

Southwest Michigan Behavioral Health CORPORATE COMPLIANCE PLAN

**Approved by SWMBH Board of Directors
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ORGANIZATIONAL STRUCTURE

Southwest Michigan Behavioral Health (SWMBH) serves as both the Medicaid Prepaid Inpatient Health Plan (PIHP) and Coordinating Agency (effective no later than 10/1/14) for the following eight county region:

Barry County:	Barry County Community Mental Health Authority;
Berrien County:	Berrien Mental Health Authority d/b/a Riverwood Center;
Branch County:	Branch County Community Mental Health Authority, d/b/a Pines Behavioral Health Services;
Calhoun County:	Calhoun County Community Mental Health Authority, d/b/a Summit Pointe;
Cass County:	Cass County Community Mental Health Authority d/b/a Woodlands Behavioral Healthcare Network;
Kalamazoo County:	Kalamazoo County Community Mental Health Authority d/b/a Integrated Services of Kalamazoo;
St. Joseph County:	Community Mental Health and Substance Abuse Services of St. Joseph County;
Van Buren County:	Van Buren Community Mental Health Authority

The Participant community mental health authorities have elected to configure SWMBH under the Michigan Mental Health Code Section 3301.1204b. It is also a selected participant Region for the Medicare-Medicaid Eligibles (MME) Demonstration effective July 1, 2014.

- **SWMBH as the PIHP**

SWMBH serves as the Medicaid Prepaid Inpatient Health Plan (PIHP) for the region with authority and accountability for operations and fulfillment of applicable federal and state statutory, regulatory and contractual obligations related to the applicable waiver(s) and MDHHS contract(s). The role of SWMBH as the PIHP is defined in federal statute, specifically 42 CFR 438 and the MDHHS/PIHP Contract.

SWMBH is the contracting entity for Medicaid contracts with MDHHS and Medicare behavioral health contracts with the Integrated Care Organizations (ICO), Aetna Better Health of Michigan and Meridian Health Plan. Contracts include Medicaid 1115 Demonstration Waiver, 1915(c)/(i) Specialty Supports and Services, the Healthy Michigan Program, the Flint 1115 Waiver, Substance Use Disorder Community Grant Programs, and/or other(s).

- **SWMBH as the Coordinating Agency**

Beyond a Medicaid role, SWMBH also serves as the Coordinating Agency (CA) for member counties with authority and accountability for operations and fulfillment of applicable federal and state statutory, regulatory and contractual obligations related to that role and its contracts. SWMBH, as a designated CA, manages SAPT Block Grant funds, other federal/state non-Medicaid SUD funds, and PA2 liquor tax funds.

SWMBH: MISSION, VISION AND VALUES

Philosophy:

“Excellence through Partnership.”

Mission:

“SWMBH strives to be Michigan’s pre-eminent benefits manager and integrative healthcare partner, assuring regional health status improvements, quality, value, trust, and CMHSP participant success.”

The MISSION of SWMBH is to provide a community-based, integrated specialty care system for individuals and families with mental health, developmental disabilities, and substance abuse needs that empowers people to succeed. We ensure all persons receiving our services have access to the highest quality care available.

Vision:

“An optimal quality of life in the community for everyone.”

The Vision of SWMBH is to ensure persons with specialty care needs reside in their own community, have a quality and healthy lifestyle, and are fully accepted.

Values:

- Customer Driven
- Person-Centered
- Recovery Oriented
- Evidenced-Based
- Integrated Care
- Trust
- Integrity
- Transparency
- Inclusive
- Accessibility
- Acceptability
- Impact
- Value
- Culturally Competent & Diverse Workforce
- High Quality Services
- Regulatory Compliance

OVERVIEW

This Corporate Compliance Plan documents SWMBH's approach to assuring that federal and state regulatory and contractual obligations related to compliance of the Prepaid Inpatient Health Plan (PIHP) are fulfilled.

The SWMBH Corporate Compliance Plan addresses SWMBH's regulatory compliance obligations as a Prepaid Inpatient Health Plan (PIHP) and how, where it has obligations, it will oversee the PIHP functions it delegates to the Participant Community Mental Health Service Providers (CMHSP). SWMBH's Corporate Compliance Program is designed to further SWMBH's commitment to comply with applicable laws, promote quality performance throughout the SWMBH region, and maintain a working environment for all SWMBH personnel that promotes honesty, integrity and high ethical standards. SWMBH's Corporate Compliance Program is an integral part of SWMBH's mission, and all SWMBH personnel, Participant CMHSPs and contracted and sub- contracted Providers are expected to support the Corporate Compliance Program. SWMBH's Compliance Plan is comprised of the following principal elements as outlined in the Federal Sentencing Guidelines:

- 1) The development and distribution of written standards of conduct, as well as written policies and procedures, that promote SWMBH's commitment to compliance and that address specific areas of potential fraud;
- 2) The designation of a Chief Compliance Officer and other appropriate bodies, (e.g., a Corporate Compliance Committee), charged with the responsibility and authority of operating and monitoring the compliance program;
- 3) The development and implementation of regular, effective education and training programs for all affected employees;
- 4) The development of effective lines of communication between the Chief Compliance Officer and all employees, including a hotline to receive complaints and the adoption of procedures to protect the anonymity of complainants and to protect callers from retaliation;
- 5) The use of audits or other risk evaluation techniques to monitor compliance and assist in the reduction of identified problem areas within delivered services, claims processing and managed care functions;
- 6) The development of disciplinary mechanisms to consistently enforce standards and the development of policies addressing dealings with sanctioned and other specified individuals; and
- 7) The development of policies to respond to detected offenses, to initiate corrective action to prevent similar offenses, and to report to Government authorities when appropriate.

SWMBH's Corporate Compliance Program is committed to the following:

- Minimizing organizational risk and improving compliance with the service provision, documentation, and billing requirements of Medicaid and Medicare;

- Maintaining adequate internal controls throughout the region and provider network;
- Encouraging the highest level of ethical and legal behavior from all employees and providers;
- Educating employees, contract providers, board members, and stakeholders on their responsibilities and obligations to comply with applicable local, state, and federal laws; and
- Providing oversight and monitoring functions.

