Number of jail released/case management linked individuals who keep first appointment with a SBCBH psychiatrist within 30 days of release, or information that identifies reasons individual does not use SBCBH medication support services. (Categorical identifications, *i.e.* Refused, Left the County, Other Tx options preferred); and,
 - f. Tracking of follow-up contact made or attempted with released clients.
- 8. Data on individuals held at Hazel Hawkins Hospital on a 5150 hold for more than 72 hours and documentation of all efforts taken to discharge the hold or transfer the patient within 72 hours.