



Southwest Michigan Behavioral Health Board Meeting
Air Zoo Aerospace & Science Museum
6151 Portage Rd, Portage, MI 49002
December 13, 2024
9:30 am to 11:30 am
(d) means document provided
Draft: 12/5/24

1. **Welcome Guests/Public Comment**
2. **Agenda Review and Adoption (d) pg.1**
3. **Financial Interest Disclosure Handling**
 - None Scheduled
4. **Consent Agenda (5 minutes)**
 - a. November 8, 2024 SWMBH Board Meeting Minutes (d) pg.3
 - b. October 9, 2024 Operations Committee Meeting Minutes (d) pg.6
 - c. Board Finance Committee Meeting Minutes (T. Schmelzer) (d) pg.11
 - d. Board Regulatory Compliance Committee Meeting Minutes (M. Todd) (d) pg.13
5. **Required Approvals (0 minutes)**
 - None
6. **Ends Metrics Updates (*Requires motion) (0 minutes)**

Proposed Motion: Is the Data Relevant and Compelling? Is the Executive Officer in Compliance? Do the Ends need Revision?

 - None scheduled
7. **Board Actions to be Considered (45 minutes)**
 - a. Executive Officer Evaluation (S. Sherban) (d) pg.14
 - b. Summit Pointe Dispute Resolution Step 3 (d) pg.15
 - c. Pivotal Dispute Resolution Step 3 (d) pd.165
 - d. Calendar Year 2025 Board Meeting Calendar (d) pg.253
 - e. Calendar Year 2025 Board Policy Calendar (d) pg.254
 - f. January Holiday Luncheon (d) pg.255
8. **Board Policy Review (5 minutes)**

Proposed Motion: Is the Board in Compliance? Does the Policy Need Revision?

 - a. BG-005 Chairperson's Role (d) pg.256
 - b. EO-002 Monitoring Executive Officer Performance (E. Meny) (d) pg.258

9. Executive Limitations Review (5 minutes)

Proposed Motion: Is the Executive Officer in Compliance with this Policy? Does the Policy Need Revision?

- BEL-003 Asset Protection (E. Krogh) (d) pg.260

10. Board Education (5 minutes)

- Fiscal Year 2025 Year to Date Financial Statements (G. Guidry) (d) pg.269

11. Communication and Counsel to the Board (15 minutes)

- a. Fiscal Year 2024 Contract Vendor Summary (G. Guidry) (d) pg.277
- b. Fiscal Year 2024 Customer Services Report (S. Ameter) (d) pg.280
- c. Follow up task from the Board to the Operations Committee (J. Goodrich)
- d. Ends Revisions and CMH Member Boards (B. Casemore) (d) pg.285
- e. January Board Policy Direct Inspection – none

12. Public Comment

13. Adjournment

SWMBH adheres to all applicable laws, rules, and regulations in the operation of its public meetings, including the Michigan Open Meetings Act, MCL 15.261 – 15.275.

SWMBH does not limit or restrict the rights of the press or other news media.

Discussions and deliberations at an open meeting must be able to be heard by the general public participating in the meeting. Board members must avoid using email, texting, instant messaging, and other forms of electronic communication to make a decision or deliberate toward a decision and must avoid "round-the-horn" decision-making in a manner not accessible to the public at an open meeting.

Next Board Meeting

January 10, 2025

9:30 am - 11:30 am

Holiday Luncheon

Immediately following the Board Meeting

Location – to be determined



Board Meeting Minutes

November 8, 2024

Air Zoo Aerospace & Science Museum, 6151 Portage Rd, Portage, MI 49002

9:30 am-11:30 am

Draft: 11/8/24

Members Present: Sherii Sherban, Tom Schmelzer, Louie Csokasy, Edward Meny, Erik Krogh, Carol Naccarato, Lorraine Lindsey, Tina Leary

Members Absent: None

Guests Present: Mila Todd, Chief Compliance Officer, SWMBH; Anne Wickham, Chief Administrative Officer, SWMBH; Garyl Guidry, Chief Financial Officer, SWMBH; Michelle Jacobs, Senior Operations Specialist & Rights Advisor, SWMBH; Cameron Bullock, Pivotal; Mandi Quigley, Summit Pointe; John Ruddell, Woodlands; Sue Germann, Pines BH; Debbie Hess, Van Buren County CMH; Richard Thiemkey, Barry County CMH; Ric Compton, Riverwood; Cathi Abbs, SWMBH Board Alternate

Welcome Guests

Sherii Sherban called the meeting to order at 9:31 am.

Public Comment

None

Agenda Review and Adoption

Motion	Edward Meny moved to approve the agenda with revisions of moving 8b Executive Officer Evaluation, 11b Board Education Planning 2025 and 12c SWMBH Counsel and County Cost Sharing to the December agenda.
Second	Erik Krogh
Motion Carried	

Financial Interest Disclosure (FID) Handling

None

Consent Agenda

Motion	Lorraine Lindsey moved to approve the October 11, 2024 Board minutes and September 25, 2024 Operations Committee Meeting Minutes as presented.
Second	Tom Schmelzer
Motion Carried	

Required Approvals

None scheduled

Ends Metrics Updates

None scheduled

Board Actions to be Considered

Calendar Year 2025 Board Policy Calendar

Sherii Sherban shared her recent attendance at a Board Governance Bootcamp and thoughts on future reviews and revisions to Board Policies. No Board action taken on Calendar Year 2025 Board Policy Calendar.

Executive Officer Evaluation

Sherii Sherban stated that the Executive Committee would meet in November regarding Brad Casemore's evaluation and this topic will be moved to the December agenda.

Holiday Luncheon

Board discussed a holiday luncheon and agreed on January after the Board meeting. Luncheon venues will be researched and brought back to the Board for consideration at December's Board meeting.

Update

Mila Todd updated the Board on Brad Casemore's family member.

Board Policy Review

EO-002 Monitoring Executive Officer Performance

Edward Meny asked that this policy be moved to the December Board meeting so that the Executive Committee can complete the Executive Officer Evaluation.

Motion Tom Schmelzer moved to change the policy review date to December.

Second Edward Meny

Motion Carried

Executive Limitations Review

None scheduled

Board Education

Fiscal Year 2024 Year to Date Financial Statements

Garyl Guidry reported a first draft of period 12 financials noting revenue, expenses and projected deficits. Garyl noted that the Region has until February to finalize year end financials before submission to the State. Sherii Sherban requested a balance sheet and a cash flow statement. Sherii Sherban also reminded the Operation Committee of the need to dive into the financials as a group. Discussion followed.

Board Education Planning 2025

Sherii Sherban stated that this topic will be moved to December.

Fiscal Year 2024 Community Mental Health Services Program Site Review Results

Mila Todd reported as documented. Discussion followed.

Debrief 10/4 9th Annual Regional Healthcare Policy Forum

Tom Schmelzer attended the 10/4 event and shared that the panel and discussion were interesting. He also added the importance of the Board attending these important events. Carol Naccarato commented that the panel was good but the meet the candidates in the afternoon “fell apart.”

Communication and Counsel to the Board

Board Finance Committee

Tom Schmelzer noted that the committee met on November 1, 2024. The Committee reviewed financials and Fiscal Year 2024 close out schedule. They asked to review the draft audit before submission to the State and drafted a December agenda. Sherii Sherban requested that the December Board Finance Committee meeting agenda be sent to the Board members.

Board Regulatory Compliance Committee

Mila Todd noted the report in the packet for the Board’s review.

SWMBH Counsel and county cost sharing

Topic moved to the December Board agenda.

Draft December Board Agenda and December Board Policy Direct Inspection

Sherii Sherban noted the draft agenda in the packet for the Board’s review. Erik Krogh will review Board Policy BEL-003 Asset Protection and Garyl Guidry will send him the documents to review.

Public Comment

None

Adjournment

Motion Louie Csokasy moved to adjourn at 10:35 am.

Second Lorraine Lindsey

Motion Carried

Date:	10/9/2024
Time:	9:00am-11:00am
Facilitator:	Jeff
Minute Taker:	Cameron
Meeting Location:	SWMBH Moses L. Walker Room Click here to join the meeting

Present: ☒ Rich Thiemkey (Barry) ☒ John Ruddell (Woodlands) ☒ Brad Casemore (SWMBH)
☒ Ric Compton (Riverwood) ☒ Jeff Patton (ISK) ☒ Mila Todd (SWMBH)
☒ Sue Germann (Pines BHS) ☒ Cameron Bullock (Pivotal) ☒ Garyl Guidry (SWMBH)
☒ Jeannie Goodrich (Summit) ☒ Debbie Hess (Van Buren)
☐ Guest(s):

Version: 9/30/24 Annotated by Brad

Agenda Topics:	Discussion Points:	Minutes:
1. Agenda Review & Adoption (All) (d)		
2. Prior Minutes (All) (d)		<ul style="list-style-type: none"> • Brad presented Red line minutes. • Mila added blue line minutes, to be added. • Minutes presented as originally given 9/25/24, without redlines, and with the addition of Mila's portion under 14.
3. FY25 Budget and Medicaid rates (Garyl) (d)		<ul style="list-style-type: none"> • Garyl presented FY 25 budget • No reserves in revenue presented. • Changes to budget shows a breakdown between CCBHC's and PIHP <ul style="list-style-type: none"> ○ Balanced vs deficit • Balanced Budget: • PIHP Shows all non-CCBHC revenues • CCBHC revenue is \$98,272,231 • PIHIP Revenue is \$323,912,264 • Regional total is \$422,184,496 • Expenditures <ul style="list-style-type: none"> ○ PIHP Expense – \$293,934,345 ○ CCBHC Expense- \$82,325,206 ○ Administrative- \$84,976,732 ○ Total – \$414,632,000

		<ul style="list-style-type: none"> • Positive Surplus of \$7,552,4495 for SWMBH Region. • This was done by a 90/10 split reduction in expenditures 90 -CMH's and 10% SWMBH. This was done unilaterally across all CMH's boards. Rich stated that they had already done a reduction and now being asked to reduce more. • Discussion was had based on SWMBH Admin Cost for CCBHC administrative cost. • Discussion was had regarding the Admin Cost Ratio currently @ 10.3% • Deficit Budget: without the cuts, would be \$8.8 million PIHP deficit. • Actual expenditures as presented by each CMH with no alterations via SWMBH. • Conversation was had regarding the "CCBHC Surplus" and the way for SWMBH admin to be able to accurately portray what the CCBHC surplus is required to do which is cover the GF and private insurance expenditures each CCBHC is required now to cover as being a CCBHC. • Brad will be asking the board to approve balanced budget column J. • Jeff suggested that there be a CEO retreat to discuss and deep dive into regional comparative data. Concerns of additional funding that Ops Comm is not aware of. Brad proposed in early December if all in agreement. • All in agreement and will need to have CFO, possibly sooner if possible. • Jeff asked to see the breakdown of FY 25 budget by CMH and funding source. • Jeff stated when presenting the budget to discuss both expenditure reduction and revenue enhancement
4. YTD Financials and FY 2024 rate adjustment (Garyl) (d)		<ul style="list-style-type: none"> • Current YTD (P11) – • Last September, FY 24 rate amendment given at the estimate of \$5.4 million • Reduced 100% ISF utilization to 94/95% ISF utilization.

		<ul style="list-style-type: none"> • \$26 million deficit, ISF utilization of \$21.2 million, and \$5.275 MDHHS shared risk reserve • Enrollments have flattened out.
5. Eleos Health follow up (Mila)	Need OC to determine length of time they want with Eleos.	<ul style="list-style-type: none"> • 15 min- 930am on 11/13/24 • Internally discussion needs to be had on what centrally held contract means. • Mila to schedule meeting with Jeff, Beth Ann, and Mila. • Allocation determination on what split is taken and usage of (SWMBH) Local funds etc.
6. OC Alternate process and update on Conflict of Interest from last meeting	Placeholder for future reference.	<ul style="list-style-type: none"> • Mila still updated and looking for source information and will provide update at a later time.
7. CMH CEO Planning Inputs		<ul style="list-style-type: none"> • SWMBH to strike out items that didn't rise as a consensus among all CMH's. • No special meeting • Future this should be done prior to budget, and should drive the budget and not in reverse. • Move to retreat date with CEO's in November/December.
8. Delegated Function update		<ul style="list-style-type: none"> • No update
9. Operating Agreement (relative to recent Board discussion)		<ul style="list-style-type: none"> • Financial Risk Management Plan vs Operating Agreement
10. Provider Network/Inpatient contracts		<ul style="list-style-type: none"> • Out for execution. • CMHA board sent out letter regarding HRA payments.
11. Dispute Resolution Process Review (d)		<ul style="list-style-type: none"> • Placeholder may be needed in the future.
12. Financial Risk Management Plan (d)		<ul style="list-style-type: none"> • Brad suggests that if the Ops Comm wants to dedicate time to word smithing this, then it is the pleasure of Ops Comm- Discussion moved to CEO only portion of meeting.
13. Oshtemo 9th street neuropsychiatric facility (Jeff)		<ul style="list-style-type: none"> • Kalamazoo courts will not allow admissions for out of state residents. Jeff to follow through, meeting next week and will report to Ops Comm. • Fully credentialed with SWMBH and can be utilized in SWMBH Region- Potentially unable to use if not able to get into CHAMPs. Mila has reached out

		to state regarding current allowance and added FY 24 amendment language.
14. CMHs and Milliman DRIVE tool	SWMBH would like to ask DHHS and Milliman to allow all 8 of our CMHs to see each other's statistics. There is no PHI in DRIVE. To make that request SWMBH will need written authorization from each CMH CEO. DHHS may insist on a formal data use agreement.	<ul style="list-style-type: none"> • SWMBH wants to provide information to individual CMH's, needs verbal approval, and will be able to disseminate to whomever the CEO's designate. • No opposition- Brad will reach out and request.
15. CY 2025 OC meeting dates		<ul style="list-style-type: none"> •
16. PIHP to CMH Contracts		<ul style="list-style-type: none"> • Pivotal's wishes that the encounter data requirements that have been added by SWMBH be removed and handled internally at Ops Comm and not in contract requirements. • Summit Point states that 30 days is great, and works to achieve, but we continue to send all encounters as we are able, but we have to work private insurance, EOB/COB's, hospitalizations etc. • Mila asks that if this can go to DEG and have a commitment from CMH's to work on this. Cameron ask that it goes both from the CMH's and also from SWMBH when requesting data and submissions. • PBIP language was written by Cameron and sent to the CEO's- Brad requests that it get approved today- CEO's issued verbal approval of presented language. • Mila will remove items and continue with only state required state language. • Mila to send out language revisions, and possibly a contract extension to CMH's

		that need longer than October to get language approved
17. Confirm Next Meeting Review Revised 2024 OC Meeting dates	November 13 th , 2024 9a-11a: Jeannie Notetaking John Facilitating 11a-12p: CEO Only Cameron will be absent	<ul style="list-style-type: none"> • Financials- Garyl • Eleos @ 930 • PCE Update – Brad •
18. CMH CEO only time 11 am – 12 pm	Need Ops Comm to let MJ know if OC wants on site box lunches. And if this is an ongoing plan for room reservation purposes.	



Board Finance Committee Meeting Minutes

November 1, 2024

SWMBH, 5250 Lovers Lane, Suite 200, Portage, MI 49002

1:00 pm-2:00 pm

Draft: 11/1/24

Members Present: Tom Schmelzer, Louie Csokasy, Carol Naccarato

Members Absent: None

SWMBH Staff Present: Garyl Guidry, Chief Financial Officer, SWMBH; Michelle Jacobs, Senior Operations Specialist & Rights Advisor, SWMBH

Review Agenda

Tom, Louie and Carol discussed/reviewed agenda and determined that the Board Finance Committee (BFC) Charter did not need to be reviewed and Board Policies listed would stay in the current process for review and not with BFC. Tom requested to review the check register monthly. Louie requested to review a cash flow analysis.

Central Topics

Review prior meeting minutes

Group approved minutes and determined that the minutes will be kept internal. Tom Schmelzer suggested verbiage that would go to the SWMBH Board. Garyl will draft that for BFC consideration.

Follow ups from prior meeting

None

Board Assignments, if any

None

Review SWMBH YTD financial statements

Garyl reviewed YTD financial statements noting revenue, expenses and projections for 2024. Garyl noted the following:

- Financials were submitted to Kristen Jordan of MDHHS
- Some legislators are aware of financial situation
- Statewide PIHP problem
- SWMBH and CMHs working on revenue maximization and expense reduction
- Reviewed project involving billing codes by CMHs

Group expressed interest in being “forward thinking” and asked what BFC can do to help. Discussion of offensive tactics/ideas.

Fiscal Year 2024 Closeout Calendar

Garyl reviewed closeout calendar dates as follows:

- 2/21/25 FSRs due from CMHs
- 2/24/25 through 2/28/25 SWMBH reviews and consolidates
- 3/3/25 financials submitted to Auditors
- 3/14/25 through 3/20/25 SWMBH receives audit
- 3/28/25 financials submitted to State

Group would like to meet on 3/28/25 prior to submission to State. Garyl will contact Auditors to see if they are available to meet.

Messaging to Board

Tom Schmelzer suggested verbiage that would go to the SWMBH Board. Garyl will draft that for BFC consideration.