There are numerous laws that affect the regulatory compliance of SWMBH and its provider network; however, in formalizing the PIHP's compliance program, the legal basis of the SWMBH compliance program centers around four key laws and statutes:

- **The Affordable Care Act (2010)** This Act requires the PIHP to have a written and operable compliance program capable of preventing, identifying, reporting, and ameliorating fraud, waste and abuse across the PIHP's provider network. All programs funded by the PIHP including CMHSPs, sub-contracted provider organizations and practitioners, board members and others involved in rendering PIHP covered services fall under the purview and scope of SWMBH's compliance program.
- **The Federal False Claims Act** This Act applies when a company or person knowingly presents (or causes to be presented) to the Federal government (or any entity on its behalf) a false or fraudulent claim for payment; knowingly uses (or causes to be used) a false record or statement to get a claim paid; conspires with others to get a false or fraudulent claim paid; or knowingly uses (or causes to be used) a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Federal government (or its designated entity).
- **The Michigan False Claims Act** This Act prohibits fraud in the obtaining of benefits or payments in conjunction with the MI Medical assistance program; prohibits kickbacks or bribes in connection with the program; prohibits conspiracies in obtaining benefits or payments; and authorizes the MI Attorney General to investigate alleged violations of this Act.
- **The Anti-Kickback Statute** This Act prohibits the offer, solicitation, payment or receipt of remuneration, in cash or in kind, in return for or to induce a referral for any service paid for or supported by the Federal government or for any good or service paid for in connection with consumer service delivery.

There are numerous Federal and State regulations that affect the SWMBH compliance program. Some of these laws not referenced above include but are not limited to:

- The Medicaid Managed Care Final Rules (42 CFR Part 438)
- The Deficit Reduction Act of 2005
- Social Security Act of 1964 (Medicare & Medicaid)

- Privacy and Security requirements of the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)
- 42 CFR Part 2 Confidentiality of Alcohol and Drug Abuse Patient Records
- Code of Federal Regulations
- Letters to State Medicaid Directors
- The MI Medicaid False Claims Act (Current through amendments made by Public Act 421 of 2008, effective 1/6/2009)
- Michigan Whistleblowers Act, Act 469 of 1980
- Michigan Mental Health Code and Administrative Rules
- Medical Services Administration (MSA) Policy Bulletins
- State Operations Manual
- State of Michigan PIHP contract provisions
- Provisions from Public Act 368 of 1978 – revised – Article 6 Substance Abuse
- Michigan State Licensing requirements
- Michigan Medical Records Act
- Civil Monetary Penalty Law of 1981
- American with Disabilities Act of 1990

The SWMBH Compliance Plan is subject to the following conditions:

- A. SWMBH's Chief Compliance Officer (CCO) may recommend modifications, amendments or alterations to the written Corporate Compliance Plan as necessary and will communicate any changes promptly to all personnel and to the Board of Directors.
- B. This document is not intended to, nor should be construed as, a contract or agreement and does not grant any individual or entity employment or contract rights.

APPLICATION OF COMPLIANCE PLAN

SWMBH is a regional PIHP and as such, this Plan is intended to address SWMBH's function as a PIHP. It is the intent of SWMBH that the scope of all its compliance policies and procedures should promote integrity, support objectivity and foster trust throughout the service region. This Plan applies to all SWMBH operational activities and administrative actions, and includes those activities that come within federal and state regulations relating to PIHPs. SWMBH personnel are subject to the requirements of this plan as a condition of employment. All SWMBH personnel are required to fulfill their duties in accordance with SWMBH's Compliance Plan, human resource and operational policies, and to promote and protect the integrity of SWMBH. Failure to do so by SWMBH personnel will result in discipline, up to and including termination of employment depending on the egregiousness of the offense. Disciplinary action may also be taken against a supervisory employee who directs or approves an employee's improper conduct, is aware of the improper conduct and does not act appropriately to correct it, or who fails to properly exercise appropriate supervision over an employee.

SWMBH directly and indirectly, through its Participant CMHSPs, contracts services for adults and children with mental illness, developmental disabilities, and co-occurring mental health and substance abuse disorders within its eight counties (Barry, Berrien, Branch, Calhoun, Cass, Kalamazoo, Saint Joseph, and Van Buren counties).

The PIHP Compliance Plan applies to all contracted and subcontracted providers receiving payment through SWMBH and/or through the PIHP managed care functions. All Participant CMHSPs and contracted and subcontracted providers, including their officers, employees, servants and agents, are subject to the requirements of this Plan as applicable to them and as stated within the applicable contracts. Failure to follow the SWMBH Compliance Plan and cooperate with the compliance program will result in remediation effort attempts and/or contract action, if needed. SWMBH has the responsibility of regulating, overseeing and monitoring the Medicare funds it receives specific to its participation in the dual eligibles demonstration project, and the Medicaid processes of business conducted throughout its service area. SWMBH also has the responsibility to support business practices conducted with integrity and in compliance with the requirements of applicable laws and sound business practices.

The SWMBH Corporate Compliance Plan standards and policies included or referenced herein are not exhaustive or all inclusive. All SWMBH personnel, Participant CMHSPs and providers are required to comply with all applicable laws, rules and regulations including those that are not specifically addressed in the Corporate Compliance Plan.

DEFINITIONS AND TERMS

- Compliance investigation: the observation or study of suspected fraud, abuse, waste, or reported violations of applicable laws and regulations for all SWMBH-administered funding streams by close examination and systematic inquiry.
- Abuse: means provider practices that are inconsistent with sound fiscal, business, or clinical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards of care. It also includes beneficiary practices that result in unnecessary cost to the Medicaid program. (42 CFR § 455.2)
- Fraud (Federal False Claims Act): means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law including but not limited to the Federal False Claims Act and the Michigan False Claims Act. (42 CFR § 455.2)
- Fraud (MI Medicaid False Claims Act): Michigan law permits a finding of Medicaid fraud based upon “constructive knowledge.” This means that if the course of conduct reflects a systematic or persistent tendency to cause inaccuracies” then it may be fraud, rather than simply a good faith error or mistake. (Public Act 421 of 2008, effective 1/6/2009)
- Waste: means overutilization of services, or other practices that result in unnecessary costs. Generally not considered caused by criminally negligent actions but rather the misuse of resources.

- **Participant CMHSPs:** Participant CMHSPs hold a subcontract with SWMBH to provide supports and services to adults and children with mental illness, developmental disabilities, and co-occurring mental health and substance abuse disorders to Plan Members and to perform various delegated managed care functions consistent with SWMBH policy. “Participant CMHSPs” includes the agency itself as well as those acting on its behalf, regardless of the employment or contractual relationship.
- **Contracted Providers:** substance abuse, MI Health Link and other Providers throughout the SWMBH region with which SWMBH directly holds a contract to provide Medicaid covered mental health and substance abuse services.
- **Subcontracted Providers:** various Providers throughout the SWMBH region that contract directly with one or more of the Participant CMHSPs to provide covered mental health and substance abuse services.
- **Medicare Funds:** when Medicare or Medicare funds are referenced in this Compliance Plan, the related activities are limited to services covered by SWMBH Medicare funds received due to its participation in the dual eligibles demonstration project.

SECTION I - CODE OF CONDUCT

- **SWMBH Personnel and Board of Directors Code of Conduct**
In order to safeguard the ethical and legal standards of conduct, SWMBH will enforce policies and procedures that address behaviors and activities within the work setting, including but not limited to the following:
 - 1) **Confidentiality:** SWMBH is committed to protecting the privacy of its consumers. Board members and SWMBH personnel are to comply with the Michigan Mental Health Code, Section 330.1748, 42 CFR Part 2 relative to substance abuse services, and all other privacy laws as specified under the Confidentiality section of this document.
 - 2) **Harassment:** SWMBH is committed to an environment free of harassment for Board members and SWMBH personnel. SWMBH will not tolerate harassment based on sex, race, color, religion, national origin, citizenship, chronological age, sexual orientation, or any other condition, which adversely affects their work environment. SWMBH has a strict non-retaliation policy prohibiting retaliation against anyone reporting suspected or known compliance violations.
 - 3) **Conflict of Interest:** SWMBH Board members and personnel will avoid any action that conflicts with the interest of the organization. All Board members and personnel must disclose any potential conflict of interest situations that may arise or exist. SWMBH will maintain standards establishing a clear separation of any supplemental employment in terms of private practice and outside employment from activities performed for SWMBH.
 - 4) **Reporting Suspected Fraud:** SWMBH Board members and personnel must report any suspected or actual “fraud, abuse or waste” (consistent with the

definitions as set forth in this Plan) of any SWMBH funds to the organization.

- 5) Culture: SWMBH Board members, Executive Officer and management personnel will establish at SWMBH, and encourage throughout its region, cultures that promote prevention, detection, and resolution of instances of misconduct in order to conform to applicable laws and regulations. SWMBH will assist Participant CMHSPs, contracted and subcontracted providers in adopting practices that promote compliance with Medicare and Medicaid fraud, abuse and waste program requirements. The SWMBH Compliance Plan and program will be enforced consistently.
- 6) Delegation of Authority: SWMBH Board members, Executive Officer and management personnel will use due care not to delegate substantial discretionary authority to individuals whom they know, or should have known through due diligence, have a propensity to engage in illegal activities.
- 7) Excluded Individuals: SWMBH will perform or cause to be performed criminal records checks on potential SWMBH personnel, and shall avoid placing untrustworthy or unreliable employees in key positions. In addition, SWMBH will consult the OIG Cumulative Sanctions List, the System for Award Management, and the Michigan Department of Health and Human Services List of Sanctioned Providers to determine whether any current or prospective SWMBH Board members or personnel have been excluded from participation in federal health care programs.
- 8) SWMBH Board members and SWMBH personnel are expected to participate in compliance training and education programs.
- 9) SWMBH Board members and SWMBH personnel are expected to cooperate fully in any investigation.
- 10) Reporting: All SWMBH Board members and SWMBH personnel have the responsibility of ensuring the effectiveness of the organization's Compliance Program efforts by actively participating in the reporting of suspected violations of the Compliance Plan or policies, and the standards stated in this Code of Conduct.
- 11) Gifts From Consumers/Members: SWMBH personnel are prohibited from soliciting tips, personal gratuities or gifts from members or member families. Additionally, SWMBH personnel are prohibited from accepting gifts or gratuities of more than nominal value. SWMBH generally defines "nominal" value as \$25.00 per gift or less. If a member or other individual wishes to present a monetary gift of more than nominal value, he or she should be referred to the Executive Officer.
- 12) Gifts Influencing Decision-Making: SWMBH personnel will not accept from anyone gifts, favors, services, entertainment or other things of value to the extent that decision-making or actions affecting SWMBH might be influenced. Similarly, the offer or giving of money, services or other things of value with the expectation of influencing the judgment or decision-making process of any purchaser, supplier, customer/member, government official or other person by any SWMBH personnel or

SWMBH is absolutely prohibited. Any such conduct should be reported immediately to the CCO, or through the SWMBH corporate compliance hotline at (800) 783-0914.

- 13) Gifts from Existing Vendors: SWMBH personnel may accept gifts from vendors, suppliers, contractors or other persons that have nominal values as defined in SWMBH financial and compliance policies. SWMBH expects SWMBH personnel to exercise good judgment and discretion in accepting gifts. If any SWMBH personnel have any concerns regarding whether a gift should be accepted, the person should consult with his or her supervisor. SWMBH personnel will not accept excessive gifts, meals, expensive entertainment or other offers of goods or services, which has a more than a nominal value as defined in SWMBH financial and compliance policies.
- 14) Vendor Sponsored Entertainment: At a vendor's invitation, SWMBH personnel may accept meals or refreshments of nominal value at the vendor's expense. Occasional attendance at local theater or sporting events, or similar activity at a vendor's expense may also be accepted provided that, a business representative of the vendor attends with SWMBH personnel. Such activities are to be reported to the Chief Compliance Officer by SWMBH personnel.
- 15) Purchasing and Supplies: It is the policy of SWMBH to ensure that all rental, lease, and purchasing agreements are structured in accordance with applicable federal and state self-referral and anti-kickback regulations as well as federal guidelines regarding tax-exempt organizations. All agreements must be commensurate with the fair market value for equipment or space.