Establish meeting dates for 2025 and December agenda

Group agreed to meet the first Friday of each month in 2025 except for April. April's meeting will occur on March 28 to review Financials and Audit before submission to the State and with Roslund Prestige if possible. Group agreed on December 6, 2024 agenda.

Adjournment

Meeting adjourned at 2:21pm

Southwest Michigan

BEHAVIORAL HEALTH

Board Regulatory Compliance Committee Meeting draft minutes

Members: Sherii Sherban, Louie Csokasy, Edward Meny

SWMBH Staff: Mila Todd, Michelle Jacobs

November 8, 2024

12:00 p.m. – 12:30 p.m. (or immediately following the SWMBH Board Meeting)

Air Zoo Aerospace & Science Museum

Draft: 11/8/24

1. Review Agenda

Motion Lorraine Lindey moved to approve the agenda as presented.

Seconded Edward Meny

Motion Carried

2. Minutes

Motion Edward Meny moved to approve the 10/11/24 minutes as presented.

Seconded Louie Csokasy

Motion Carried

3. Central Topics

- a. Committee reviewed Fiscal Year 2025 Compliance activities which included date of death and date of services after date of death data mining. Mila reviewed reasoning, results, and remediation. Discussion followed.
- b. Fiscal Year 2024 Medicaid Services Verification Report - Mila Todd noted that this report is a contractual obligation with audit tool(s) based on MDHHS technical requirement. This audit is the largest audit in the organization and is completed quarterly with a yearly submission due on December 31st.
- c. Meetings for 2025 – Group agreed to meet quarterly in 2025 starting in February after the Board meeting. Michelle Jacobs will send out calendars invites.
- d. Referral from the Office of Inspector General (OIG) – Mila Todd reviewed referral from the OIG regarding possible duplicate billing and request of SWMBH to validate data. SWMBH IT department is researching and developing solutions to report back to the OIG.
- e. Smart Suite Reports – Mila Todd stated that Smart Suite reports are being developed for Committee's review.

Next Meeting: February 14, 2025

Sherii Sherban noted that the EO Evaluation Committee (Board Officers) met on November 15, 2024 and reviewed pertinent materials according to Board Policy EO-002 Monitoring Executive Performance. The Board Executive Committee finds the Executive Officer achieved 100% of Ends Metrics and achieved compliance with all Board Executive Limitations Policies. The Executive Committee would like to commend Brad and his team at SWMBH for a job well done.

The Executive Committee finds that the Executive Officer is in compliance with Board Policy EO-002 and the Policy does not need revision, and I so Move.

Preliminary Management Response for Summit Pointe Dispute Resolution Step 3

I. Background

Summit Pointe seeks expansion of the SWMBH delegation of utilization management from the current CMH authority for admission authorization and the first three days of inpatient psychiatric hospitalization to authorization authority for the entire inpatient psychiatric hospital stay. SWMBH has not declined this proposal, rather has paused initiation of the required readiness review pending MDHHS written specifications on Conflict Free Access & Planning, a.k.a., conflict free case management, which are certain to alter the boundaries of utilization management authorities for both PIHPs and CMHSPs.

Summit Pointe local care management has a delegation of utilization management from SWMBH for inpatient psychiatric hospital services which includes admission decision authority and approval of the first three (3) days after which SWMBH central care management has the authority for concurrent reviews and service authorizations. Utilization Management is a managed care function with uniform statewide inpatient psychiatric hospital criteria applied by qualified utilization managers. Utilization Management is separate and distinct from the undisputed authority of CMH for discharge planning and post-hospitalization service implementation.

After a SWMBH management – Summit Pointe conversation on the topic, a written response was sent to Summit Pointe from Ms. Todd (Attachment A for Board packet, currently available to Summit Pointe).

Summit Pointe requested the Dispute Resolution Process on this topic per the Operating Agreement. Step 1, a meeting of the Summit Pointe CEO and SWMBH EO, was held. A response affirming a pause, not a declination of the request, was sent to Summit Pointe from the SWMBH EO (Attachment B for Board packet, currently available to Summit Pointe).

Summit Pointe requested Dispute Resolution Step 2 with the Operations Committee which occurred on 11/13/24, even though SWMBH had not rendered a decision. Summit Pointe distributed hard copy binders to Operations Committee members and Mila Todd who represented SWMBH in Brad Casemore's absence. (Attachment C for Board packet, currently available to Summit Pointe). SWMBH did not receive that information beforehand, and it is unclear if the CMH CEOs received the information in advance of the Step 2 meeting.

Neil Marchand JD of Miller Johnson was present representing Summit Pointe at the Step 2 meeting. SWMBH was informed of Mr. Marchand's planned attendance 30 minutes before the meeting. Not receiving materials before the meeting, nor informing SWMBH Management counsel would be present at the Step 2 meeting, is contrary to the spirit of the Operating Agreement Dispute Resolution process, good faith dispute resolution efforts, and raises concern where SWMBH is represented by counsel but its counsel was not notified of any of the above by Summit Pointe's counsel.

The Operations Committee upheld the Summit Pointe position via email on 11/13/24 (Attachment D for Board packet, currently available to Summit Pointe).

The Summit Pointe Step 2 document is a legal opinion which SWMBH had no prior access to before the Step 2 meeting thus had no prior considered basis to respond to it there. (Attachment E for Board packet, currently available to Summit Pointe). Analysis of Summit Pointe's legal opinion and analysis is being prepared for the Board Step 3 process by Varnum.

Also at the Step 2 Operations Committee meeting, Summit Pointe made the claim through Counsel (Attachment F for Board, currently available to Summit Pointe) that utilization management functions are reserved to CMHs and that PIHPs have no authority over utilization management. This infers that SWMBH must relinquish all forms of utilization management to them – and by inference to all SWMBH CMHs. This view is a position taken assertively by CMHAM and some CMHs. Simultaneously it is the view of reasonable persons that the claim is contrary to 22 years of system understanding and practices, MDHHS – PIHP contracts and federal Medicaid managed care regulations.

The legal premise on which this assertion has been based has not been adjudicated in any court of competent jurisdiction to SWMBH's knowledge.

II. Management Analysis

SWMBH is considering Summit Pointe's request to expand delegation of inpatient psychiatric hospital services utilization management to Summit Pointe. However, it is likely premature to initiate the regulatory, contractual and prudent process for consideration given the remaining uncertainty around details for Conflict Free Access and Planning (CFAP), aka conflict free case management, in federal nomenclature. In addition, the request departs from the current regional approach at other CMHs and thus requires diligent consideration from SWMBH and CMH partners so as to preserve and protect the most effective and efficient fulfillment of federal and state requirements for demonstrable uniformity of benefit for entitled Medicaid services. Taking on an exercise to dispute the CMH legal opinion claims will be expensive and distract from core required activities of SWMBH and CMHs, thus has been referred to SWMBH Counsel for review and response to assist management and the Board in its deliberations. ***Notably, SWMBH Management requests the Board consider whether it even has authority at this stage to make a determination on Summit Pointe's request, possibly voiding the applicability of Step 3.***

SWMBH Management is concerned that this Summit Pointe claim constitutes a Member CMH Board pursuing through legal recourse the diminution or decrease of the Regional Entity's PIHP roles and functions as stated in the Regional Entity Bylaws, Operating Agreement and SWMBH-MDHHS Agreement and using Medicaid funds to do so. Management will consult with SWMBH Counsel and independent auditors as to the permissibility of using Medicaid funds for all parties involved in this matter thus far and into the future.

The Summit Pointe claim and dispute may create an existential question for SWMBH. Due to the magnitude of the implications of the sought after business process changes, MDHHS interests, legal costs, opportunity costs and the practical and political ramifications of an Owner CMH Board setting the stage for a complete or severe contraction of SWMBH, the Board is in the position to determine its course of action for Step 3 beginning with whether this is even the Board's decision to make. Additionally, the Board should consider SWMBH Management's differing opinion to

that of Summit Pointe's in full, should the Board first determine that it has the authority to do so and further consider that SWMBH has not yet rendered a decision on Summit Pointe's request—thus this decision being requested of the Board may not yet be ripe for the Board's consideration.

SWMBH's CEO has also asked Varum Partner Sarah Wixson and Board Policy Governance Consultant Susan Radwan to opine in writing to the Board on conflict of interest handling in Dispute Resolution Step 3 activities. Those opinions will appear in the Board packet for the December 13, 2024 SWMBH Board meeting.

Relevant Board Policies are excerpted below in no particular order; not necessarily exclusive of other applicable Board Policies.

BG-011 Governing Style and Commitment: "The Board's major focus will be on the intended long-term impacts, ***not on administrative or programmatic means*** of attaining those impacts." "<The Board> will enforce upon itself whatever discipline is needed to govern with excellence. Discipline will apply to matters such as attendance, preparation for meetings, policy-making principles, respect of roles, and ensuring the continuance of governance capability. "When a <Board> Member either must recuse themselves or chooses to recuse themselves for voting on a Board decision their prior potential vote count will be removed from the vote tally denominator." "When a <Board> Member abstains from voting on a Board decision their potential vote count will not be removed from the vote tally denominator." (emphasis added).

EO-001 Executive Role and Job Description: "The Board will instruct the EO through written policies or directives consistent with Board policies, delegating to the EO the interpretation and implementation of those policies and Ends."

BEL-009 Global Executive Constraint: "The EO shall not cause or allow any practice, activity, decision, or organizational circumstance which is either illegal, imprudent or in violation of commonly accepted business and professional ethics or in violation of contractual obligations."

BEL-008 Communication and Counsel to the Board: " The EO will not allow the Board to be unaware that, in the EO's opinion, the Board is not in compliance with its own policies, particularly in the case of Board behavior that is detrimental to the work relationship between the Board and the EO."

BG-003 Delegation Unity of Control: "Only officially passed motions of the Board are binding on the EO."

BG-007 Code of Conduct: "The Board commits itself to ethical, lawful, and businesslike conduct including proper use of authority and appropriate decorum when acting as Board Members. It shall be the policy of SWMBH Board that SWMBH Board Members represent the interests of SWMBH. This accountability supersedes any potential conflicts of loyalty to other interests including advocacy or interest groups, membership on other Boards, relationships with others or personal interests of any Board Member." "<Board> Members commenting on the agency and EO performance must be done collectively and as regards to explicit Board policies."

<END>



Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI, 49002

P: 800-676-0423

F: 269-883-6670

September 19, 2024

Jean M. Goodrich
CEO, Summit Pointe

Via email only

Re: Request for Delegation of Inpatient Continuing Stay Reviews

Dear Jeannie:

On August 25, 2024, Summit Pointe requested that SWMBH delegate inpatient continuing stay reviews to Summit Pointe by October 1, 2024. SWMBH is declining to move forward with a pre-delegation assessment, which is required under the Code of Federal Regulations, at this time based on the following:

- MDHHS has indicated that under its Conflict Free Access and Planning (CFAP) implementation plan, PIHPs will be precluded from delegating Utilization Management to Participant CMHSPs. There is an MDHHS-initiated CFAP meeting with PIHPs on November 1, 2024. In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time.
- Summit Pointe was cited in the FY24 CMH Site Review process for UM Standard 11, related to training staff on the Milliman Care Guidelines (MCG). Deficiencies noted included that staff were not trained on MCG for use in inpatient Pre-Admission Screening determinations. MCG is the MDHHS-required medical necessity criteria for both pre-admission screening as well as continuing stay determinations. Continued monitoring of Summit Pointe's implementation of its Corrective Action Plan will occur according to the Site Review monitoring process.

Should you have any questions or concerns, please feel free to contact me. Thank you.

Regards,

A handwritten signature in blue ink that reads "Mila C. Todd".

Mila C. Todd, Esq., CHC, CHPC
Chief Compliance & Privacy Officer
Director of Provider Network Management

Cc: Brad Casemore, Anne Wickham



Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI 49002

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October 8, 2024

Jeannie Goodrich CEO Summit Pointe

RE: Summit Pointe Dispute Resolution Process Step 1 Expansion of Delegation of inpatient psychiatric services Utilization Management (UM)

Jeannie,

This serves as my response subsequent to October 3, 2024 Dispute Resolution Step 1 meeting on the above-captioned topic. I referred to our September 19, 2024 letter to you throughout the meeting.

1. I clarified and confirmed that our September 19 declination was in reference to your request to expand the delegation October 1, 2024 and was not a blanket “no, never.”
2. I reinforced that further MDHHS pronouncements on Conflict Free Access & Planning (aka conflict free case management) will inform SWMBH central care management and CMH local care management utilization management roles, authorities and business processes. There is a November 1, 2024 MDHHS-PIHP meeting on CFAP. This current lack of certainty remains a basis for our pause in considering your requested expansion of delegated utilization management for inpatient psychiatric services. From our September 19 letter *“In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time.”* More information will be known and shared with the region after we analyze MDHHS November 1 guidance. I suggested scheduling a bilateral SWMBH-Summit Pointe follow-up meeting regarding your request the week of November 11, 2024. That meeting would not include me and is not part of the Dispute Resolution process. Please let Mila know if you would like to set that meeting.
3. Regarding MCG Criteria training and proper usage please continue your efforts to complete the related Corrective Action Plan. Once that is lifted and the prospective assurances are in place and underway we will no longer consider this a contingency to considering your request. You mentioned that you seek contractual and/or SWMBH Policy clarity on the MCG Annual Training requirement. I concur SWMBH needs to put that in place if it is lacking.
4. I confirmed that our October 3, 2024 meeting fulfills the Dispute Resolution Step 1 process thus any future Dispute Resolution steps move to Step 2 if on this same topic.



I mentioned some of our probable future considerations regarding your Ask. Summit Pointe is free to but not obligated to prepare responses to those and/or other pre-delegation assessment issues. Please note that process if initiated is an operational matter not a component of this Dispute.

Respectfully,

A handwritten signature in black ink that reads "Bradley P. Casemore".

Bradley P. Casemore



45 Ottawa Avenue SW
Suite 1100
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NEIL J. MARCHAND
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November 13, 2024

VIA HAND DELIVERY

Operations Committee
Southwest Michigan Behavioral Health
SWMBH Moses L. Walker Room

Re: Pivotal's and Summit Pointe's Step 2 Appeal regarding
Inpatient Continuing Stay Determinations

Dear SWMBH Operations Committee:

Miller Johnson represents Community Mental Health & Substance Abuse Services of St. Joseph County d/b/a Pivotal ("Pivotal") and Calhoun County Community Mental Health Authority d/b/a Summit Pointe ("Summit Pointe"). We are writing in support of Pivotal's and Summit Pointe's appeal to Southwest Michigan Behavioral Health's ("SWMBH") Operations Committee relating to SWMBH's unauthorized and illegal exercise of authority for inpatient continuing stay determinations. As discussed below, (1) SWMBH does not have the legal right to make inpatient continuing stay determinations; and (2) to the extent SWMBH relies on its October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe for such authority, then SWMBH's interpretation renders that agreement void. Therefore, Pivotal and Summit Pointe request that the Operations Committee immediately direct SWMBH to cease its interference with Pivotal's and Summit Pointe's inpatient continuing stay authority.

I. SWMBH lacks the legal authority to perform inpatient continuing stay reviews.

The issue is whether SWMBH has the legal authority to perform inpatient continuing stay reviews. As discussed below, SWMBH does not.

A. SWMBH's power is derived from the participating community mental health service programs ("CMHSPs").

MCL 330.1204b governs the creation of regional entities and the regional entity's purpose and power. MCL 330.1204b(2) provides, "*Except as otherwise stated in the bylaws*, a regional entity has [. . .] [t]he power, privilege, or authority that the participating community mental health services programs share in common and may exercise separately under this act, whether or not that power, privilege, or authority is specified in the bylaws establishing the regional entity." MCL 1204b(2)(a) (emphasis added).

B. SWMBH's Bylaws and Operating Agreement prohibit SWMBH from exercising any power or authority relating to Pivotal's and Summit Pointe's obligations under the Mental Health Code and their clinical operations.

SWMBH's Bylaws describe SWMBH's powers in Article II. (**Exhibit 1**.) Consistent with the enabling statute, Article 2.2 states, "Except as otherwise stated in these Bylaws, the Regional Entity has all of the following powers provided under MCL 330.1204b(2) [...]." (*Id.*, at 2.) Article 2.4 provides:

The Participants shall retain **all powers, rights and authority afforded community mental health services programs**, organized and operated as county mental health authorities, agencies or organizations **under the Mental Health Code.** *Only the powers and authority specifically delegated* to the Regional Entity under these Bylaws and as further defined under an Operating Agreement, [sic] are transferred to the Regional Entity. (*Id.*, at 3 (emphasis added).)

Further, Article 2.4.1 provides that SWMBH "shall have no powers, rights or authority" relating to "the Participants' obligations under the Mental Health Code" and "the Participants' autonomous administrative, financial, or clinical operations[.]" (*Id.* at 3.) SWMBH's Operating Agreement, which is incorporated by reference into the Bylaws, reiterates SWMBH's lack of authority in these areas. (**Exhibit 2**, at 12-13.)

C. Michigan's Mental Health Code gives CMHSPs the authority to perform all inpatient stay determinations.

MCL 330.1206(1) states that the "purpose of a community mental health services program shall be to provide a comprehensive array of mental health services[.]" including "the provision of inpatient or other protective environment for treatment." MCL 330.1206(1)(a); *see also* Mich. Admin. R 330.2005 (providing that a "community mental health board shall ensure that" inpatient services are provided).