All subcontractor and supplier arrangements will be managed in a fair and reasonable manner, consistent with all applicable laws and good business practices. Subcontractors, suppliers, and vendors will be selected based on objective criteria including quality, technical excellence, price, delivery, and adherence to schedules, services and maintenance of adequate sources of supply. Purchasing decisions will be made on the supplier's ability to meet needs and not on personal relationships or friendships. SWMBH will always employ the highest ethical standards in business practices in source selection, negotiation, determination of contract awards, and the administration of purchasing activities.

- 16) Marketing: Marketing and advertising practices are defined as those activities used by SWMBH to educate the public, provide information to the community, increase awareness of services, and recruit employees or contractual providers. SWMBH will present only truthful, fully informative and non-deceptive information in any materials or announcements. All marketing materials will reflect available services.

The federal Anti-kickback Statute (section 1128B[b] of the Social Security Act) makes it a felony, punishable by criminal penalties, to offer, pay,

solicit, or receive “remuneration” as an inducement to generate business compensated by Medicare and Medicaid programs. Therefore, all direct- to-consumer marketing activities require advance review by the Compliance Committee or designee if the activity involves giving anything of value directly to a consumer.

- 17) Financial Reporting: SWMBH shall ensure integrity of all financial transactions. Transactions shall be executed in accordance with established policies and procedures and with federal and state law, and shall be recorded in conformity with generally accepted accounting principles or any other applicable criteria.

All financial reports, accounting records, research reports, expense accounts, time sheets and other documents will accurately and clearly represent the relevant facts or the true nature of a transaction. No undisclosed or unrecorded funds or assets will be established for any purpose.

SWMBH will not tolerate improper or fraudulent accounting, documentation, or financial reporting. SWMBH personnel have a duty to make reasonable inquiry into the validity of financial information reporting. In addition to employee discipline and termination, SWMBH may terminate the contractual arrangement involving any contracted provider due to fraudulent accounting, documentation, or financial reporting.

SWMBH shall develop internal controls and obtain an annual independent audit of financial records; shall ensure that reimbursement for services billed is accurate, appropriate, and based on complete documentation; and shall maintain accountability of assets.

- 18) Third Party Billing and Governmental Payers: SWMBH is committed to truthful billing that is supported by complete and accurate documentation. SWMBH personnel may not misrepresent charges to, or on behalf of, a consumer or payer.

SWMBH must comply with all payment requirements for government-sponsored programs. All SWMBH personnel must exercise care in any written or oral statement made to any government agency. *SWMBH will not tolerate false statements by SWMBH personnel to a governmental agency.* Deliberate misstatements to governmental agencies or to other payers will expose the individual to potential criminal penalties and termination.

- 19) Responding to Government Investigations: SWMBH will fully comply with the law and cooperate with any reasonable demand made in a governmental investigation as outlined and specified in the SWMBH Compliance and Program Integrity Operating Policy 19.9, *Response To Government Investigations*. SWMBH personnel may not conceal, destroy,

or alter any documents, lie or make misleading statements to governmental representatives. SWMBH personnel may not aid in any attempt to provide inaccurate or misleading information or obstruct, mislead, or delay the communication of information or records relating to a possible violation of the law.

It is crucial that the legal rights of SWMBH personnel and SWMBH are protected. If any SWMBH personnel receives an inquiry, a subpoena, or other legal documents requiring information about SWMBH business or operation, whether at home or in the workplace, from any government agency, SWMBH requests that the person notify SWMBH's Executive Officer or the Chief Compliance Officer immediately.

SWMBH will distribute the Code of Conduct to all SWMBH personnel upon hire who shall certify in writing that they have received, read, and will abide by the organization's Code of Conduct. In addition to the Code of Conduct, all SWMBH personnel will be familiar with and agree to abide by all SWMBH operational and human resources policies and procedures as well as the employee handbook. All operational and human resources policies and procedures and the employee handbook are available to SWMBH personnel through the SWMBH intranet and the shared drive.

- **Participant CMHSP and Contracted and Subcontracted Provider Relationships**
It is the policy of SWMBH to ensure that all direct and subcontracted provider contractual arrangements are structured in accordance with federal and state laws and regulations and are in the best interest of the organization and the consumers we serve. In order to ethically and legally meet all standards, SWMBH will strictly adhere to the following:
 - 1) SWMBH does not receive or provide any inducement for referrals. Consumer referrals and intakes will be accepted based on the consumer's needs, eligibility, and SWMBH's ability to provide the services needed.
 - 2) No employee, Participant CMHSP, or contracted or subcontracted provider, or any other person acting on behalf of the organization is permitted to solicit or receive anything of value, directly or indirectly, in exchange for the referral of consumers.
 - 3) SWMBH does not enter into financial arrangements with physicians that are designed to provide inappropriate remuneration to the organization in return for the physician's ability to provide services to state and federal health care program beneficiaries.
 - 4) SWMBH does not enter into contractual relationships with individuals or agents/agencies that have been convicted of a criminal offense related to health care or that are listed by a federal agency as debarred, excluded, or otherwise ineligible for participation in federal health care programs. Reasonable and prudent background investigations will be completed prior to entering into contractual relationships with all individuals and agents/agencies. SWMBH will consult the National Practitioner Data

Bank and the OIG Cumulative Sanctions List to determine whether any current or prospective Participant CMHSPs or contracted or subcontracted Providers have been excluded from participation in federal health care programs.

- 5) All Participant CMHSP, contracted and subcontracted provider personnel have the responsibility of ensuring the effectiveness of SWMBH's Compliance Program efforts by actively participating in the reporting of suspected violations of the Compliance Plan or policies, and the standards stated in this Code of Conduct consistent with SWMBH compliance policies.

Participant CMHSPs and contracted and subcontracted providers will be required to comply with the SWMBH Code of Conduct or provide evidence of a sufficient Code of Conduct of their own. If complying with the SWMBH Code of Conduct, Participant CMHSPs and contractual providers will receive a copy of the Code of Conduct at the time of the initial contract and will be required to certify in writing that they have received, read, and will abide by SWMBH's Code of Conduct for inclusion in the contractor file. Participant CMHSPs and contracted or subcontracted providers having developed their own Code of Conduct will be required to provide evidence of such for inclusion in the contractor file. Participant CMHSPs and contracted and subcontracted providers will be familiar with and agree to abide by the SWMBH Compliance Plan and all applicable policies and procedures as incorporated into relevant contracts. All policies and procedures are available to the Participant CMHSPs, contracted, and subcontracted providers via the SWMBH Internet Website at www.swmbh.org. Participant CMHSPs and contracted and subcontracted providers are responsible for monitoring and staying informed of regulatory developments independent of SWMBH Compliance Program efforts.

- All SWMBH personnel, Participant CMHSPs, contracted and subcontracted providers will refrain from conduct that may violate the Medicare and Medicaid anti-kickback, false claims or physician self-referral laws and regulations. A false claim includes the following: billing for services not rendered; misrepresenting services actually rendered; falsely certifying that certain services were medically necessary; or submitting a claim for payment that is inconsistent with or contrary to Medicaid payment requirements. In general, these laws prohibit:
 - Submission of false, fraudulent or misleading claims for payment, the knowing use of a false record or statement to obtain payment on false or fraudulent claims paid by the United States government, or the conspiracy to defraud the United States government by getting a false or fraudulent claim allowed or paid. If the claims submitted are knowingly false or fraudulent then the False Claims Act has been violated;
 - Knowingly and willfully making false representation to any person or entity in order to gain or retain participation in the Medicaid program or to obtain payment for any service from the United States government;

- A physician (or immediate family member of the physician) who has a financial relationship with an entity from referring a Medicaid patient to the entity for the provision of certain “designated health services” unless an exception applies; or an entity from billing an individual, third party payer, or other entity for any designated health services provided pursuant to a prohibited referral; and
- Knowingly and willfully making or causing to be made any false statement or representation of a material fact in any application (claim) for benefits or payments under a Federal health care program.

SECTION II - CHIEF COMPLIANCE OFFICER AND COMPLIANCE COMMITTEE

SWMBH EO will designate a Chief Compliance Officer (CCO), who will be given sufficient authority to oversee and monitor the Compliance Plan, including but not limited to the following:

- Recommending revisions/updates to the Compliance Plan, policies, and procedures to reflect organizational, regulatory, contractual and statutory changes.
- Reporting on a regular basis the status of the implementation of the Compliance Plan and related compliance activities.
- Assuring and/or coordinating compliance training and education efforts for SWMBH personnel, Participant CMHSPs and contracted and subcontracted providers.
- Assuring continuing analysis, technical expertise and knowledge transmission of corporate compliance requirements and prepaid health plan performance in keeping with evolving federal requirements and MDHHS contractual obligations and standards.
- Coordinating internal audits and monitoring activities outlined in the compliance work plan.
- Performing or causing to be performed risk assessments, verification audits, and on-site monitoring consistent with the approved annual PIHP compliance work plan(s) intended to reduce the risk of criminal conduct at SWMBH, Participant CMHSPs, contracted and subcontracted providers.
- Ensure coordinating efforts with Human Resources, Provider Network Management, and other relevant departments regarding employee certifications/licensures, background checks, and privileging and credentialing.
- Developing and modifying policy and programs that encourage the reporting of suspected fraud and other potential problems without fear of retaliation.
- Independently investigating and acting on matters related to compliance.
- Drafting and maintaining SWMBH Board and executive reports including annual Compliance Program Evaluation and bi-annual Board compliance reports.

The authority given the CCO will include the ability to review all SWMBH, Participant CMHSP, contracted and subcontracted provider Medicare (specific to the Medicare funds received for participation in the dual eligible demonstration project), Medicaid and ABW

documents and other information relevant to compliance activities, including, but not limited to, consumer records, billing records, employee records and contracts and obligations of SWMBH, consistent with applicable contract provisions.

SWMBH maintains and charters a Corporate Compliance Committee that oversees the implementation and operation of the SWMBH Compliance Plan. The Corporate Compliance Committee reviews reports and recommendations made by the SWMBH CCO regarding compliance activities. This includes data regarding compliance generated through audits, monitoring, and individual reporting. Based on these reports, the Chief Compliance Officer will make recommendations to the Executive Officer regarding the efficiency of the SWMBH Compliance Plan and program. The Corporate Compliance Committee will be chaired by the CCO and will consist of members appointed by the EO of SWMBH, which can include:

- Executive Officer (EO) of SWMBH or his/her designee;
- Chief Compliance Officer/Privacy Officer;
- Chief Information Officer;
- Member Services Coordinator;
- Director of Performance Improvement Program;
- Directors of Clinical functional areas;
- Chief Administrative Officer;
- Provider Network Manager;
- Chief Financial Officer; and
- Participant CMHSP CEO

Specific responsibilities of the Corporate Compliance Committee include:

- Regularly reviewing compliance program policies to ensure they adequately address legal requirements and address identified risk areas;
- Assisting the CCO with developing standards of conduct and policies and procedures to promote compliance with the Compliance Plan;
- Analyzing the effectiveness of compliance education and training programs;
- Reviewing the compliance log for adequate and timely resolution of issues and/or inquiries;
- Assisting the CCO in identifying potential risk areas, advising and assisting the CCO with compliance initiatives, identifying areas of potential violations, and recommending periodic monitoring/audit programs ;
- Assisting in the development of policies to address the remediation of identified problems;
- Receiving, interpreting, and acting upon reports and recommendations from the CCO;
- Evaluating the overall performance of the Compliance Program and making recommendations accordingly; and
- Providing a forum for the discussion of ethical issues related to entity business functions.

SECTION III - COMPLIANCE TRAINING AND EDUCATION

Proper and continuous training and education of SWMBH personnel at all levels is a significant element of an effective compliance program. Therefore, SWMBH will establish a regular training program consistent with applicable compliance policies that covers the provisions of the Code of Conduct, as well as the processes for obtaining advice and reporting misconduct. Training is provided upon hire for new employees; annual and periodic retraining is provided to existing SWMBH personnel and, as applicable, independent contractors.

SWMBH Board members and personnel will be scheduled to receive SWMBH's compliance program training on the Compliance Plan and Code of Conduct at orientation or within thirty (30) days of employment. Tailored training may be required for employees involved in specific areas of risk and the CCO will coordinate and schedule this as needed and will supplement with training and/or newsletters, e-mails and in-services. Records will be maintained on all formal training and educational activities. Training is considered a condition of employment and failure to comply will result in appropriate disciplinary action.