Chapter 4 of the Mental Health Code gives CMHSPs the power to authorize inpatient hospitalization. Specifically, MCL 330.1409(1) provides that the community mental health services program shall establish a preadmission screening unit or contract with an agency that provides the preadmission screening services. The CMHSPs must authorize hospitalization where "the individual is clinically suitable for hospitalization[.]" MCL 330.1409(3); *see also* MCL 330.1410 (stating that an individual who requests or assents to voluntary admission to a hospital or outpatient treatment program may be considered for admission "only after authorization by a community mental health services preadmission screening unit."); MCL 330.1423 (requiring a hospital to hospitalize an individual if *inter alia* an authorization by a preadmission screening unit has been executed). If an individual is denied hospitalization and requests a second opinion, the

“executive director” shall arrange for that second opinion and, with the medical director, “shall make a decision based on all clinical information available” where there is a conflict between the first and second opinions. MCL 330.1409(4). Notably, “executive director” is defined as the “individual appointed under section 226 to direct a community mental health services program or his or her designee.” MCL 330.1100a(32).

The CMHSPs’ authority over inpatient stay determinations extends to whether to *continue* the individual’s inpatient hospitalization. MCL 330.1482 states, “Six months from the date of a 1-year order of involuntary mental health treatment, *the executive director of the community mental health services program responsible for treatment* [. . .] shall assign a physician or licensed psychologist to review the individual’s clinical status as a person requiring treatment.” MCL 330.1482 (emphasis added). Moreover, the CMHSP executive director (1) is responsible for providing the individual and others notice of the periodic review results and information on the individual’s right to petition for discharge, MCL 330.1483; and (2) has standing to object to the periodic review’s conclusions and petition for discharge, MCL 330.1484. *Nothing* in the Mental Health Code gives inpatient stay determination authority to a regional entity.

D. Pivotal and Summit Pointe have the exclusive authority to make inpatient stay, and continuing stay, determinations.

SWMBH derives its power from its participating CMHSPs, not vice versa. And SWMBH’s exercise of inpatient continuing stay authority violates Michigan law, its Bylaws, and its Operating Agreement in three ways. First, under Article 2.4 of SWMBH’s Bylaws, *only* the powers and authority specifically delegated to SWMBH are transferred to SWMBH, and nothing in SWMBH’s Bylaws or Operating Agreement delegates inpatient continuing stay determination authority to SWMBH. Second, Article 2.4 of the Bylaws states that the Participants—in this case, Pivotal and Summit Pointe—retain “all powers, rights and authority afforded community mental health services programs” under the Mental Health Code, and the Mental Health Code gives CMHSPs the authority to perform all inpatient stay determinations, both initial admission and continuing stay. And third, Article 2.4.1 of the Bylaws and SWMBH’s Operating Agreement provide that SWMBH “shall have no powers, rights or authority” with regards to “the Participants’ obligations under the Mental Health Code” or “the Participants’ autonomous administrative, financial, or clinical operations[.]” By making inpatient continuing stay determinations, SWMBH is interfering with Pivotal’s and Summit Pointe’s authority under the Mental Health Code and their exclusive clinical operations.

Despite raising these issues with SWMBH, (Exhibit 3), SWMBH’s response failed to address its lack of legal authority to act or why SWMBH allows Kalamazoo County Community Mental Health Authority d/b/a Kalamazoo Community Mental Health and Substance Abuse Services (and no other CMHSP) to perform their own inpatient continuing stay determinations (Exhibit 4). Instead, SWMBH has made vague references to: (i) the Code of Federal Regulations;

(ii) MDHHS pronouncements on Conflict Free Access & Planning purportedly prohibiting delegation of utilization management; and (iii) Corrective Action Plans relating to Milliman Care Guidelines. However, the portions of the Code of Federal Regulations upon which I understand SWMBH to rely do not support SWMBH's position, as explained in Pivotal's June 5, 2024 correspondence. (**Exhibit 3.**) Moreover, MDHHS and SWMBH have conceded that "utilization management" is not defined, (**Exhibit 5**), and SWMBH admitted that it does not have any written contractual obligations or policy relating to the Milliman Care Guidelines. (**Exhibit 6.**) Finally, SWMBH admitted that it was exceeding its authority as to Pivotal members who do not have Medicaid coverage. (**Exhibit 4.**)

Because SWMBH lacks the legal authority to perform inpatient continuing stay reviews, SWMBH's exercise of decision making authority constitutes an ultra vires activity that is not protected by governmental immunity. *Dextrom v Wexford County*, 287 Mich App 406, 417; 789 NW2d 211 (2010) (explaining that ultra vires activities are activities that are not expressly or impliedly mandated or authorized by law). Moreover, the "immunity" afforded SWMBH under Article 10.2.2 of the Bylaws does not apply because Pivotal's and Summit Pointe's liability, loss, and damages are caused by SWMBH's actions. Pivotal and Summit Pointe reserve all of their rights against SWMBH and its employees and directors.

II. SWMBH's claim that it has the authority to delegate inpatient continuing stay reviews means that SWMBH's October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe is unenforceable as written.

SWMBH has framed the dispute as an "expansion of delegation" of inpatient psychiatric services utilization management. As discussed above, SWMBH's posture is misleading because SWMBH's authority is derived from the participant CMHSPs, the CMHSPs retained all authority afforded them under the Mental Health Code, and SWMBH's Bylaws expressly state that it does not have any authority over a CMHSP's clinical operations.

Nevertheless, my understanding is that SWMBH will cite Section 2 of its October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe to argue that the authorization of inpatient services and partial hospitalization services is limited to the initial authorization for up to three days. (**Exhibit 7.**) As discussed above, the Mental Health Code grants CMHSPs, *and only CMHSPs*, the authority to make initial and continuing inpatient stay determinations. And it is axiomatic that "an agreement that violates the laws of Michigan is unenforceable as written." *Wasenko v Auto Club Group*, — Mich App —; — NW3d — (2023 WL 4671210) (citation omitted). Thus, accepting SWMBH's position means that SWMBH's October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe is unenforceable as written.

MILLER JOHNSON

Operations Committee
November 13, 2024
Page 5

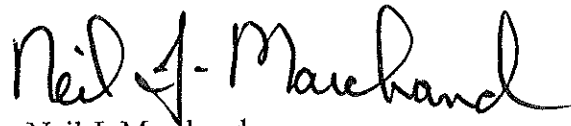
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For the reasons discussed above, Pivotal and Summit Pointe request that the Operations Committee immediately direct SWMBH to cease its interference with Pivotal's and Summit Pointe's inpatient continuing stay authority and allowing Pivotal and Summit Pointe to perform their statutorily authorized clinical operations.

Sincerely,

MILLER JOHNSON

By


Neil J. Marchand

Enclosures



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November 13, 2024

VIA HAND DELIVERY

Operations Committee
Southwest Michigan Behavioral Health
SWMBH Moses L. Walker Room

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Inpatient Continuing Stay Determinations

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Operations Committee
November 13, 2024
Page 5

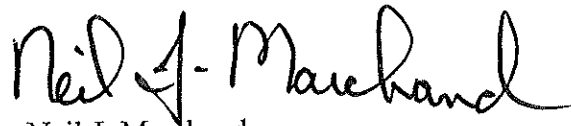
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By


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Enclosures



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November 29, 2024

VIA EMAIL AND HAND DELIVERY

Board of Directors
Southwest Michigan Behavioral Health

Re: SWMBH's Step 3 Appeal regarding Inpatient Continuing
Stay Determinations

Dear SWMBH Board of Directors:

Miller Johnson represents Community Mental Health & Substance Abuse Services of St. Joseph County d/b/a Pivotal ("Pivotal") and Calhoun County Community Mental Health Authority d/b/a Summit Pointe ("Summit Pointe"). Enclosed as **Exhibit A** is the legal memorandum and supporting documents Pivotal and Summit Pointe provided to the Southwest Michigan Behavioral Health's ("SWMBH") Operations Committee for consideration at their November 13, 2024 meeting. As discussed in the memorandum, SWMBH does not have the legal authority to perform continuing inpatient stay reviews, either under Michigan's Mental Health Code, its Bylaws, or the October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe.

At the November 13, 2024 Operations Committee meeting, SWMBH conceded the following material points:

1. SWMBH has not requested a legal review relating to whether SWMBH has the authority to perform continuing inpatient stay reviews;
2. SWMBH allows Kalamazoo County Community Mental Health Authority d/b/a Integrated Services of Kalamazoo to perform its own inpatient continuing stay determinations;
3. The Milliman Care Guideline training cited in Pivotal's and Summit Pointe's respective correction action plans are irrelevant to whether SWMBH has the authority to perform continuing inpatient stay review determinations; and
4. MDHHS has not provided any definition of "utilization management" to SWMBH such that SWMBH can assert that MDHHS now requires SWMBH to perform continuing inpatient stay review determinations, nor has SWMBH notified Integrated Services of Kalamazoo that it will be taking that authority away.

Additionally, to the extent SWMBH comes up with any regulatory basis permitting it to exercise continuing inpatient stay reviews, SWMBH did not dispute that it would need to invoke the dispute resolution process in its contract with MDHHS to address the fact that a regulatory requirement cannot supersede Michigan's Mental Health Code. *Meier v Public School Employees Retirement Sys*, 343 Mich App 571, 578; 997 NW2d 719 (2022) (stating that agency interpretations of a statute "cannot conflict with the plain meaning of the statute." (quotations and citations omitted)). Ultimately, the Operations Committee decided that SWMBH must return inpatient continuing stay determinations to Pivotal and Summit Pointe as soon as possible. **(Exhibit B.)**

More broadly, "[o]perating agreements, such as a corporation's bylaws, are intended to govern the future conduct of the entity and its members." *Conlin v Upton*, 313 Mich App 243, 254; 881 NW2d 511 (2015). Those bylaws must comply with the law and "constitute a binding contractual agreement between the entity and its members." *Id.*, at 255 (citation omitted). As discussed in **Exhibit A**, SWMBH's Bylaws clearly state that SWMBH "shall have no powers, rights or authority" with regards to "the Participants' obligations under the Mental Health Code" or "the Participants' autonomous administrative, financial, or clinical operations[.]" Whether an individual continues to be a person requiring treatment is a clinical decision to be made by the physician or licensed psychologist assigned by the executive director of the participant community mental health services program. MCL 300.1482. Thus, SWMBH is violating its own Bylaws by performing inpatient continuing stay reviews. This is problematic for multiple reasons, including the fact that it exposes SWMBH (and its employees) to liability.

Overall, everyone's goal is to provide the highest quality care to our clients while being good stewards of Medicaid funds. SWMBH's exercise of authority over inpatient continuing stay reviews is not only legally noncompliant, it also results in increased costs for SWMBH and negatively impacts our clients. We ask the Board to affirm the scope of its authority under the Bylaws and the Operations Committee's decision by directing SWMBH to return the inpatient continuing stay review authority to Pivotal and Summit Pointe as soon as possible.

Below is Pivotal's and Summit Pointe's proposed solution:

Within fifteen (15) days of the conclusion of the Dispute Resolution process, (1) Summit Pointe and Pivotal shall provide community stakeholders and hospitals the requisite contact and updated process information for inpatient continuing stay reviews; and (2) SWMBH shall return the inpatient continuing stay reviews to Summit Pointe and Pivotal.

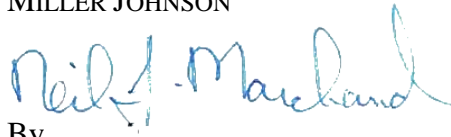
Thank you for your time and consideration.

MILLER JOHNSON

Operations Committee
November 29, 2024
Page 3

Sincerely,

MILLER JOHNSON



By

Neil J. Marchand

Enclosures

EXHIBIT A

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November 13, 2024

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SWMBH Moses L. Walker Room

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Further, Article 2.4.1 provides that SWMBH "shall have no powers, rights or authority" relating to "the Participants' obligations under the Mental Health Code" and "the Participants' autonomous administrative, financial, or clinical operations[.]" (*Id.* at 3.) SWMBH's Operating Agreement, which is incorporated by reference into the Bylaws, reiterates SWMBH's lack of authority in these areas. (**Exhibit 2**, at 12-13.)

C. Michigan's Mental Health Code gives CMHSPs the authority to perform all inpatient stay determinations.

MCL 330.1206(1) states that the "purpose of a community mental health services program shall be to provide a comprehensive array of mental health services[.]" including "the provision of inpatient or other protective environment for treatment." MCL 330.1206(1)(a); *see also* Mich. Admin. R 330.2005 (providing that a "community mental health board shall ensure that" inpatient services are provided).

Chapter 4 of the Mental Health Code gives CMHSPs the power to authorize inpatient hospitalization. Specifically, MCL 330.1409(1) provides that the community mental health services program shall establish a preadmission screening unit or contract with an agency that provides the preadmission screening services. The CMHSPs must authorize hospitalization where "the individual is clinically suitable for hospitalization[.]" MCL 330.1409(3); *see also* MCL 330.1410 (stating that an individual who requests or assents to voluntary admission to a hospital or outpatient treatment program may be considered for admission "only after authorization by a community mental health services preadmission screening unit."); MCL 330.1423 (requiring a hospital to hospitalize an individual if *inter alia* an authorization by a preadmission screening unit has been executed). If an individual is denied hospitalization and requests a second opinion, the

“executive director” shall arrange for that second opinion and, with the medical director, “shall make a decision based on all clinical information available” where there is a conflict between the first and second opinions. MCL 330.1409(4). Notably, “executive director” is defined as the “individual appointed under section 226 to direct a community mental health services program or his or her designee.” MCL 330.1100a(32).

The CMHSPs’ authority over inpatient stay determinations extends to whether to *continue* the individual’s inpatient hospitalization. MCL 330.1482 states, “Six months from the date of a 1-year order of involuntary mental health treatment, *the executive director of the community mental health services program responsible for treatment* [. . .] shall assign a physician or licensed psychologist to review the individual’s clinical status as a person requiring treatment.” MCL 330.1482 (emphasis added). Moreover, the CMHSP executive director (1) is responsible for providing the individual and others notice of the periodic review results and information on the individual’s right to petition for discharge, MCL 330.1483; and (2) has standing to object to the periodic review’s conclusions and petition for discharge, MCL 330.1484. *Nothing* in the Mental Health Code gives inpatient stay determination authority to a regional entity.

D. Pivotal and Summit Pointe have the exclusive authority to make inpatient stay, and continuing stay, determinations.

SWMBH derives its power from its participating CMHSPs, not vice versa. And SWMBH’s exercise of inpatient continuing stay authority violates Michigan law, its Bylaws, and its Operating Agreement in three ways. First, under Article 2.4 of SWMBH’s Bylaws, *only* the powers and authority specifically delegated to SWMBH are transferred to SWMBH, and nothing in SWMBH’s Bylaws or Operating Agreement delegates inpatient continuing stay determination authority to SWMBH. Second, Article 2.4 of the Bylaws states that the Participants—in this case, Pivotal and Summit Pointe—retain “all powers, rights and authority afforded community mental health services programs” under the Mental Health Code, and the Mental Health Code gives CMHSPs the authority to perform all inpatient stay determinations, both initial admission and continuing stay. And third, Article 2.4.1 of the Bylaws and SWMBH’s Operating Agreement provide that SWMBH “shall have no powers, rights or authority” with regards to “the Participants’ obligations under the Mental Health Code” or “the Participants’ autonomous administrative, financial, or clinical operations[.]” By making inpatient continuing stay determinations, SWMBH is interfering with Pivotal’s and Summit Pointe’s authority under the Mental Health Code and their exclusive clinical operations.

Despite raising these issues with SWMBH, (**Exhibit 3**), SWMBH’s response failed to address its lack of legal authority to act or why SWMBH allows Kalamazoo County Community Mental Health Authority d/b/a Kalamazoo Community Mental Health and Substance Abuse Services (and no other CMHSP) to perform their own inpatient continuing stay determinations (**Exhibit 4**). Instead, SWMBH has made vague references to: (i) the Code of Federal Regulations;

(ii) MDHHS pronouncements on Conflict Free Access & Planning purportedly prohibiting delegation of utilization management; and (iii) Corrective Action Plans relating to Milliman Care Guidelines. However, the portions of the Code of Federal Regulations upon which I understand SWMBH to rely do not support SWMBH's position, as explained in Pivotal's June 5, 2024 correspondence. (**Exhibit 3.**) Moreover, MDHHS and SWMBH have conceded that "utilization management" is not defined, (**Exhibit 5**), and SWMBH admitted that it does not have any written contractual obligations or policy relating to the Milliman Care Guidelines. (**Exhibit 6.**) Finally, SWMBH admitted that it was exceeding its authority as to Pivotal members who do not have Medicaid coverage. (**Exhibit 4.**)

Because SWMBH lacks the legal authority to perform inpatient continuing stay reviews, SWMBH's exercise of decision making authority constitutes an ultra vires activity that is not protected by governmental immunity. *Dextrom v Wexford County*, 287 Mich App 406, 417; 789 NW2d 211 (2010) (explaining that ultra vires activities are activities that are not expressly or impliedly mandated or authorized by law). Moreover, the "immunity" afforded SWMBH under Article 10.2.2 of the Bylaws does not apply because Pivotal's and Summit Pointe's liability, loss, and damages are caused by SWMBH's actions. Pivotal and Summit Pointe reserve all of their rights against SWMBH and its employees and directors.