Upon employment, all SWMBH personnel will be provided a written copy of the Plan; staff signature (Compliance Certification Form Attachment A) acknowledges that the staff received:

- Corporate Compliance Orientation
- A copy of the Code of Conduct
- A copy of the SWMBH Corporate Compliance Plan

The Compliance Certification Forms will be maintained in the Program Integrity and Compliance Office. Modifications to the Plan will be distributed to all personnel after revisions have been approved by the SWMBH Compliance Committee and accepted by the Board of Directors.

A copy of the Plan will be kept on file by the CCO and maintained at SWMBH's corporate office. The SWMBH Corporate Compliance Plan can also be accessed on the shared drive of SWMBH's network, and on the SWMBH Internet Website at www.swmbh.org.

- Initial training: The Chief Compliance Officer shall ensure the scheduling and documentation of initial trainings for all SWMBH personnel regarding SWMBH's Corporate Compliance Plan. Training sessions may include, but are not limited to face-to-face educational presentations or videotapes. Subsequent compliance instruction will occur annually.
- Continuing Education: The CCO shall review and circulate periodic information to the Corporate Compliance Committee regarding any health care fraud issues as received from the Office of Inspector General (OIG), the Department of Health and Human Services (DHHS), and other updated compliance materials. The CCO shall ensure current mandates are instituted in both initial and refresher

education/training that will assist in answering personnel questions related to modifications in either federal or state edicts. Continued compliance training will be documented in electronic format. These training sessions are obligatory, personnel initiated, or instituted upon request of the supervisor. Failure to participate in mandatory training session(s) will result in verbal/written reprimand, suspension, or termination of employment as deemed appropriate by SWMBH's EO. The CCO will be available to all personnel to answer questions regarding modifications of governmental guidelines.

- Regulations: It is the responsibility of SWMBH personnel to maintain job specific certifications and/or licensing requirements, proficiencies, and competencies set forth by the State of Michigan licensing body.

Training and educational opportunities related to compliance may be made available by SWMBH to Participant CMHSPs, contracted and subcontracted provider staff, as well as consumers and others as appropriate. Participant CMHSPs, contracted and subcontracted providers are expected to provide the following minimum compliance training annually to all staff and agents working on their behalf:

- Establish and review policies and procedures that provide detailed information about the Federal False Claims Act;
- Establish and review policies and procedures that provide detailed information about the MI State False Claims Act;
- Review administrative, civil and criminal remedies for false claims and statements under both the Federal and State False Claims Act;
- Establish and review agency policies/procedures relating to prevention of fraud, waste and abuse; and
- Establish and review agency policies and procedures relating to whistleblower provisions and non-retaliation protections.

SWMBH reserves the right to review all compliance related training materials used by Participant CMHSPs covering the elements noted above in order to ensure compliance with contractual requirements.

SECTION IV - COMPLIANCE REPORTING AND ONGOING COMMUNICATION

All SWMBH Board members and personnel must be familiar with applicable federal and state laws and regulations as well as SWMBH policies and procedures. Any SWMBH Board member and personnel that know, or has reason to believe, that an employee of, or independent professional providing services to, SWMBH is not acting in compliance with federal and state laws and regulations should report such matters to the CCO consistent with the applicable compliance policy. Reporting of suspected violations may be accomplished through a verbal, written, or anonymous report using the following mechanisms:

- SWMBH Telephone Hot Line – Suspected compliance violations or questions can be made to a toll-free hot line. The number is (800) 783-0914 and includes confidential voice mail.
- SWMBH Electronic Mail (E-Mail) – Suspected compliance violations or questions can be sent electronically via e-mail to the mila.todd@swmbh.org or swmbhcompliance@swmbh.org.
- Mail Delivery – Suspected compliance violations or questions can be mailed to:
Southwest Michigan Behavioral Health
Attn: Chief Compliance Officer
5250 Lovers Lane, Suite 200
Portage, MI 49002
- In Person - Suspected compliance violations or questions can be made in person to SWMBH's CCO at the above address.

Whistleblower Protections for SWMBH Personnel

Employees who make good faith reports of violations of federal or state law are protected by state and federal whistleblower statutes, as more fully described below.

Under the *Federal False Claims Act* and the *Michigan Medicaid False Claims Act*, employees who report violations in good faith are entitled to protection from disciplinary actions taken by their employer.

The *Federal False Claims Act*, 31 USC §§3729 through 3731, provides for administrative remedies, encourages enactment of parallel State laws pertaining to civil and criminal penalties for false claims and statements, and provides “whistle-blower” protection for those making good faith reports of statutory violations.

Under the *Michigan Medicaid False Claims Act*, an employer shall not discharge, demote, suspend, threaten, harass, or otherwise discriminate against an employee in the terms and conditions of employment because the employee initiates, assists in, or participates in a proceeding or court action under this act or because the employee cooperates with or assists in an investigation under this act. This prohibition does not apply to an employment action against an employee who the court finds: (i) brought a frivolous claim, as defined in section 2591 of the revised judicature act of 1961, 1961 PA 236, MCL §600.2591; or, (ii) planned, initiated, or participated in the conduct upon

which the action is brought; or, (iii) is convicted of criminal conduct arising from a violation of that act.

An employer who takes action against an employee in violation of the *Michigan Medicaid False Claims Act* is liable to the employee for all of the following:

1. Reinstatement to the employee's position without loss of seniority;
2. Two times the amount of lost back pay;
3. Interest on the back pay;
4. Compensation for any special damages; and,
5. Any other relief necessary to make the employee whole.

Under the *Federal False Claims Act*, any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.

Partly because of their status as primary contracted agents performing delegated managed care functions and in order to minimize regional risk and harm, Participant CMHSPs will report suspected compliance issues within three business days or less to the SWMBH Chief Compliance Officer when one or more of the following criteria are met:

- 1) During an inquiry by the Participant CMHSP compliance officer there is determined to be (reasonable person standard) Medicare (for a Duals Demonstration beneficiary) or Medicaid fraud, abuse, or waste as defined by federal statute, CMS, HHS OIG and applicable Michigan statute or regulation; or
- 2) Prior to any self-disclosure to any federal or state of Michigan Medicare (for a Duals Demonstration beneficiary) or Medicaid authority. In no way is this intended to nor should it be interpreted as a requirement or request to violate the letter or spirit of federal or Michigan reporting and whistleblower statutes or related regulations; or
- 3) When a Participant CMHSP knows or (reasonable person standard) suspects that an action or failure to take action in the organization or its contractors would result in the improper application or improper retention of Medicaid funds.