II. SWMBH's claim that it has the authority to delegate inpatient continuing stay reviews means that SWMBH's October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe is unenforceable as written.

SWMBH has framed the dispute as an "expansion of delegation" of inpatient psychiatric services utilization management. As discussed above, SWMBH's posture is misleading because SWMBH's authority is derived from the participant CMHSPs, the CMHSPs retained all authority afforded them under the Mental Health Code, and SWMBH's Bylaws expressly state that it does not have any authority over a CMHSP's clinical operations.

Nevertheless, my understanding is that SWMBH will cite Section 2 of its October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe to argue that the authorization of inpatient services and partial hospitalization services is limited to the initial authorization for up to three days. (**Exhibit 7.**) As discussed above, the Mental Health Code grants CMHSPs, **and only CMHSPs**, the authority to make initial and continuing inpatient stay determinations. And it is axiomatic that "an agreement that violates the laws of Michigan is unenforceable as written." *Wasenko v Auto Club Group*, — Mich App —; — NW3d — (2023 WL 4671210) (citation omitted). Thus, accepting SWMBH's position means that SWMBH's October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe is unenforceable as written.

MILLER JOHNSON

Operations Committee

November 13, 2024

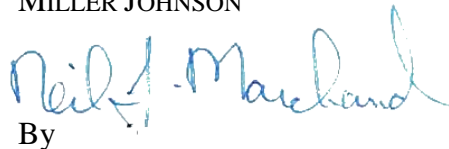
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Therefore, to the extent SWMBH relies on the October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe, SWMBH's interpretation renders those agreements void.

For the reasons discussed above, Pivotal and Summit Pointe request that the Operations Committee immediately direct SWMBH to cease its interference with Pivotal's and Summit Pointe's inpatient continuing stay authority and allowing Pivotal and Summit Pointe to perform their statutorily authorized clinical operations.

Sincerely,

MILLER JOHNSON



By

Neil J. Marchand

Enclosures

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

April 3, 2013

BYLAWS
[Southwest Michigan Behavioral Health]

ARTICLE I
FORMATION

1.1 **Establishment of Entity.** The Southwest Michigan Behavioral Health Regional Entity (the “ Regional Entity”) is hereby created pursuant to MCL 330.1204b of the Michigan Mental Health Code, 1974 PA 258, MCL 330.1001 *et seq* (the “Mental Health Code”) with the adoption of these Bylaws by the following Participant community mental health services programs which are organized and operated as community mental health authorities under the Mental Health Code:

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

i.e., (the “Participants”).

1.2 **Form of Entity.** Pursuant to MCL § 330.1204b(3), the Regional Entity is a public governmental entity separate from the counties, authorities, or organizations that establish it.

1.3 **Service Area.** The Regional Entity’s designated service area encompasses the following Michigan counties: Barry, Berrien, Branch, Cass, Calhoun, Kalamazoo, St. Joseph and Van Buren (“Service Area”).

ARTICLE II
PURPOSES AND POWERS

2.1 **Purpose.** The Regional Entity is formed for the purpose of carrying out the provisions of the Mental Health Code in the Service Area as they relate to: serving as a

prepaid inpatient health plan, as defined in 42 CFR 438.2 (“PIHP”), to manage the Medicaid Specialty Support and Services Concurrent 1915(b)/(c) Waiver Programs (“Medicaid”) and the Michigan ABW NON-Pregnant Childless Adults Waiver (Adult Benefits Waiver) Section 1115 Demonstration program (“ABW”); ensuring a comprehensive array of services and supports as provided in the PIHP Medicaid and ABW contracts with MDCH; and exercising the powers and authority set forth in these Bylaws. Additional purposes may be added by the Regional Entity Board.

2.2 Powers. Except as otherwise stated in these Bylaws, the Regional Entity has all of the following powers provided under MCL 330.1204b(2):

2.2.1 The power, privilege, or authority that the Participants share in common and may exercise separately under the Mental Health Code, as specified in these Bylaws or as granted by the Regional Entity Board under subsection 2.2.8;

2.2.2 The power to contract with the State to serve as the Medicaid specialty service PIHP for the Service Area;

2.2.3 The power to contract with a state, federal, local, and/or commercial organization(s).

2.2.4 The power to accept funds, grants, gifts, or services from the federal government or a federal agency, the State or a State department, agency, instrumentality, or political subdivision, or any other governmental unit whether or not that governmental unit participates in the Regional Entity, and from a private, or civic source;

2.2.5 The power to enter into a contract with a Participant for any service to be performed for, by, or from the Participant; and

2.2.6 The power to create a risk pool and take other actions as necessary to reduce the risk that the Participants otherwise bear individually.

2.2.7 The power to calculate, assess, and collect from the Participant payments attributable to their designated share of the Regional Entity’s costs and expenses.

2.2.8 Other powers granted by the Regional Entity Board that the Participants share in common and may exercise separately under the Mental Health Code.

2.3 Regional Entity Actions. The manner by which the Regional Entity’s purposes will be accomplished and powers will be exercised shall be through the actions of the Participants as provided in Article III of these Bylaws and through the actions of the Regional Entity Board as set forth in these Bylaws, or as delegated by the Regional Entity Board to officers, committees or other agents.

2.4 **Participant Retained Powers.** The Participants shall retain all powers, rights and authority afforded community mental health services programs, organized and operated as county mental health authorities, agencies or organizations under the Mental Health Code. Only the powers and authority specifically delegated to the Regional Entity under these Bylaws and as further defined under an Operating Agreement, are transferred to the Regional Entity. An Operating Agreement shall be approved by the Regional Entity Board and incorporated herein by reference.

2.4.1 The Regional Entity shall have no powers, rights or authority with respect to:

- the Participants' obligations under the Mental Health Code including those related to size, composition, and authority of the Participants' Board;
- the Participants' autonomous administrative, financial, or clinical operations; or
- the Participants' relationship with other providers unless the Regional Entity's involvement is so limited that it does not prevent the Participant from collaborating with other providers.

ARTICLE III THE PARTICIPANTS

3.1 **Participants.** The Participants shall be those community mental health authorities listed in section 1.1.

3.2 **Participant Vote.** Each Participant will designate members of the Regional Entity Board, as provided in Section 4.2.

3.3 **Withdrawal of the Participant.** Any Participant may withdraw from participation with the Regional Entity effective upon providing to the Executive Director of the Regional Entity written notice (minimum notice of 6 months before the beginning of the fiscal year). Upon the effective date of such withdrawal, the Participant will have no further rights or benefits of the Participant of the Regional Entity. The withdrawing Participant is responsible for meeting all of its obligations prior to the withdrawal. The Regional Entity Board position(s) and other positions appointed by the withdrawing Participant shall terminate upon the effective date of withdrawal of the Participant and no replacement shall be appointed nor vacancy be deemed to occur by reason of the Participant's withdrawal and termination of positions.

3.4 **Removal of the Participant.** The Participants cannot be removed from the Regional Entity.

3.5 **New Participants.** New Participants may be admitted by a simple majority vote of the Participants. At any time that the new Participant is admitted and enters into an Operating Agreement to participate in the Regional Entity, the new Participant shall be entitled to the entire Participants' rights of governance and obligations provided in these Bylaws.

3.6 **Dispute Resolution.** The manner for adjudicating a dispute or disagreement among Participants shall be set forth in an Operating Agreement, approved by the Regional Entity Board and incorporated herein by reference.

3.7 **Participant Reserved Powers.** Each Participant shall possess the powers and rights retained and reserved to the Participants under Section 2.4 of these Bylaws and this Section 3.7, which shall include the power to approve the following:

- 3.7.1 all amendments, restatements or the adoption of new bylaws;
- 3.7.2 a plan of merger, consolidation or joint venture;
- 3.7.3 the sale, transfer or other disposition of substantially all the assets of the Regional Entity; and
- 3.7.4 the dissolution of the Regional Entity and distribution of assets and liabilities, if any.

3.8 **Participants' Exercise of Reserved Powers.** The Participants shall exercise their reserved powers through duly adopted written resolutions from their respective boards. The Participants Boards will unanimously 100% approve all reserved powers listed in section 3.7.

3.9 **The Participant Payment of Designated Share of the Regional Entity's Costs and Expenses.** The manner of equitably allocating costs and expenses and how they will be assessed shall be set forth in the Regional Entity's annual Financial Management Plan, which shall be approved by the Regional Entity Board and incorporated herein by reference.

ARTICLE IV REGIONAL ENTITY BOARD

4.1 **General Powers.** The business, property, and affairs of the Regional Entity shall be managed by the Regional Entity Board in accordance with the Policy Governance Model as made explicit by Dr. John Carver www.carvergovernance.com.

4.2 **Number and Composition.** The composition of the Regional Entity Board shall be consistent with all applicable statutory requirements. Each of the Participant Community Mental Health Services Program (CMHSP) Boards shall have one representative on the Regional Entity Board, who shall be an active member of the Participants' CMHSP

Board. If the Regional Entity is a department-designated community mental health entity, as defined in Section 100a(22) of 2012 PA 500, the composition of the Regional Entity Board shall also consist of representatives of mental health, developmental or intellectual disabilities and substance use disorder services as required under 2012 PA 500. The Regional Entity Board shall also include consumer representation. Each Participant CMHSP Board shall appoint one member to the Regional Entity Board. The Regional Entity Board shall determine whether all of the required categories of board members are represented on the Regional Entity Board. Each CMH shall appoint one member with one vote if there are a total of 8 Board Members. If additional members are needed to be appointed to represent all of the required categories, the Participant CMHSPs will jointly agree on and appoint additional individuals as necessary. There shall be no more than two members from any one Participant CMHSP on the Regional Entity Board. There will be no more than 2 total votes for each Participant CMHSP on the Regional Entity Board. Participant CMHSPs in which two individual board members reside will have one vote assigned to each of those members and Participant CMHSPs in which one board member resides will have two votes assigned to that member.

4.3 **Appointment.** The Participant CMHSP Boards shall appoint members of the Regional Entity Board. At any time the Participant CMHSP Boards may appoint, remove, or replace its appointee to the Regional Entity Board.

4.4 **Term.** All Regional Entity Board members shall continue to serve on the Regional Entity Board until their Participant CMHSP Board appoints a different representative.

4.5 **Removal.** The Participant CMHSP Boards may remove its appointee to the Regional Entity Board at any time. The Regional Entity Board is responsible for informing the relevant Participant board if there is a lack of participation or attendance by the Participant's appointed Board members.

4.6 **Resignation.** Any Regional Entity Board member may resign at any time by providing written notice to the Regional Entity. The resignation will be effective on receipt of the notice or at a later time designated in the notice. A successor will be appointed as provided in Section 4.3 of these Bylaws.

4.7 **Regional Entity Board Vacancies.** A vacancy on the Regional Entity Board shall be filled by the Participant CMHSP Board that originally filled the person's vacated position.

4.8 **Regular Meetings.** The Regional Entity Board shall establish a regular schedule of meetings at the beginning of each fiscal year. Notice in writing of each meeting shall be given to Regional Entity Board members and posted to the public.

4.9 **Special Meetings.** Special meetings of the Regional Entity Board may be held at the call of the Chair of the Regional Entity Board or, in the Chair's absence, the Secretary, or by a simple majority of the Regional Entity Board members.

4.10 **Meeting by Remote Communication.** A Regional Entity Board member may participate in a meeting by conference telephone or any similar communication equipment through which all persons Participant in the meeting can hear each other. Participation in a meeting pursuant to this Section constitutes presence in person at the meeting.

4.11 **Quorum and Voting.** A majority of the Regional Entity Board members then in office constitutes a quorum for the transaction of any business at any meeting of the Regional Entity Board. Actions voted on by a super majority (75% of attendees) of Regional Entity Board members present at a meeting where a quorum is present shall constitute authorized actions of the Regional Entity Board.

4.12 **Conflict of Interest Policy.** The Regional Entity Board shall adopt and adhere to a conflict of interest policy. All Regional Entity Board members will annually disclose any conflicts of interest while serving on the Regional Entity Board.

4.13 **Compliance with Laws.** The Regional Entity and its Participant CMHSP Boards, members of the Regional Entity Board, officers, staff and other employees shall fully comply with all applicable laws, regulations and rules, including without limitation 1976 PA 267 (the "Open Meetings Act") and 1976 PA 422 (the "Freedom of Information Act"). The Regional Entity shall develop such compliance policies and procedures. In the event that any such noncompliance is found, immediate corrective action as defined in the Operating Agreement shall be taken by the appropriate source to ensure compliance. Compliance policies and procedures will be defined in the Operating Agreement.

4.14 **Alternates/Designees.** The Participant CMHSP Boards may appoint official designees to serve in place of their appointed Regional Entity Board member in the event that a Regional Entity Board member is unable to attend a regularly scheduled meeting. This designee shall have full voting rights for the purpose of the meeting he/she is designated to attend.

4.15 **Per Diem and Travel Expenses:** The Regional Entity does not pay Per Diem or travel expenses of Regional Entity Board members that are part of regular Regional Entity Board activities.

ARTICLE V COMMITTEES

5.1 **Powers.** The Regional Entity Board may form committees from time to time, as it deems appropriate. A committee designated by the Regional Entity Board may exercise

any powers of the Regional Entity Board in managing the Regional Entity's business and affairs that are within the committee's jurisdiction, to the extent provided by resolution of the Regional Entity Board.

5.1.1 Operations Committee: An Operations Committee will be formed consisting of the CEOs of the Participants or their designees. The Operations Committee will have the responsibilities and authorities assigned by the Board and outlined in the Operating Agreement.

5.2 **Meetings**. Committees shall meet as directed by the Regional Entity Board; minutes shall be recorded at each committee meeting and shall be available to the Regional Entity Board.

ARTICLE VI OFFICERS

6.1 **Officers**. The Officers of the Regional Entity Board shall be the Chairperson, the Vice Chairperson, and the Secretary. Only Officers of the Regional Entity Board can speak to the press as representatives of the Regional Entity.

6.2 **Appointment**. Officers will be elected by a majority vote of the Regional Entity Board members, and must be a representative of the Participant's Board.

6.3 **Term of Office**. The term of office of Officers elected in 2013 shall be through March 30, 2014. Thereafter the term of office of Officers shall be annual April to March with annual April Officer elections. Election of Officers of the Regional Entity Board shall occur annually, or in case of vacancy.

6.4 **Vacancies**. A vacancy in an officer position shall be filled by a majority vote of the Regional Entity Board.

6.5 **Removal**. The Regional Entity Board will be able to remove any Regional Entity Board Officer by a super majority (75% of attendees) vote of Regional Entity Board members present at a meeting where a quorum is present and shall constitute an authorized action of the Regional Entity Board.

6.6 **Chair**. The Chair shall preside at all Regional Entity Board meetings. The Chair shall have the power to perform duties as may be assigned by the Regional Entity Board. The Chair shall perform all duties incident to the office.

6.7 **Vice Chair**. The Vice Chair shall have the power to perform duties that may be assigned by the Chair or the Regional Entity Board. If the Chair is absent or unable to perform his or her duties, the Vice Chair shall perform the Chair's duties until the

Regional Entity Board directs otherwise. The Vice Chair shall perform all duties incident to the office.

6.8 **Secretary.** The secretary shall: (a) ensure that minutes of Regional Entity Board meetings are recorded; (b) be responsible for providing notice to each Regional Entity Board Member as required by law or these Bylaws; (c) be the custodian of the Regional Entity records; (d) keep a register of the names and addresses of each Officer and Regional Entity Board Member ; (e) complete all required administrative filings required by the Regional Entity's legal structure; and (f) perform all duties incident to the office and other duties assigned by the Regional Entity Board.

ARTICLE VII STAFF POSITIONS

7.1 **Executive Officer.** The Regional Entity shall have at a minimum an Executive Officer, and a Fiscal Officer. The Regional Entity Board shall hire the Executive Officer; and the Executive Officer shall hire and supervise the Fiscal Officer. Both positions shall have direct access to the Regional Entity Board.

7.2 **Fiscal Officer:** The Fiscal Officer shall serve as the fiscal officer as defined in MCL 330.1204b and shall (a) have charge and custody over corporate funds and securities; (b) keep accurate books and records of corporate receipts and disbursements; (c) deposit all moneys and securities received by the Regional Entity at such depositories in the Regional Entity's name that may be designated by the Regional Entity Board. The Fiscal Officer has the responsibilities set forth in MCL 330.1204b and will be responsible for receiving, depositing, investing, and disbursing the Regional Entity's funds in the manner authorized by these Bylaws and Regional Entity Board in accordance with the Regional Entity's Operating Agreement and other duties as assigned by the Executive Officer.

ARTICLE VIII ADVISORY BODIES:

8.1 **Advisory Bodies.** The Regional Entity Board may establish Advisory Bodies.

8.2 **Purpose.** The Regional Entity Board shall define the purpose and longevity of any advisory bodies in the document creating an Advisory Body.

8.3 **Membership.** The Regional Entity Board shall define membership in each establishing agreement for each Advisory Body.

8.4 **Officers.** Officers will be elected by a majority vote of the Advisory Body members.

8.5 **Meetings**. Each Advisory Body shall establish a regular schedule of meetings at the beginning of each fiscal year. Notice in writing of each meeting shall be given to the Regional Entity Board.

ARTICLE IX REPORTS

The Regional Entity must provide an annual report of its activities to each Participant.

ARTICLE X IMMUNITY

10.1 **Governmental Immunity**. All the privileges and immunities from liability and exemptions from laws, ordinances, and rules provided under MCL § 330.1205(3)(b) of the Mental Health Code granted to county community mental health services programs and their Regional Entity Board members, officers, and administrators, and county elected officials and employees of county government are retained by the Regional Entity and the Regional Entity's Board members, Officers, agents, and employees, as provided in MCL § 330.1204b(4).

10.2 **LIABILITY**. Except as required by law, these Bylaws, or any agreement between the Participants or the Participants and the Regional Entity, the Participants shall not be responsible for the acts, omissions, debts or other obligations and responsibilities of the Regional Entity or any other Participant or the Board members, employees, agents and representatives of the Regional Entity or the other Participants, whether acting separately or jointly under these Bylaws or pursuant to any such agreements. The Participants shall only be bound and obligated as expressly agreed to by each Participant and no Participant may otherwise obligate any other Participant.

10.2.1 All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities to be carried out by the Regional Entity shall be the sole and non-transferrable responsibility of the Regional Entity, and not the responsibility of the Participant, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act by the Regional Entity, its Board members, officers, employees or representatives; provided that nothing herein shall be construed as a waiver of any governmental or other immunity that has been provided to the Regional Entity or its Board members, officers, employees or representatives, by statute or court decisions.

10.2.2 All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities to be carried out by the Participant shall be the sole and non-transferrable responsibility of the

Participant and not the responsibility of the Regional Entity, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act by the Participant, its Board members, officers, directors, employees and authorized representatives; provided that nothing herein shall be construed as a waiver of any governmental or other immunity that has been provided to the Participant or its Board members, officers, employees or representatives, by statute or court decisions.

10.2.3 Each Participant and the Regional Entity will obtain its own legal counsel, and will bear its own costs, including judgments, in any litigation which may arise out of its activities to be carried out pursuant to its obligations under these Bylaws or any agreement between the Participants or the Participants and the Regional Entity. It is specifically understood that no indemnification will be provided in such litigation.

10.2.4 In the event that liability to third parties, loss or damage arises as a result of activities conducted jointly under these Bylaws or any agreement between the Participants or the Participants and the Regional Entity, such liability, loss or damages shall be borne by each party in relation to each party's responsibilities under the joint activities, provided that nothing herein shall be construed as a waiver of any governmental or other immunity granted to any of said parties as provided by applicable statutes and/or court decisions.

10.2.5 Under these Bylaws, it is the intent that each of the Participants and the Regional Entity shall separately bear and shall be separately responsible for only those financial obligations related to their respective duties and responsibilities.

10.3 **INSURANCE.** The Regional Entity may purchase and maintain insurance on behalf of any person who is or was a Board member, officer, employee or representative of the Regional Entity, against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Regional Entity would have power to indemnify the person against such liability under these Bylaws or the laws of the State of Michigan.

ARTICLE XI ADMINISTRATION

11.1 **Allocation of Assets and Liabilities.** The Regional Entity shall allocate its assets and liabilities to each Participant in the following manner:

11.1.1 **Revenues.** The Regional Entity will equitably allocate Medicaid (including ABW) revenues to the Participants utilizing a sub-capitation methodology based

on the number of Medicaid beneficiaries in each county using regional capitation rates. The specific methodology used to allocate revenues will be provided in the annual Financial Management Plan, approved by the Regional Entity Board and incorporated herein by reference.

The allocation of other revenues derived from a federal or state grant or loan, a gift, bequest, grant, or loan from a private source, or an insurance payment or service fee shall be approved by the Regional Entity Board on a case by case basis. The specific methodology for the allocation of other revenues will be provided in the annual Financial Management Plan approved by the Regional Entity Board and incorporated herein by reference.

11.1.2 **Capital and Operating Costs.** The Regional Entity will deduct and retain, from the total capitation revenue, the cost of any required State and Federal Payments (for example HRA or Claims Tax). The Regional Entity will deduct capital and operating costs, payments to reserve funds authorized by law, and payments of principle and interest on obligations as approved by Board. The deductions for capital and operating costs, reserve funds, payments of principle and interest on obligations should be allocated as delineated in the Financial Management Plan.

11.1.3 **Other Assets.** The Regional Entity Board shall approve the allocation of other Regional Entity assets, on a case by case basis. The specific methodology for such allocation will be provided in the annual Financial Management Plan, approved by the Regional Entity Board and incorporated herein by reference.

11.1.4 **Surplus Funds.** Any surplus funds available after the completion of the Regional Entity's purpose will be returned to the Participants in the proportion based on the amount of sub capitation revenues in the last year of Regional Entity operations.

11.1.5 **Special Fund Account.** Each Participant may elect to create a special fund account under Section 226A of the Mental Health Code. Money in the special fund account represents local funds of each Participant. Each Participant will pay the Regional Entity its share of local matching fund obligation for Medicaid funding. Each Participant may use its special fund account or other local funds to meet the local matching fund obligations for Medicaid funding.

11.1.6 **Accountability of Funds.** The Regional Entity will maintain an accounting and financial reporting system in accordance with Generally Accepted Accounting Principles (GAAP). The accounting procedures and internal financial controls of the Regional Entity shall conform to Generally Accepted Accounting Principles (GAAP) for governmental units. The Regional Entity shall maintain accounts and source records in which any and all revenues received and expenses incurred are ascertainable and verifiable and include date of receipt / payment and sources of funds. The Regional Entity shall engage a certified public accounting

firm to perform an annual independent financial audit in conformance with the American Institute of Certified Public Accountants Guide to assess compliance with the appropriate standard accounting practices and procedures and MDCH contract requirements.

11.1.7 **Contracts.** The Regional Entity Board shall designate the positions of the Regional Entity that will have authority to enter into contracts on behalf of the Regional Entity with third parties, including contracts involving the acquisition, ownership, custody, operation, maintenance, lease or sale of real or personal property and the disposition, division or distribution of property acquired through the execution of the contract.

11.1.8 **Risk Management.** The Regional Entity shall have a Financial Risk Management Plan that is approved by the Regional Entity Board.

11.1.9 **Participants Failure to Pay:** Addressed in 3.9, 11.1.2, and 11.1.5

11.2 **Other Administration Activities.** The Regional Entity Board and/or its Operations Committee will, on an ongoing basis, consider possible administrative efficiencies where appropriate.

ARTICLE XII FISCAL YEAR

The fiscal year of the Regional Entity shall end on September 30 of each calendar year.

ARTICLE XIII AMENDMENTS

These Bylaws may be amended altered, changed, added to or repealed by a uniform resolution approved by each Participant CMH Board. No amendment to these Bylaws shall be effective until filed as provided in Article XIV.

ARTICLE XIV FILING BYLAWS

These Bylaws, including any amendment, shall be effective only after it has been duly adopted in accordance with MCL 330.1204b(1) and subsequently filed with the clerk of each county in which the Participant is located and with the Michigan Secretary of State.

ARTICLE XV TERMINATION

The Participants may terminate the Regional Entity by a vote of super majority (75%) vote of the Participants, after distributing any surplus funds to the Participants as provided in Section 11.1.4 of these Bylaws.

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EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

SOUTHWEST MICHIGAN BEHAVIORAL HEALTH OPERATING AGREEMENT

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PURPOSE

Pursuant to Michigan Law, an Operating Agreement is “an agreement among an organization’s participant members to govern the organization’s business, and the participant member’s financial and managerial rights and duties.” (MCL 450.4102(2)(r)).

Southwest Michigan Behavioral Health (SWMBH) Operating Agreement is established between SWMBH and its participant Community Mental Health Services Programs (CMHSPs). The Operating Agreement is approved by the regional SWMBH Board, which has as its membership representatives from each of the participant CMHSP Boards.

The primary purposes of this Operating Agreement are to:

- Declare that the Regional Entity is a separate legal entity from the participant CMHSP organizations;
- Augment specific sections of the SWMBH Bylaws, as referenced therein;
- Further define the governance and management structure of SWMBH that the participant CMHSPs have chosen for the organization;
- Clarify the business and operational relationships between SWMBH and its participant CMHSPs; and
- Clarify the provisions and understandings by which SWMBH will operate.

PREAMBLE

Southwest Michigan Behavioral Health (hereinafter referred to as “SWMBH”) is a Regional Entity created pursuant to MCL 330.1204b of the Michigan Mental Health Code, 1974 PA 258. A Regional Entity is an independent public governmental entity, and is separate from the counties, authorities, or organizations that establish it. SWMBH operates under the authority of its own Board of Directors (the “SWMBH Board”), which consists of membership from each of the participant CMHSP boards, as delineated in the SWMBH Regional Entity Bylaws.

SWMBH was created with the filing of its Bylaws with Michigan’s Office of the Great Seal. These Bylaws were approved by the following participant Community Mental Health Services Programs, which are organized and operated as community mental health authorities under Michigan’s Mental Health Code (MCL 330.1001 et seq.)

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

As the Bylaws reference the Operating Agreement and require an annual review of this Operating

Agreement with revisions subject to approval by the SWMBH Board, the Operating Agreement will be filed by SWMBH with each County Clerk and the Office of the Great Seal when revisions occur.

SWMBH designated service area encompasses the following Michigan counties: Barry, Berrien, Branch, Calhoun, Cass, Kalamazoo, St. Joseph, and Van Buren. These counties are hereinafter known as the “Service Area” of SWMBH.

SWMBH was formed for the purpose of:

- (i) carrying out the provisions of the Mental Health Code in its Department designated service area as they relate to: serving as a prepaid inpatient health plan, as defined in 42 CFR 438.2 (“PIHP”);
- (ii) managing the business lines for which SWMBH is the contractor to Michigan Department of Health and Human Services (MDHHS);
- (iii) ensuring a comprehensive array of services and supports as provided in the contracts with MDHHS;
- (iv) performing all the duties and responsibilities contained in the Department/Regional Entity Contract;
- (v) Substance Abuse Coordinating Agency (CA) required functions for its service area, pursuant to MCL 333.6230 et seq. (PA 501 of 2012; Amendments to Public Health Code), and MCL 330.1100a et seq. (PA 500 of 2012, Mental Health Code);
- (vi) contractual participation in the Department’s MI Health Link (MiHL) demonstration project for its service area, serving persons with behavioral health needs who have both Medicare and Medicaid coverage; and finally
- (vii) exercising the powers and authority set forth by the Bylaws and governed by the SWMBH Board.

OPERATIONAL STRUCTURE

The aforementioned eight Community Mental Health Services Programs (the “Participants”) have joined together to create a jointly governed regional entity operating as a Prepaid Inpatient Health Plan (“PIHP”) for the purpose of supporting and furthering the work of the Participants in their roles as Community Mental Health Service Programs (“CMHSPs”) as applicable in the counties they serve.

Inherent in this action is the belief that the Participants are best suited to provide services well matched to the needs of the communities and citizens served. SWMBH is established for the purpose of meeting its regulatory and statutory requirements, and other services as mutually agreed, while not encumbering, but enhancing, the efforts of the Participant CMHSPs. In serving and representing the counties of Barry, Berrien, Branch, Cass, Calhoun, Kalamazoo, Saint Joseph, Van Buren, SWMBH shall be dedicated to ensuring that equality in voice and governance exists, and that the benefit to the person participating in services is uniform, person centered, and locally available.

SWMBH is founded on a shared governance structure, using standing committees to create avenues for input. Certain checks and balances are created to ensure that governance remains balanced and equal.

SWMBH exists to support all Participants, and all Participants must work collaboratively to ensure that SWMBH is successful in its core mission.

The SWMBH Board has final authority over governing SWMBH, as set forth in the Bylaws approved by the Participants and subject to those powers reserved to the Participants in the Bylaws. This Operating Agreement reinforces the responsibility for governance of the Regional Entity to the SWMBH Board, and management of the Regional Entity to its Executive Officer (EO).

The SWMBH Board will be best served by an EO who is an accomplished administrator and facilitator, capable of bringing many and varied voices together to achieve consensus. The EO must promote compliance, fiscal responsibility, quality programs, meaningful outcomes, and efficiencies that will funnel more resources to direct services. The SWMBH Board shall also be advised by an Operations Committee that brings management expertise, local perspectives, local needs, and greater vision to the operation of the PIHP.

ORGANIZATION

Formation and Qualification. SWMBH has been formed by the Participants pursuant to the authority granted under the Michigan Mental Health Code, MCL § 330.1204b and by filing Bylaws with the County Clerks of each of the eight counties and the Michigan Secretary of State, Office of the Great Seal.

Name. The business of SWMBH may be conducted under that name or, in compliance with applicable laws, any other name that the SWMBH Board deems appropriate or advisable. SWMBH shall file any certificates, articles, fictitious business name statements and the like, and any amendments and supplements thereto, as SWMBH considers appropriate or advisable.

Office. The principal office of SWMBH shall be at such place or places of business within the eight counties as the SWMBH Executive Officer may determine.

SCOPE AND AUTHORITY

The intention of this Operating Agreement is to provide a paradigm for decision-making, and a structure for effective communication among members of the SWMBH Board, the Participants, SWMBH administration and, potentially, provider representatives, persons in service, SWMBH staff, and stakeholders, that is inclusive, collegial, equal and responsive.

The Operations Committee participates meaningfully in the establishment of and alignment to regional, SWMBH, and common CMHSPs goals.

- **Meetings.** The Operations Committee shall meet as often as it deems necessary in order to perform its responsibilities. The Operations Committee may also meet by video and phone options and may act by unanimous written consent via e-mail in lieu of a meeting. Records of Operations Committee Meetings shall be kept.

- Annual Self-Evaluation. At least annually, the Operations Committee shall evaluate its own performance, and provide recommendations and conclusions to the Board.
- Standing Committees and Subcommittees. The Operations Committee may form and delegate authority to one or more Standing Committees made up of CEOs, or it may form self-populated subcommittees or workgroups as it deems appropriate from time to time under the circumstances. Such efforts will avoid duplication or role confusion.

SWMBH BOARD COMMITTEES AND OVERSIGHT BOARDS

Pursuant to the SWMBH Bylaws, the SWMBH Board shall create the following Committees or Oversight Boards:

- Operations Committee;

Operations Committee

“An Operations Committee will be formed consisting of the CEOs of the CMHSPs or their designees. The Operations Committee will have the responsibilities and authorities assigned by the Board and outlined in the Operating Agreement.” (*SWMBH Bylaws 5.1.1*)

The SWMBH Operations Committee is comprised of the Participant CEOs/Executive Directors, or their designees, and the SWMBH EO. The SWMBH EO participates in an ex-officio capacity without vote. The Operations Committee, in collaboration with the EO and SWMBH Board, participates in the development of the vision, mission and long-term plans of SWMBH. The Operations Committee, in a manner consistent with SWMBH Board directives, contributes to the hiring and evaluation process of the EO. The EO, in concert with the Operations Committee, develops and recommends priorities for the SWMBH Board’s consideration and makes recommendations to the SWMBH Board with respect to policy and fiscal matters. The EO collaborates with the Operations Committee in the development of the contracts between the Participants and SWMBH. Each CMHSP CEO is charged with assuring that its CMHSP complies with applicable federal and state standards and regulations. The Operations Committee is advisory to both the EO and SWMBH Board. Any items requiring approval from the Operations Committee requires a super majority (75% of present members) vote.

The Operations Committee shall function with a large degree of independence in the discharge of its responsibilities. The Operations Committee shall assess the information provided by the SWMBH management, in accordance with its business judgment; and will work in collaborative partnership with the SWMBH Executive Officer (EO) in carrying-out its responsibilities, and in the provision of advice and recommendations to the Board.

Operations Committee Responsibilities and Authorities

The Operations Committee and the individual CMHSP CEOs/Executive Directors will work actively and constructively to:

- A. Assure Participant CMHSP and community awareness of and alignment to SWMBH approved contracts, Participant subcontracts and related Plans, Policy and Procedures.
- B. Assure its CMHSP personnel are constructively involved in SWMBH Committees and

related activities.

- C. Contribute to SWMBH and Participant CMHSP environmental awareness and SWMBH regional planning activities, including but not limited to strategic planning, Mission development, operational and capital budgeting, growth, infrastructure, products and markets.
- D. Seek to resolve boundary issues, differences and disputes.
- E. On an ongoing basis consider possible administrative efficiencies where appropriate (Bylaws 11.2).