Participant CMHSPs shall undertake fraud, waste and abuse prevention, detection, and surveillance measures per contractual obligations and industry standards.

They are encouraged to independently assure that claims, encounters, other data and financial submissions to SWMBH are complete, accurate and timely on an ongoing basis. They are encouraged to update financial reports and encounter submissions consistent with this approach.

SECTION V - COMPLIANCE AUDITING, MONITORING AND RISK EVALUATION

The SWMBH CCO is responsible for monitoring compliance activities and operations within SWMBH. The CCO must then report any determinations of noncompliance to the Executive Officer, the Corporate Compliance Committee, and SWMBH's Board of Directors. The CCO will identify, interpret and determine standards of compliance through internal audit and monitoring functions and external audits. The CCO shall prepare an Annual Auditing and Monitoring Plan for EO and Corporate Compliance Committee review and input.

Monitoring and Auditing: SWMBH believes that a thorough and ongoing evaluation of the various aspects of SWMBH's Compliance Plan is crucial to its success. In order to evaluate the effectiveness of the Plan, SWMBH will employ a variety of monitoring and auditing techniques, including but not limited to, the following:

- Periodic interviews with personnel within SWMBH, Participant CMHSPs, and contracted and subcontracted providers regarding their perceived levels of compliance within their departments or areas of responsibilities;
- Questionnaires developed to poll personnel within SWMBH, Participant CMHSPs, contracted and subcontracted providers regarding compliance matters including the effectiveness of training/education;
- Information gained from written reports from SWMBH compliance staff utilizing audit and assessment tools developed to track all areas of compliance;
- Audits designed and performed by internal and/or external auditors utilizing specific compliance guidelines;
- Investigations of alleged noncompliance reports as described in SWMBH Compliance Operating Policy 10.8 – *Compliance Reviews and Investigations for Reporting*; and
- Exit interviews with departing SWMBH employees.
- Participant CMHSPs, contracted and subcontracted providers are encouraged to perform auditing and monitoring functions involving Medicare and Medicaid covered services through their own compliance program efforts.

The SWMBH CCO, legal counsel, Corporate Compliance Committee, and as appropriate, other SWMBH personnel will take actions to ensure the following:

- Access to and familiarity with the latest HHS OIG compliance guidelines and current enforcement priorities; and

- Assessment of the baseline risk of any significant issues regarding non-compliance with laws or regulations in accordance with SWMBH's Compliance Plan.

The CCO is also responsible to ensure a risk assessment is performed annually with the results integrated into the daily operations of the organization.

SECTION VI - ENFORCEMENT OF COMPLIANCE POLICIES AND STANDARDS

Corrective action shall be imposed as a means of facilitating the overall SWMBH Compliance Plan goal of full compliance. Corrective action plans should assist SWMBH personnel, Participant CMHSPs, contracted and subcontracted providers to understand specific issues and reduce the likelihood of future noncompliance. Corrective action, however, shall be sufficient to address the particular instance of noncompliance and should reflect the severity of the noncompliance. The following Corrective Action Plan Guidelines are to be used with SWMBH Personnel, Participant CMHSPs, contracted and subcontracted providers:

<u>Violation</u>	<u>Possible Disciplinary Action</u>
Knowingly and willfully committing fraud and/or violation of a federal or state billing or documentation practice(s). Knowingly and willfully providing false or misleading information in a compliance context to SWMBH, governmental agency, consumer or MDHHS. [E.g. billing for services not performed, forging documentation or signatures, upcoding, kickbacks, bribes]	<p>First Offense for SWMBH Personnel: Immediate termination of employment.</p> <p>First Offense for Participant CMHSP, Contracted or Subcontracted Provider: Termination of subcontract or provider contract. All related remuneration and/or funds will be recouped by SWMBH.</p>
Unknowingly violating federal or state billing or documentation practice(s).	<p>First Offense for SWMBH Personnel: Possible/potential disciplinary action as warranted and based upon CCO/human resources judgment up to and including: written reprimand for personnel file, mandatory compliance refresher training, individual counseling with manager and Chief Compliance Officer, probation, etc.</p> <p>Second Offense for SWMBH Personnel: Possible/potential disciplinary action as warranted and based upon EO.</p> <p>First Offense for Participant CMHSP, Contracted or Subcontracted Provider: Written notice of noncompliance for contract file, mandatory compliance</p>

	<p>training approved by SWMBH Corporate Compliance Committee or provided by SWMBH CCO, Corrective Action Plan to be submitted to the SWMBH Corporate Compliance Committee, may be placed on probationary period. Related individual(s) may be barred from Medicare and Medicaid service provision or administrative activity. All related remuneration and/or funds will be recouped by SWMBH.</p> <p>Second Offense for Participant CMHSP, Contracted or Subcontracted Provider: Possible termination of subcontract or contract.</p>
<p>Knowingly violating policies and/or procedures as set forth in the Compliance Plan.</p>	<p>First Offense for SWMBH Personnel: Written reprimand for personnel file, individual counseling with manager and Chief Compliance Officer, and placed on 60-day probation.</p> <p>Second Offense for SWMBH Personnel: Unpaid suspension and possible termination.</p> <p>First Offense for Participant CMHSP, Contracted and Subcontracted Providers: Written notice of noncompliance for contract file, Corrective Action Plan to be submitted to SWMBH Corporate Compliance Committee, may be placed on probationary period. Related individual(s) may be barred from Medicare and Medicaid service provision or administrative activity.</p> <p>Second Offense for Participant CMHSP, Contracted or Subcontracted Provider: Possible termination of subcontract or contract.</p>
<p>Detection of, but, failure to report or failure to detect substantive violations of federal and state mandates in duties where a</p>	<p>First Offense for SWMBH Personnel: Written reprimand for personnel file, mandatory compliance refresher training,</p>

<p>reasonable person could be expected to detect violation(s).</p>	<p>individual counseling with manager and Chief Compliance Officer, and placed on 60-day probation.</p> <p>Second Offense for SWMBH Personnel: Suspension and possible termination.</p> <p>First Offense for Participant CMHSP, Contracted or Subcontracted Provider: Written notice of noncompliance for contract file, mandatory compliance training approved by SWMBH Corporate Compliance Committee or provided by SWMBH CCO, Corrective Action Plan to be submitted to SWMBH Corporate Compliance Committee, may be placed on probationary period. Related individual(s) may be barred from Medicare and Medicaid service provision or administrative activity.</p> <p>Second Offense for Participant CMHSP, Contracted or Subcontracted Provider: Possible termination of subcontract or contract.</p>
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Basis for Participant CMHSP, Contracted or Subcontracted Provider Corrective Action:
Monitoring and auditing, and reports of questionable practices may form the basis for imposing corrective action.