As listed throughout the Operating Agreement the Operations Committee does the following:

- A. Advises both the EO and SWMBH Board.
- B. Participates in the development of the vision, mission, and long-term plans of SWMBH and ensures alignment with common CMHSP goals.
- C. Reviews the annual operating and capital budget, Financial Management Plan, Cost Allocation Plan and Financial Risk Management Plan prior to presentation and approval by the SWMBH Board.
- D. Reviews the Quality Assurance and Program Improvement Program (QAPIP) prior to presentation and approval by the SWMBH Board.
- E. Reviews the Utilization Management Program (UM Plan) prior to implementation and/or presentation to the SWMBH Board.
- F. Advises the EO in advance of, and throughout, engaging in any meaningful discussion with other entities that may impact the operations or decision of participants' CMHSP or SWMBH.
- G. Attempts to resolve disputes between the Participants or one or more Participants and SWMBH at step 2 in the formal Dispute Resolution process.
- H. Assists the SWMBH Board in hiring and retention decisions regarding the SWMBH EO in a manner consistent with Board policy, and as requested.
- I. Responds to the EO's consultation before the EO renders a formal policy interpretation that may materially or negatively affect the Participants - where feasible.
- J. Reviews all grant applications submitted on behalf of SWMBH prior to being submitted.
- K. Responds to the EO's consultation before the EO determines what functions remain with SWMBH and which can be delegated to the Participants consistent with the Balanced Budget Act. Medicaid Managed Care Regulations.
- L. Advises the EO regarding any additional SWMBH contractual arrangements that involve the Participants.
- M. Provides a recommendation to the SWMBH Governing Board regarding any additional SWMBH contractual arrangements that involve the Participants and/or other vendors and requires approval by the SWMBH Governing Board.
- N. Where appropriate, reviews and comments on agendas, materials, and minutes of the Substance Use Disorder Oversight Policy Board (SUDOPB).

OPERATIONAL COMMITTEES AND POLICY BOARD COMMITTEES

SWMBH POLICY BOARDS AND COMMITTEES

Substance Use Disorder Oversight Policy Board is established to assist SWMBH develop and sustain a comprehensive array of prevention programs, treatment and other services and a provider network

capable of meeting the needs of persons with substance use disorders. SWMBH has executed an Intergovernmental Contract with 8 county commissions. This contract and related statutes and regulations shall guide the responsibilities of the SUD Oversight Policy Board. The Substance Use Disorder Oversight Policy Board will be constituted as required under MCL 330.1100a et seq. (PA 500 of 2012; Mental Health Code) and shall advise the SWMBH on issues concerning services to persons with substance use disorders. The functions and responsibilities assigned to the Board under law will include:

- A. Approval of that portion of SWMBH budget that includes local funds (PA2) for treatment or prevention of substance use disorders;
- B. Advice and recommendations regarding SWMBH budget for substance use disorder treatment or prevention using other nonlocal funding sources;
- C. Advice and recommendations regarding contracts with substance use disorder treatment or prevention providers;
- D. Other functions and responsibilities requested by SWMBH and accepted by amending Intergovernmental Contract.

Customer Advisory Committee (CAC) is established to advise SWMBH. The CAC is comprised of active or former customers, and may also include family members. Membership will include at least two but not more than three representatives from each county, nominated by Participants and other sources, recommended by the SWMBH EO, and appointed by the SWMBH Board, unless otherwise required by contract or regulation. Representatives will reflect the SWMBH population served and include those living with developmental disabilities, mental illness, serious emotional disturbance, and substance use disorders.

SWMBH Corporate Compliance Committee is established to develop the Compliance Plan for SWMBH Board approval and assist in implementing Program Integrity/Compliance Program of SWMBH. Committee members will include the SWMBH key functional areas such as Compliance, Utilization Management, Quality Management, Information Technologies, Finance, etc. as appointed by the EO. The Corporate Compliance Officer has a dual reporting relationship with the EO and the SWMBH Board. The Operations Committee will appoint a member to the SWMBH Compliance Committee.

SWMBH Standing Committees

Standing Operating Committees of SWMBH are:

- Finance Committee
- Quality Management Committee
- Utilization Management Committee
- Clinical Practices Committee
- Provider Network Management Committee
- Regional Information Technology Committee
- Customer Services Committee
- Regional Compliance Coordinating Committee

The CMHSP CEOs will ensure representatives from participant CMHSPs on all SWMBH Standing Committees. Each Participant CMHSP shall identify their representative to each committee. The EO with CMHSP support and involvement will actively pursue customer representation on standing committees. Committee work plans and goals shall be reviewed by the Operations Committee annually

and in the event of changes to ensure alignment with SWMBH and common CMHSP goals. At its discretion, the Operations Committee may request an in-depth committee report or update.

Finance Committee is established to advise the EO and is comprised of the SWMBH Fiscal Officer and participant CMHSP Fiscal Officer or Finance Director, as appointed by the Participant CEOs/Executive Directors. The Finance Committee will be charged with advising the EO and SWMBH CFO in the development of the annual operating and capital budget; Financial Management Plan, Cost Allocation Plan, and Financial Risk Management Plan, for review by the SWMBH Operating Committee prior to presentation and approval by the SWMBH Board.

Quality Management Committee is established to advise the EO and is comprised of both SWMBH QAPI leader and Participant CMHSP QM staff. The Quality Management Committee will be charged with advising the EO and SWMBH QAPI Director in the development of the Quality Assurance and Program Improvement Program (QAPIP), for review by the SWMBH Operating Committee prior to presentation and approval by the SWMBH Board.

Utilization Management Committee is established to advise the EO and is comprised of both SWMBH Clinical leader and Participant CMHSP UM staff. The UM Committee will be charged with advising the EO and the SWMBH staff in the development of the Utilization Management Program (UM Plan) for review by the SWMBH Operations Committee prior to implementation, and/or presentation to the SWMBH Board.

Clinical Practices Committee is established to advise the EO and is comprised of both SWMBH Clinical leader and Participant CMHSP clinical staff. The CP Committee will be charged with advising the EO and the SWMBH staff in the development of the Clinical Practices Program for review by the SWMBH Operations Committee prior to implementation, and/or presentation to the SWMBH Board.

Provider Network Management Committee is established to advise the EO and is comprised of both SWMBH Provider Network Manager Leader and Participant CMHSP PNM staff, as appointed by the Participant CEOs/Executive Directors.

Regional Information Technology Committee is established to advise the EO and is comprised of both SWMBH CIO and Participant CMHSP IS/IT staff, as appointed by the Participant CEOs/Executive Directors.

Customer Services Committee is established to advise the EO and is comprised of both SWMBH staff and Participant CMHSP CS leader, as appointed by the Participant CEOs/Executive Directors.

Regional Compliance Coordinating Committee consists of both SWMBH Chief Compliance Officer and CMHSP Compliance Officers as appointed by the Participant CEOs/Executive Directors. It is established to insure sharing of Compliance knowledge and best practice among the participants.

Each Committee shall have a Charter, subject to review by the Operations Committee. Periodic Operations Committee reviews of Committee Charters at the direction of the Operations Committee and SWMBH EO.

Responsibilities of SWMBH and Participants Regarding the Participants and Committees

SWMBH EO and the Participant CMHSP CEOs/Executive Directors shall mutually assure communication and collaboration including but not limited to:

- A. Provide all parties, in a timely manner, copies of correspondence of a substantive nature to allow full consideration and deliberation prior to being called on to take action on such items. This includes but is not limited to: 1) policy, 2) contracts, 3) funding, 4) State and federal mandates, 5) items requiring a parties action and 6) legislative initiatives;
- B. Provide all parties with copies of minutes from meetings attended by staff as representatives of SWMBH, and provide timely reports to the Operations Committee, as requested;
- C. It is the intent of the parties to operate an efficient and well managed organization, keeping cost reasonable, thus allowing a maximum flow of funding for services. To this end all parties will share in representing the SWMBH at State level meetings and on committees at the regional, State, federal, and any association levels. Only those authorized to do so by the EO may speak on behalf of SWMBH, and those representing SWMBH are to provide a written summary or minutes of the proceedings. Determination of SWMBH representation, if other than SWMBH staff appointed by the EO, at standing statewide PIHP committees or meetings will be discussed by the Operations Committee;
- D. Provide timely and accurate financial reports, with detail at the level necessary to allow the Participant CEOs/Executive Directors to have a full understanding of fiscal operations and status of SWMBH matters;
- E. Provide data to all parties Boards in a complete and timely manner, and provide additional reasonable detail as requested by the Participants;
- F. Contribute to SWMBH and Participant CMHSPs environmental awareness and SWMBH regional planning activities, including but not limited to strategic planning, Mission development, operational and capital budgeting, growth, infrastructure, products and markets;
- G. Advise the Operations Committee in advance of engaging in any meaningful discussion with other entities that may impact the operations or decision of CMHSPs; and
- H. Establish and sustain a regular schedule for standing committee meetings and arrange for appropriate space and clerical support.

DISPUTE RESOLUTION PROCESS

“The manner for adjudicating a dispute or disagreement among Participants shall be set forth in an Operating Agreement, approved by the Regional Entity Board and incorporated herein by reference.”
(SWMBH Bylaws 3.6)

Occasionally disputes may arise that cannot be resolved through amiable discussion. Any unresolved disputes between the Participants or one or more Participant and SWMBH will be resolved as follows:

1. The Participant CMHSP CEOs/Executive Directors will attempt to resolve the dispute through discussion with each other, or the SWMBH EO if the dispute is with SWMBH.
2. If the dispute remains unresolved, the Participant CMHSP CEOs/Executive Directors, or the SWMBH EO if the dispute is with SWMBH, will bring the matter to the Operations Committee no later than its next scheduled meeting, which will discuss the matter and render a decision within fifteen (15) calendar days of the meeting, or within agreed upon timeframe by involved parties.
3. If the dispute continues to be unresolved to the satisfaction of the Participant/s or SWMBH, all parties to the dispute will provide written descriptions of the issue in dispute and propose a solution to the SWMBH Board within fifteen (15) calendar days or within agreed upon timeframe by involved parties. The SWMBH Board will have thirty (30) calendar days or a

mutually agreed upon timeframe to provide a written decision.

4. If the Participant/s or SWMBH remain dissatisfied, the Participant/s or SWMBH may seek mediation, arbitration or legal recourse as provided by PIHP-CMHSP contract and law.
5. Participant sub-contracts will include a Dispute Resolution section congruous with this approach.

OPERATION OF SWMBH

A. Budget

The Finance Committee is charged with advising the EO and SWMBH CFO in the development of the regional annual operating and capital budget; Financial Management Plan, Cost Allocation Plan, and Financial Risk Management Plan, for review by the SWMBH Operating Committee prior to presentation and approval by the SWMBH Board as applicable.

From these plans, annual operating and capital budgets will be developed. The Participants play an integral part in the budget development via its representatives on the SWMBH Finance Committee.

Annual operating and capital budgets will be developed in accordance with the principles outlined in SWMBH Financial Management and Financial Risk Management Plan and Cost Allocation Plans which are incorporated herein by reference and considered a part of this Operating Agreement. The annual operating and capital budgets will be reviewed by the Operations Committee prior to presentation to the SWMBH Board.

The annual operating budget shall plan for adequate funds for projected supports and services to beneficiaries. Budgeting shall consider Participant CMHSPs needs for capital and operating costs, payments of principal and interest on obligations; prudent risk management; reinvestment of Medicaid savings to ensure benefit stabilization; Participant CMHSPs meeting local match obligations for Medicaid; equitable distribution of any surplus funds available after the completion of the Regional Entity's purpose, and operations efficiency and effectiveness across the region.

The SWMBH CFO and Finance Committee may recommend to the EO potential areas where functional consolidation and administrative efficiencies may be achieved. These in turn will be considered by the EO and the Operations Committee. After thorough review, a proposal may be presented to the SWMBH Board for approval if necessary.

Purchase of Services (POS)

Participant CMHSPs singly or in groups may purchase services from SWMBH. Such arrangements shall be documented in writing with mutual agreement as to specification and pricing.

Where there is a POS agreement between SWMBH and one or more Participants, only those Participants who are a party to the agreement will be subject to the terms and conditions of the agreement. Cost associated with any agreements shall be managed between SWMBH and applicable Participants, subject to request for review by the Operations Committee.

Nothing shall prohibit a Participant from withdrawing from an agreement established with SWMBH to provide a service on behalf of the Participant. However, the Participant, once a party to an agreement, will be bound by that agreement and may withdraw only according to the terms of the agreement.

The SWMBH CFO and Finance Committee will establish a financial management system sufficient to monitor revenues and expenditures by funding source (Medicaid, HMP, General Fund, etc.) and the Participants. SWMBH shall maintain accounts and source records in which any and all revenues received and expenses incurred are ascertainable and verifiable and include date of receipt /payment and sources of funds. The SWMBH CFO has the responsibilities set forth in MCL § 330.1204b and will be responsible for receiving, depositing, investing, and disbursing SWMBH's funds in the manner authorized by SWMBH Bylaws, Board policy, and operational policy.

B. Planning

The SWMBH Board, in collaboration with the Operations Committee and the EO, will develop and publish a mission statement and vision statement consistent with the principles of SWMBH.

Per Board directive the EO will facilitate a planning session, involving the SWMBH Board and the Operations Committee to create, update, or modify the Long-Term Plan of SWMBH. The process will allow for broad input and is intended to meet all contractual and accreditation requirements. The SWMBH Board will approve the Long-term Plan prior to its publication.

C. Compliance

All parties recognize that SWMBH is a regional entity, and holds distinct and different legal status and responsibilities than the Participants. SWMBH is the Department designated PIHP and CA Office for the Southwest Michigan service area.

Throughout the implementation of this Operating Agreement, all parties enter into this arrangement in a spirit of good faith and cooperation. All parties recognize that SWMBH may need to, at the discretion and with the advanced approval of the SWMBH EO and his/her designee, conduct random audits and/or reviews of the Participants. Such activity would occur with timely notice to the Participant CEOs/Executive Directors and Participant Compliance Officer to communicate rationale for the review and findings. The Participants acknowledge that SWMBH is responsible for ensuring that covered services and administrative services furnished by and through the Participants are furnished and compensated in accordance with applicable laws and regulations. Accordingly, on behalf of itself and its providers, the Participants acknowledge that SWMBH has the right, responsibility and authority:

1. To detect and deter compliance violations by the Participants and their providers by any lawful means, including monitoring and announced audits; and
2. In conjunction with the Participant CMHSPs Compliance Officer to independently investigate alleged or suspected compliance violations by the Participants, a network provider, or an employee, owner, or governing body members of either.

The Participants acknowledge their obligation to submit all requested financial and quality data and reports within the timelines as found in subcontracts, MDHHS directives or as agreed upon. Should a Participant CMHSPs not submit requested financial and quality data and reports in a complete, valid and timely manner, SWMBH will be empowered to take corrective action, including agreed upon sanctions, in accordance with the terms of the SWMBH/CMHSP Contract.

D. Human Resources

SWMBH will directly employ the EO, CFO, and CIO. The Operations Committee may recommend to the SWMBH EO the use of other hired staff, or the use of a contract to secure other established positions as required.

The SWMBH EO shall appoint, or contract with, an individual or an organization to perform Human Resources functions.

The employee handbook of SWMBH shall be made available upon request to the Operations Committee.

The SWMBH Board has sole responsibility for all hiring and retention decisions regarding the SWMBH EO. The Operations Committee shall assist the SWMBH Board in this process as requested. This may include screening candidates to ensure the SWMBH Board receives only qualified applicants to consider and participation in the interview and evaluation process

E. Policy Development

The SWMBH EO, making full use of the Operations committee and standing committees, shall develop policies, exclusive of SWMBH internal operational policies.

The SWMBH EO shall consult with the Operations Committee before rendering a formal policy interpretation that may materially or negatively affect the Participants where feasible.

F. Contracts

SWMBH shall contract with the Participants as its CMHSP providers.

SWMBH, consistent with regulatory requirements and funds availability may consider with review from Operations Committee providing Participants with pilot or startup funding. Nothing other than federal or state statutory or regulatory prohibition should inhibit or prohibit a Participant CMHSPs from participating in opportunities to provide integrated and accountable care to serve the Medicaid population in its CMHSP catchment area provided that they are consistent with SWMBH policies, financial plan, financial risk management plan and cost allocation plan.

Consistent with the SWMBH mission, vision, and principles, all grant applications submitted on behalf of SWMBH must be reviewed by the Operations Committee prior to being submitted. This may necessitate review outside the regularly scheduled Operations Committee meetings due to funding application grant timelines.

The SWMBH EO shall, in consultation with Operations Committee, determine what functions remain with SWMBH and which can be delegated to the Participants consistent with the Medicaid Managed Care Rules.

The Operating Committee shall be consulted regarding significant contract arrangements that involve SWMBH and Participant CMHSPs. Nothing herein prohibits the participant CMHSPs from entering into opportunities at the local level to provide services.

“2.4.1 The Regional Entity shall have no powers, rights or authority with respect to:

- the Participants’ obligations under the Mental Health Code including those related to size,

composition, and authority of the Participants' Board;

- the Participants' autonomous administrative, financial, or clinical operations; or
 - the Participants' relationship with other providers unless the Regional Entity's involvement is so limited that it does not prevent the Participant from collaborating with other providers."
- (SWMBH Bylaws 2.4)

AMENDMENTS

This Operating Agreement shall be reviewed and an Operations Committee Self-Evaluation shall be performed by the Operations Committee on an annual basis, with a report to the Board on both. Any recommended changes to the Operating Agreement will be forwarded to the SWMBH Board for consideration. All revisions or amendments to the Operating Agreement shall be in writing and formally approved by the SWMBH Board.

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3



June 5th, 2024

To: Brad Casemore, Chief Executive Officer - SWMBH
Mila Todd, Chief Compliance Officer - SWMBH

RE: Inpatient Hospitalization Continued Stays Authorization

As you know, I have been diligently looking to get back inpatient hospitalizations from SWMBH. I know that SWMBH has taken the stance that you are in full authority to delegate or not delegate functions, in this case, inpatient hospitalizations. I believe that you have taken authority that you do not have when it comes to inpatient hospitalizations:

I have thoroughly reviewed as many documents as I can. These documents include the SWMBH Contract, SWMBH Bylaws, SWMBH MOUs, SWMBH Operating Agreement, Constitution of the state of Michigan, DHHS Behavioral Health and Developmental Disabilities Administration—Community Health Programs, and finally, Michigan Department of Community Health Behavioral Health and Developmental Disabilities Administration (Cost Reporting Instructions).

I would like to start with the Administrative Rules:

- R330.2005 Minimum Services to be Provided.
 - Rule 2005. A community mental health board shall ensure that the following minimum types and scopes of mental health services are provided to all age groups **directly by the board**, by contract, or by formal agreement with public or private agencies or individuals contingent on legislative appropriation of matching funds for provision of these services
 - Emergency Intervention Services.
 - Prevention services.
 - Outpatient Services
 - Aftercare services.
 - Day Program and activity services.
 - Public information services.
 - **Inpatient services.**
 - Community/caregiver services.

As a community mental health, I am responsible for providing Inpatient services. This doesn't say that it can be limited, or granted via the PIHP, it says that I am to provide those services.

Michigan State MCL (Mental Health Code) 330.1116:

Section 116 2 b



Main Office
677 E. Main Street
Centreville, MI 49032

Three Rivers Office
1020 Millard Street
Three Rivers, MI 49093

Sturgis Office
1555 E. Chicago Rd., Suite A
Sturgis, MI 49091

Phone: 269.467.1000 • Crisis Line: 1.800.622.3967 • www.PivotalStJoe.org



(b) Administer the provisions of Chapter 2 so as to promote and maintain an adequate and appropriate system of community mental health services programs throughout the state. In the administration of Chapter 2, it shall be the objective of the department to shift primary responsibility for the direct delivery of public mental health services from the state to a community mental health services program whenever the community mental health services program has demonstrated a willingness and capacity to provide an adequate and appropriate system of mental health services for the citizens of that service area.

Rest assured that we are more than willing and able to provide St. Joseph County citizens with the authorizations and coordination of care required for inpatient hospitalization.

SWMBH MOU, specifically CFR 438.210 & 438.230:

- 210 specifically speaks to coverage and authorization of services. It doesn't state that you must provide the authorization; it does instead state that you:
 - (a)(1) Identify, define, and specify the amount, duration, and scope of each service that the [MCO](#), [PIHP](#), or [PAHP](#) is required to offer.
 - **(b) Authorization of services.** For the processing of requests for initial and continuing authorizations of services, each contract must require—
 - **(1)** That the [MCO](#), [PIHP](#), or [PAHP](#) and its [subcontractors](#) have in place and follow written policies and procedures.
 - **(2)** That the [MCO](#), [PIHP](#), or [PAHP](#)—
 - **(i)** Have in effect mechanisms to ensure consistent application of review criteria for authorization decisions.
 - **(ii)** Consult with the requesting [provider](#) for medical services when appropriate.\
 - **(iii)** Authorize [LTSS](#) based on an [enrollee](#)'s current needs assessment and consistent with the [person](#)-centered service plan.
 - **3)** That any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested be made by an individual who has appropriate expertise in addressing the [enrollee](#)'s medical, behavioral health, or [long-term services and supports](#) needs.

SWMBH has taken undue authority to claim responsibility for this process.

- 230 specifically speaks to your requirement to document any delegation and information needed for a subcontract. Again, this doesn't state that you have the authority to withhold my ability to provide, authorize, and handle all aspects of inpatient care.
- 240 (as referenced in MOU) specifically talks about Quality Assessment and performance improvement projects, which have nothing to do with authorizing services. It does speak to you monitoring our over- and underutilization, which you do yearly for our annual audits. Again, this has nothing to do with you authorizing the services; it does speak to you reviewing what we authorize and whether we follow standards set forth via the PIHP.

SWMBH Operating Agreement

Page 12 of 13 specifically states: The regional entity shall have no powers, rights, or authority with respect to:

- The participant's obligations under the Mental Health code, including those related to size, composition, and authority of the Participants' board;
- the Participants' autonomous administrative, financial, or clinical operations;

SWMBH limiting my ability to authorize, continue to authorize (continued stays), and participate in the discharging of clients as part of the continued stay process, is one of the core responsibilities of a community mental health organization regardless of insurance source, and this is particularly true concerning inpatient authorization, etc. found in Chapter 4 of the mental health code. This is of particular interest as SWMBH does not have the authority to authorize or continue to authorize the use of my GF, especially when it comes to inpatient hospitalizations, and there are no provisions in any of our contracts, MOUs, etc., that delineate that.

SWMBH BYLAWS

- 2.4 Participant Retained Powers: The participant shall retain all powers, rights, and authority afforded community mental health services programs, organized and operated as county mental health authorities, agencies, or organizations under the Mental Health Code.
- SWMBH limiting my ability to authorize, continue to authorize, and participate in the discharging of clients is one of the core responsibilities of a community mental health organization.

Lastly, the Michigan Department of Community Health Behavioral Health and Developmental Disability's Administration Administrative Costs reporting.

- Page 6
 - SWMBH has taken the stance that they have used this document to determine what UM is and what can or cannot be delegated. However, this document does something completely different. It tells the PIHP and the CMHSP how to allocate their funding while performing the services described by the Administrative Costs. This does not in any way limit the CMH agency from performing or not performing any duty, task, or requirement.



Given the following documentation provided and the Mental Health Code, I suspect we will need to have a further conversation amongst all CMHs minus ISK as they are still "granted" the "authority" from SWMBH to retain this function.

Thank you for your time, and I look forward to hearing from you soon.

Respectfully,

Cameron Bullock, MBA

Pivotal Chief Executive Officer



Main Office
677 E. Main Street
Centreville, MI 49032

Three Rivers Office
1020 Millard Street
Three Rivers, MI 49093

Sturgis Office
1555 E. Chicago Rd., Suite A
Sturgis, MI 49091

Phone: 269.467.1000 • Crisis Line: 1.800.622.3967 • www.PivotalStJoe.org



Ensing, Bryan R.

From: Jeannie M. Goodrich <JGoodrich@summitpointe.org>
Sent: Tuesday, November 12, 2024 2:01 PM
To: Marchand, Neil J.
Cc: Bullock, Cameron
Subject: FW: Summit Pointe Request

CAUTION: ** Ensure you trust and expect email from "jgoodrich@summitpointe.org" before clicking links/attachments. ** **CAUTION**

[REDACTED]



Jeannie Goodrich MBA

CEO
Summit Pointe
Desk Phone: 269.441.6030
Mobile Phone: 269.209.5928

From: Jeannie M. Goodrich
Sent: Sunday, August 25, 2024 6:45 PM
To: Brad Casemore FWD (brad.casemore@swmbh.org) <Brad.Casemore@swmbh.org>
Cc: Mila Todd (Sackett) <Mila.Todd@swmbh.org>
Subject: Summit Pointe Request

Brad,

As we have discussed in Operations Committee, Summit Pointe would like to provide continued authorization for inpatient hospitalization directly.

Let me know the process to get the continued inpatient authorization returned to Summit Pointe by 10.1.2024.

I look forward to the discussion.



Jeannie Goodrich MBA

CEO
Summit Pointe
Desk Phone: 269-441-6030
Mobile Phone: 269-209-5928

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EXHIBIT 4

EXHIBIT 4

EXHIBIT 4

EXHIBIT 4



Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI, 49002

P: 800-676-0423

F: 269-883-6670

September 19, 2024

Cameron Bullock

CEO, Pivotal

Via email only

Re: Request for Delegation of Inpatient Continuing Stay Reviews

Dear Cameron:

Pivotal requested that SWMBH delegate inpatient continuing stay reviews to Pivotal. SWMBH is declining to move forward with a pre-delegation assessment, which is required under the Code of Federal Regulations, at this time based on the following:

- MDHHS has indicated that under its Conflict Free Access and Planning (CFAP) implementation plan, PIHPs will be precluded from delegating Utilization Management to Participant CMHSPs. There is an MDHHS-initiated CFAP meeting with PIHPs on November 1, 2024. In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time.
- Pivotal was cited in the FY24 CMH Site Review process for UM Standard 11, related to training staff on the Milliman Care Guidelines (MCG). Deficiencies noted included that staff were not trained on MCG for use in inpatient Pre-Admission Screening determinations. MCG is the MDHHS-required medical necessity criteria for both pre-admission screening as well as continuing stay determinations. Continued monitoring of Pivotal's implementation of its Corrective Action Plan will occur according to the Site Review monitoring process.

Pivotal's request for delegation further asserted that SWMBH has no authority over Pivotal's General Funds, and therefore Pivotal should complete inpatient continuing stay review determinations for individuals funded under General Fund. It is a correct assertion that SWMBH does not have authority over Pivotal's General Funds. Historically, these reviews have been completed by SWMBH because hospitals are required to assist individuals in submitting applications for Medicaid coverage, and often individuals who received inpatient psychiatric services receive retroactive Medicaid coverage such that the inpatient stay is ultimately paid out of Medicaid funds. At Pivotal's request, SWMBH will cease in performing continuing stay reviews for Pivotal members who do not have Medicaid coverage, effective October 1, 2024 for all new admissions. **Please provide a telephone number for Pivotal UM reviewers that SWMBH may provide to hospitals that contact SWMBH.** It is SWMBH's very strong recommendation that Pivotal:

- Notify inpatient providers of the change in process.
- Ensure continuing stay reviews are being completed in accordance with all Medicaid requirements. In the event an individual receives retroactive Medicaid coverage, all Medicaid requirements must have been met, including use and documentation of MCG criteria for continuing stay medical necessity determinations, in order for Medicaid funds to be used. As you know, it is in the Region's best interest to capture every valid Medicaid cost and encounter, including those for retroactive Medicaid enrollment.

Should you have any questions or concerns, please feel free to contact me. Thank you.

Regards,



Mila C. Todd, Esq., CHC, CHPC
Chief Compliance & Privacy Officer
Director of Provider Network Management

Cc: Brad Casemore, Anne Wickham



Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI, 49002

P: 800-676-0423

F: 269-883-6670

September 19, 2024

Jean M. Goodrich
CEO, Summit Pointe

Via email only

Re: Request for Delegation of Inpatient Continuing Stay Reviews

Dear Jeannie:

On August 25, 2024, Summit Pointe requested that SWMBH delegate inpatient continuing stay reviews to Summit Pointe by October 1, 2024. SWMBH is declining to move forward with a pre-delegation assessment, which is required under the Code of Federal Regulations, at this time based on the following:

- MDHHS has indicated that under its Conflict Free Access and Planning (CFAP) implementation plan, PIHPs will be precluded from delegating Utilization Management to Participant CMHSPs. There is an MDHHS-initiated CFAP meeting with PIHPs on November 1, 2024. In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time.
- Summit Pointe was cited in the FY24 CMH Site Review process for UM Standard 11, related to training staff on the Milliman Care Guidelines (MCG). Deficiencies noted included that staff were not trained on MCG for use in inpatient Pre-Admission Screening determinations. MCG is the MDHHS-required medical necessity criteria for both pre-admission screening as well as continuing stay determinations. Continued monitoring of Summit Pointe's implementation of its Corrective Action Plan will occur according to the Site Review monitoring process.

Should you have any questions or concerns, please feel free to contact me. Thank you.

Regards,

A handwritten signature in blue ink that reads "Mila C. Todd".

Mila C. Todd, Esq., CHC, CHPC
Chief Compliance & Privacy Officer
Director of Provider Network Management

Cc: Brad Casemore, Anne Wickham

EXHIBIT 5

EXHIBIT 5

EXHIBIT 5

EXHIBIT 5

Ensing, Bryan R.

From: Bullock, Cameron <CBullock@pivotalstjoe.org>
Sent: Thursday, October 24, 2024 11:30 AM
To: Marchand, Neil J.
Cc: Jeannie Goodrich
Subject: Fw: Pivotal Dispute Resolution Step 1 10-14-24

CAUTION: ** Ensure you trust and expect email from "cbullock@pivotalstjoe.org" before clicking links/attachments. ** **CAUTION**

See communication below:

Thank you



Cameron Bullock, MBA

Chief Executive Officer

From: Mila Todd <Mila.Todd@swmbh.org>
Sent: Thursday, October 24, 2024 11:27 AM
To: Bullock, Cameron <CBullock@pivotalstjoe.org>
Cc: Brad Casemore <Brad.Casemore@swmbh.org>; Anne Wickham <Anne.Wickham@swmbh.org>
Subject: RE: Pivotal Dispute Resolution Step 1 10-14-24

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Good morning:

Brad asked I respond while he is away – he is included on this response. SWMBH maintains the position that we will not consider completing a pre-delegation assessment until such time as MDHHS announces CFAP specifications and requirements. I emailed Kristen Jordan on Monday asking when we can expect that information to be released. In previous iterations of MDHHS's CFAP implementation plan, PIHPs were precluded from delegating Utilization Management (albeit "utilization management" was undefined). I am happy to schedule a bilateral meeting with applicable subject matter experts for the purpose of developing strategies to improve existing business processes including communication and coordination, with the ultimate goal of improving member care by reducing lengths of stay and readmissions. We can also use this meeting to discuss the delegation consideration process and timeline. The MDHHS-PIHP Agreement contains a specific requirement that revised Delegation Agreements be sent to MDHHS at least 90 calendar days prior to the proposed effective date of any new delegation for MDHHS review and approval (Standard Contract Terms, Paragraph 11).

Let me know if you'd like me to schedule the meeting referenced above. Thank you.

Regards,
Mila C. Todd, Esq., CHC, CHPC
Chief Compliance & Privacy Officer
Director of Provider Network
www.swmbh.org

From: "Bullock, Cameron" <CBullock@pivotalstjoe.org>
Date: October 22, 2024 at 10:05:48 AM EDT
Cc: Brad Casemore <Brad.Casemore@swmbh.org>
Subject: Re: Pivotal Dispute Resolution Step 1 10-14-24

CAUTION: External Email

Brad,

As CFAP meeting was canceled. What are my next steps to get this back?

I would to have this back no later than 12/1.

I do not believe that waiting for CFAP is going to be a hindering me taking it back, or negatively affect my ability to fo continue stays.

Thank-you

Cameron

Cameron Bullock, MBA
Chief Executive Officer



677 E Main St
Centreville, MI 49032
Cell: 269.503.2814
Work: 269.467.1001 x 308
Fax: 269.467.3075
www.pivotalstjoe.org

From: Michelle Jacobs <Michelle.Jacobs@swmbh.org>
Sent: Monday, October 14, 2024 1:30:14 PM
To: Bullock, Cameron <CBullock@pivotalstjoe.org>
Cc: Brad Casemore <Brad.Casemore@swmbh.org>; Mila Todd <Mila.Todd@swmbh.org>; Anne Wickham <Anne.Wickham@swmbh.org>
Subject: Pivotal Dispute Resolution Step 1 10-14-24

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Cameron,

Attached please find a letter regarding Pivotal Dispute Resolution Step 1 10-14-24.

Thank you,

Michelle Jacobs
Senior Operations Specialist - Office of the CEO;
Rights Advisor
Southwest Michigan Behavioral Health
P: 269-488-6845
www.swmbh.org



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EXHIBIT 6

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Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI 49002

P: 800-676-0423

F: 269-883-6670

October 14, 2024

Cameron Bullock CEO Pivotal

Regarding Pivotal Dispute Resolution Process Step 1 expansion of delegation of inpatient psychiatric services Utilization Management (UM)

Cameron,

This serves as my response subsequent to our October 10, 2024 Dispute Resolution Step 1 meeting on the above-captioned topic. I referred to our September 19, 2024 letter to you throughout the meeting.

1. I clarified and confirmed that our September 19 declination was a temporary pause in initiating our consideration process and was not a blanket "no, never."
2. I reinforced that further MDHHS pronouncements on Conflict Free Access & Planning (aka conflict free case management) will inform SWMBH central care management and CMH local care management utilization management roles, authorities and business processes. At September 19 2024 there was to be a November 1, 2024 MDHHS-PIHP meeting on CFAP. That meeting has been canceled by MDHHS with no known reschedule date. Current lack of MDHHS CFAP specifications remains a basis for our pause in considering your requested expansion of delegated utilization management for inpatient psychiatric services. From our September 19 letter *"In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time."* More information from MDHHS will be known and shared with the region hopefully in the near future. Until that time our pause on considering your request remains. I recognize you disagree with this decision and further that you believe we do not have the authority to determine delegation of utilization management for Medicaid.
3. Regarding MCG Criteria training and proper usage I understand your position that no CAP request should have been issued by SWMBH based on your view that there is no or limited guidance from SWMBH on this. Regardless please continue your efforts to know and plan for adherence to written SWMBH guidance on MCG Criteria and related training. Once your prospective assurances are in place we will no longer consider this a contingency to considering your request.



You mentioned that you seek written contractual and/or SWMBH Policy clarity on the MCG Annual Training requirement as you cannot find that guidance. I agree SWMBH needs to put specifications in place if they are lacking.

4. I confirmed that our October 10, 2024 meeting fulfills the Dispute Resolution Step 1 process on this topic thus any future Dispute Resolution moves to Step 2 if on this same topic.