Elements of a Participant CMHSP, Contracted or Subcontracted Provider Corrective Action Plan: As appropriate given the nature of the noncompliance, a corrective action plan submitted to SWMBH for approval shall include:

- A description of how the issue(s) identified was immediately corrected OR the reason the issue(s) cannot be immediately corrected (i.e. the consumer has been discharged).
- A description of the steps to be put into place to prevent the issue(s), or a similar issue(s), from occurring again (i.e. staff training, process redesign, etc.)
- A description of the quality assurance program put into place for monitoring purposes to ensure the corrective action plan is effective and/or similar issues do not occur.

SECTION VII - CONFIDENTIALITY AND PRIVACY

SWMBH is committed to protecting the privacy of its consumers and shall strictly govern the disclosure of any information to anyone other than those authorized in the current published Privacy Notice. Any Board member, SWMBH personnel, or contracted or subcontracted provider who engages in unauthorized disclosure of consumer information is subject to disciplinary action which may result in removal from the Board, termination of employment, or termination of the contract.

To ensure that all consumer information remains confidential, SWMBH personnel and contracted and subcontracted providers are required to comply with all confidentiality policies and procedures in effect, specifically to include the HIPAA privacy regulations outlined below:

- Privacy Notice - SWMBH will have a Notice of Privacy Practices to be given to each consumer at intake and to be further available upon request.
- Consent - Prior to treatment, Participant CMHSPs and contracted and subcontracted providers will obtain a signed consumer consent for permission to treat, bill for and carry out health care operations described in the Privacy Notice.
- Authorization - If consumer Protected Health Information is disclosed to an individual or entity outside of SWMBH, a signed authorization will be obtained from the consumer consistent with the HIPAA Privacy Rule, MI Mental Health Code, and 42 CFR Part 2 requirements.
- Business Associate Agreement – SWMBH will obtain assurances with all Business Associates that protected health care information shared with them, will be protected and appropriately safeguarded consistent with all applicable State and Federal laws and requirements..
- SWMBH shall investigate any reports of suspected violations and respond to findings of the investigations in compliance with the HIPAA Privacy and Security regulations.
- SWMBH will perform any necessary risk analyses or assessments to ensure compliance.

All SWMBH Board members, SWMBH personnel, Participant CMHSPs, and contracted and subcontracted providers must conduct themselves in accord with the principle of maintaining the confidentiality of consumers' information in accordance with all applicable laws and regulations, including but not limited to the Michigan Mental Health Code, the Privacy and Security Regulations issued pursuant to HIPAA and recent updated HITECH revisions, and 42 CFR Part 2 as it relates to substance abuse records. All will refrain from disclosing any personal or confidential information concerning members unless authorized by laws relating to confidentiality of records and protected health information. If specific questions arise regarding the obligation to maintain the confidentiality of information or the appropriateness of releasing information, SWMBH Board members, SWMBH personnel, and Participant CMHSPs should seek guidance from the Chief Compliance Officer/Chief Privacy Officer (the Chief Compliance Officer also fulfills the role of Chief Privacy Officer), or anonymously through the SWMBH corporate compliance hotline at (800) 783-0914.

SWMBH PERSONNEL COMPLIANCE CERTIFICATION FORM

- 1) I have received, read and understand the SWMBH Compliance Plan, Code of Conduct, and related policies and procedures.
- 2) I pledge to act in compliance with and abide by the Code of Conduct and SWMBH Compliance Plan during the entire term of my employment and/or contract.
- 3) I acknowledge that I have a duty to report to the Chief Compliance Officer any alleged or suspected violation of the Code of Conduct, agency policy, or applicable laws and regulations.
- 4) I will seek advice from my supervisor or the Chief Compliance Officer concerning appropriate actions that I may need to take in order to comply with the Code of Conduct or Compliance Plan.
- 5) I understand that failure to comply with this certification or failure to report any alleged or suspected violation of the Code of Conduct or Compliance Plan may result in disciplinary action up to and including termination of employment or contract.
- 6) I agree to participate in any future compliance trainings as required and acknowledge my attendance at such trainings as a condition of my continued employment/contract.
- 7) I agree to disclose the existence and nature of any actual or potential conflict of interest to the Chief Compliance Officer. Further, I certify that I am not aware of any current, undisclosed conflicts of interest.

Employee/Provider/Contractor Signature

Date

SWMBH BOARD OF DIRECTORS COMPLIANCE CERTIFICATION FORM

- 1) I have received, read and understand the SWMBH Compliance Plan and Code of Conduct.
- 2) I pledge to act in compliance with and abide by the Code of Conduct and SWMBH Compliance Plan during the entire term of my Board service.
- 3) I acknowledge that I have a duty to report to the SWMBH Chief Compliance Officer any alleged or suspected violation of the Code of Conduct or related laws and regulations by myself, another Board Member or any other person.
- 4) I will seek advice from the SWMBH Board Chairman or the SWMBH Chief Compliance Officer concerning appropriate actions that I may need to take in order to comply with the Code of Conduct or Compliance Plan.
- 5) I understand that failure to comply with any part of this certification may result in my removal from the Board of Directors.
- 6) I agree to participate in future Board compliance trainings as required
- 7) I agree to disclose the existence and nature of any actual or potential conflict of interest to the Board Chairman and Chief Compliance Officer. Further, I certify that I am not aware of any current, undisclosed conflicts of interest.

Board Member Signature _____

Date _____