I take seriously your examples of opportunities to improve communications amongst and between Pivotal, SWMBH Central Care Management and hospitals. Anne Wickham the Chief responsible for Call Center and UM stands ready to hear and address opportunities for improvement apart from any Dispute Resolution process.

I mentioned some of our probable future considerations regarding your Ask. Pivotal is free to but not obligated to prepare responses to those and/or other pre-delegation assessment issues anticipating future consideration of your Ask. Please note that process if initiated is an operational matter not a component of this Dispute.

Respectfully,

A handwritten signature in dark ink that reads "Bradley Casemore".

Bradley P. Casemore



Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI 49002

P: 800-676-0423

F: 269-883-6670

October 8, 2024

Jeannie Goodrich CEO Summit Pointe

RE: Summit Pointe Dispute Resolution Process Step 1 Expansion of Delegation of inpatient psychiatric services Utilization Management (UM)

Jeannie,

This serves as my response subsequent to October 3, 2024 Dispute Resolution Step 1 meeting on the above-captioned topic. I referred to our September 19, 2024 letter to you throughout the meeting.

1. I clarified and confirmed that our September 19 declination was in reference to your request to expand the delegation October 1, 2024 and was not a blanket “no, never.”
2. I reinforced that further MDHHS pronouncements on Conflict Free Access & Planning (aka conflict free case management) will inform SWMBH central care management and CMH local care management utilization management roles, authorities and business processes. There is a November 1, 2024 MDHHS-PIHP meeting on CFAP. This current lack of certainty remains a basis for our pause in considering your requested expansion of delegated utilization management for inpatient psychiatric services. From our September 19 letter *“In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time.”* More information will be known and shared with the region after we analyze MDHHS November 1 guidance. I suggested scheduling a bilateral SWMBH-Summit Pointe follow-up meeting regarding your request the week of November 11, 2024. That meeting would not include me and is not part of the Dispute Resolution process. Please let Mila know if you would like to set that meeting.
3. Regarding MCG Criteria training and proper usage please continue your efforts to complete the related Corrective Action Plan. Once that is lifted and the prospective assurances are in place and underway we will no longer consider this a contingency to considering your request. You mentioned that you seek contractual and/or SWMBH Policy clarity on the MCG Annual Training requirement. I concur SWMBH needs to put that in place if it is lacking.
4. I confirmed that our October 3, 2024 meeting fulfills the Dispute Resolution Step 1 process thus any future Dispute Resolution steps move to Step 2 if on this same topic.



I mentioned some of our probable future considerations regarding your Ask. Summit Pointe is free to but not obligated to prepare responses to those and/or other pre-delegation assessment issues. Please note that process if initiated is an operational matter not a component of this Dispute.

Respectfully,

A handwritten signature in black ink that reads "Bradley P. Casemore".

Bradley P. Casemore

EXHIBIT 7

EXHIBIT 7

SOUTHWEST MICHIGAN BEHAVIORAL HEALTH PREPAID INPATIENT HEALTH PLAN

Effective October 1, 2018

CMHSP Participant: Memorandum of Understanding

This Memorandum of Understanding (hereinafter referred to as the "MOU") between Southwest Michigan Behavioral Health (SWMBH) acting in its capacity as the Pre-paid Inpatient Health Plan (PIHP) and Community Mental Health and Substance Abuse Services of St. Joseph County (CMHSP Participant) made and entered into by both parties on October 1, 2018, supersedes and replaces any and all previous versions of this MOU, and sets forth Services and Responsibilities agreed to by SWMBH and Community Mental Health and Substance Abuse Services of St. Joseph County.

I. Agreement Purpose:

The purpose of this Agreement is to document the terms and conditions by which SWMBH delegates certain required PIHP administrative functions and responsibilities to the CMHSP Participant consistent with the CMS regulations pertaining to subcontractual relationships and delegation [CFR: 438.230].

Delegation of each administrative responsibility is considered independent and as such, requires acknowledgement by both SWMBH and the CMHSP Participant [CFR: 438.230(c)(1)(ii)].

Delegation of each separate administrative responsibility is solely at the discretion of SWMBH. The SWMBH retains full oversight responsibility for all delegated activities, and all delegated activities must be carried out in observance of applicable federal regulations, terms of contract between MDHHS and SWMBH, SWMBH Sub-Contract Agreement and SWMBH policies and standards.

Southwest Michigan Behavioral Health is obligated to assure prospective development, documentation and distribution to CMHSP participants of new and revised policies and procedures impacting participants' functions. This shall occur, among other means, through review at Committee(s), SWMBH website placement of policies, distribution of provider manuals, Technical Advisory Bulletins, and special alerts. Terms and conditions retroactively imposed by MDHHS or other legitimate authority are exempted from this pledge.

Any SWMBH action related to participant sub-contract penalties, sanctions or termination shall be guided by and subject to the terms and conditions of the participant sub-contract.

The CMHSP Participant shall demonstrate continuous full competency and capacity to fulfill the responsibilities identified below. The CMHSP Participant shall be aware of Medicaid Managed Care Rule requirements, PIHP contractual obligations and SWMBH policies; and shall perform the delegated activities and reporting responsibilities as specified in those requirements. The CMHSP Participant agrees to comply with all applicable Medicaid laws, regulations including sub-regulatory guidance, and contract provisions (438.230(c)(2)).

The CMHSP Participant may not sub-delegate any delegated function without obtaining prior written authorization from SWMBH's Executive Officer. Participating CMHSPs are encouraged to consider functional sharing arrangements for delegated functions. Such sharing arrangements must include SWMBH Executive Officer or his/her designee in the design discussions and methodology development, prior to any implementation.

Pre-Assessment of CMHSP PARTICIPANT's Capacity to Perform Delegation:

SWMBH completed a pre-delegation assessment to evaluate the delegated entity's capacity to perform the delegated activities prior to any delegation.

On-Going/Annual Assessment of Delegation Functions:

It is understood and agreed by both parties that SWMBH maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with the State. To assure adherence with these requirements, SWMBH will monitor and assess that the CMHSP Participant is appropriately carrying out its delegated responsibilities and is complying with required SWMBH (and CMS/MDHHS) policies, standards and contract terms for all delegated functions.

Such on-going monitoring will be obtained through various performance activities of SWMBH sub-committees, contract monitoring and review(s) of the CMHSP Participant's operational practices, local policies and procedures, and internal documentation pertaining to all delegated functions. In addition, remote electronic oversight and monitoring/data analysis may occur.

The CMHSP Participant shall identify to SWMBH a single authoritative managerial point of contact for each delegated function, and update SWMBH promptly if said person(s) change over time. The CMHSP Participant shall make reasonable efforts to make this person and related persons available to SWMBH for training, reporting, and monitoring, on an as-needed basis.

Compliance Expectations:

CMHSP Participant must have and maintain practices that are adequate to fulfill its obligations under each sub-contract. In the event that the CMHSP Participant fails to meet established criteria for performance of a delegated function, corrective action will be required. Persistent non-compliance could lead to revocation of the delegated function (42 CFR 438.230(c)(1)(iii)).

A CMHSP Participant will be given written notice of areas of non-compliance and/or performance below standard of the delegated function(s). The CMHSP Participant will be expected to take immediate action to correct the performance deficiency and to document and submit such improvement efforts to SWMBH for approval and follow-up monitoring. Should the CMHSP Participant fail to comply with the requirements of the Plan of Correction or improve performance within the time-period acceptable as stated in writing by SWMBH, SWMBH may revoke the delegated function(s). Non-compliance and/or sub-standard performance in one delegated functional area does not automatically jeopardize delegation to the CMHSP Participant in another functional area. Similarly, the revocation of one delegated function may not affect another delegated function where the CMHSP Participant is performing satisfactorily.

Written notice from SWMBH to the CMHSP Participant is required prior to revocation of any delegated function. Should a delegation(s) be revoked, the CMHSP Participant still remains under obligation to the terms of its contract with SWMBH and shall continue to observe SWMBH policies and standards as a provider of service.

The CMHSP Participant understands and agrees that (42 CFR 438.230):

- 1) The State, CMS, the HHS Inspector General, the Comptroller General, or their designees have the right to audit, evaluate, and inspect any books, records, contracts, computer or other electronic systems of the CMHSP Participant or of its contractors, that pertain to any aspect of services and activities performed, or determination of amounts payable under SWMBH's

- contract with the State.
- 2) The CMHSP Participant will make available, for purposes of an audit, evaluation, or inspection under the above section (1), its premises, physical facilities, equipment, books, records, contracts, computer or other electronic systems relating to its Medicaid enrollees.
 - 3) The right to audit under exists through 10 years from the final date of the contract period or from the date of completion of any audit, whichever is later.
 - 4) If the State, CMS, or the HHS Inspector General determines that there is a reasonable possibility of fraud or similar risk, the State, CMS, or the HHS Inspector General may inspect, evaluate, and audit the CMHSP Participant at any time.

II. Delegated Functions [Mental Health services and outpatient SUD services provided by the CMHSP Participant directly]

I. Utilization Management	
<p>The PIHP shall delegate the following Utilization Management activities to the CMHSP PARTICIPANT:</p> <p><i>Legal References:</i></p> <ul style="list-style-type: none"> ▪ 42 CFR 438.210 ▪ MDHHS Contract: Attachment P.6.7.1.1 	<ol style="list-style-type: none"> 1) Access and Eligibility Determination. The CMHSP Participant shall: <ol style="list-style-type: none"> a) Screen for both clinical eligibility and financial eligibility using MDHHS contractually mandated standardized screening tools; b) Provide for a second opinion from a network provider, or arrange for the enrollee to obtain one outside the network, at no cost to the enrollee; c) For SUD services only, offer choice of provider from SWMBH's Provider Network. 2) Utilization Management Protocols <ol style="list-style-type: none"> a) CMHSP Participant shall adhere to Payor standards for the following: <ol style="list-style-type: none"> i) Medical Necessity criteria and determinations; ii) Level of Care assessments; iii) Service intensity or selection criteria; and iv) Services requiring specialist review. b) CMHSP Participant shall be responsible for implementation and application of the PIHP Utilization Management Policy and Plan. c) CMHSP Participant shall participate in the development, dissemination, and application of Practice Guidelines. 3) Authorization <ol style="list-style-type: none"> a) Initial approval or denial of requested services (42 CFR 428.210; 42 CFR 438.240) <ol style="list-style-type: none"> i) Initial assessment for and authorization of psychiatric inpatient services up to three (3) days (or four (4) days only if necessitated by a holiday); ii) Initial assessment for and authorization of psychiatric partial hospitalization services up to three (3) days (or four (4) days only if necessitated by a holiday); iii) Initial assessment for and authorization of crisis residential services up to three (3) days (or four (4) days only if necessitated by a holiday); iv) Initial and ongoing authorization of non-SUD services to individuals receiving community based services. v) SUD Services: Initial and ongoing authorization of SUD services provided by the CMHSP Participant directly. b) CMHSP Participant shall follow SWMBH policies on prospective (preauthorization), concurrent, and retrospective reviews. When the CMHSP Participant is conducting service authorization, it shall have internal procedures that include: <ol style="list-style-type: none"> i) Review decisions are supervised by qualified medical professionals. ii) Decisions to deny or reduce services are made by health care professionals who have the appropriate clinical expertise to treat the conditions. iii) The reasons for decisions are clearly documented. iv) The reasons for decisions are provided (made available) to the beneficiary. v) Notification of any decision to deny a service authorization request, or to authorize a service in an amount, duration, or scope that is less than requested, is

	<p>sent to the beneficiary in writing. (42 CFR 438.404).</p> <ul style="list-style-type: none"> vi) Notification is given to the provider, in writing, of any decision to deny a service authorization request, or to authorize a service in an amount, duration, or scope that is less than requested. vii) Notification of a denial includes a description of how to file an appeal. viii) UM decisions are made in a timely manner in accordance with SWMBH policies and applicable laws, rules, and regulations. ix) Decisions on appeals are made in a timely manner in accordance with SWMBH policies (timelines). <p>4) Utilization Review</p> <ul style="list-style-type: none"> a) CMHSP Participant shall: <ul style="list-style-type: none"> i. Have procedures to ensure review of individual, provider and programmatic data to ensure Level of Care criteria is being consistently applied; and ii. Participate in regional review of aggregate data and improvement to Level of Care guidelines. <p>5) Coordination of Care</p> <ul style="list-style-type: none"> a) CMHSP Participant shall have procedures to ensure the following: <ul style="list-style-type: none"> i) Coordination occurs between the primary care physicians and the CMHSP Participant and/or its sub-network. (42 CFR 438.208) ii) The services of the CMHSP (or sub-network) furnished to a Medicaid beneficiary are coordinated with other MCO (MHPs, ICOs), and PIHPs/CMHSPs. (42 CFR 438.208(b)(2)) iii) Results of beneficiary assessments performed by the CMHSP (or sub-network) are shared with MCOs (i.e. MHPs and their PCPs), and other PIHPs serving the beneficiary in order to prevent duplication of services. (42 CFR 438.208(b)(3))
Reporting Requirements	<ol style="list-style-type: none"> 1. Pre-screen documentation for acute care admissions must be completed according to SWMBH policy. 2. Maintenance and submission of documentation of non-emergent CMHSP Participant utilization management activities when requested. 3. Submission of functional assessment tool scores.

II. Customer Services	
<p>The PIHP shall delegate the following Customer Services activities to the CMHSP PARTICIPANT:</p> <p>Legal References:</p> <ul style="list-style-type: none"> ▪ 42 CFR 438.10 ▪ 42 CFR 438.100 ▪ 42 CFR 438.228 ▪ 42 CFR 438.400 ▪ 42 CFR 438.402 ▪ LEP Policy Guideline 	<p>The CMHSP participant shall possess knowledge of and adhere to related Managed Care Final Rule requirements under sections 438.10 and 438.100, and SWMBH policies regarding Enrollee Rights</p> <ol style="list-style-type: none"> 1) Information Services <ul style="list-style-type: none"> a) Including but not limited to: <ul style="list-style-type: none"> i) Development and dissemination of informational brochures, coordination of community and stakeholder input and dissemination of specialized information about PIHP benefit plans, beneficiary (recipient) rights, grievance and appeals and second opinion processes, service providers and treatment and support practices, including development of culturally sensitive and/or alternative communication systems. ii) Orienting new and potential plan members to the services and benefits available, the process for accessing services, due process rights, and how to receive services in language of preference (Limited English Proficiency). iii) Make oral interpretation services available free of charge to each potential enrollee and enrollee. iv) Provide written materials in an easily understood format; taking into consideration the special needs of those who, for example, are visually limited or have limited reading proficiency v) Accommodations for customers with physical disabilities, hearing and vision

<p>(Executive Order 13166 of August 11, 2002).</p> <ul style="list-style-type: none"> ■ Federal Register Vol 65, August 16, 2002. ■ Americans with Disability Act (ADA) 	<p>impairments, limited-English proficiency, and/or alternative forms of communication.</p> <ul style="list-style-type: none"> vi) Orienting the general community on the availability of eligibility criteria, services offered, and accessibility including who may be excluded from enrollment, subject to mandatory enrollment or free to voluntarily enroll. vii) Outreach activities to identify and establish communication with under-served groups. viii) The CMH participant will answer customer questions; provide requested information, and assist customers in filing complaints, grievances or requesting appeals. Customer Services Representatives of the CMHSP must maintain information concerning benefits, network providers, network policies and procedures, access to services, authorizations, grievance/appeals process, and local transportation options for those customers that are eligible. ix) Enrollee Rights or Customer Services departments will maintain a current participating provider and community resource list available to plan customers upon request. x) The CMHSP participant shall provide the following information to all customers of its CMHSP participant sub-network: Names, locations, telephone numbers of, and non-English languages spoken by current sub-network providers in the customer's service area, including information at least on sub-panel providers and panel specialists when determined needed or requested. xi) The CMH participant will ensure that enrollees are informed of their right to be treated with dignity and respect, to participate in decisions regarding their health care- including the right to refuse treatment, to be free from seclusion or restraint, and that they may request a copy of their medical records as held by the CMHSP. xii) The CMHSP participant must ensure each enrollee is free to exercise their rights and that exercise of those rights does not adversely affect how they are treated. xiii) The CMHSP participant shall make a good faith effort to give written notice of termination of a contracted provider (organizational) within 15 days after receipt or issuance of the termination notice, to each customer who received his or her services from the terminated provider. <p>2) Customer Complaint, Grievance and Appeals Processes</p> <ul style="list-style-type: none"> a) Ensure that staff members are trained in Grievance and Appeal options for customers as well as Notice of Adverse Benefit Determination requirements, if applicable to their job responsibilities; b) Investigation, management, and documentation of informal issues and grievances; c) Investigation, management, and documentation of all formal grievances, appeals, and complaints, including local dispute resolution (Due Process, Recipient Rights); d) Cooperate and support SWMBH with the Fair Hearing investigation and process; e) Maintain logs of customers who have been subject to an "Adverse Benefit Determination"; f) Ensure that Notice of Adverse Benefit Determination forms and provision procedures are in compliance with Payor standards, the Managed Care Final Rule, MDHHS contractual Technical Requirements, and any other applicable rules and regulations; g) Ensure complete, timely, and accurate entries into management information systems/applications; h) Active involvement in regional information management analysis and remediation activities. <p>3) Community Benefit. These activities are focused on the entire service area population, or sub-groups of that population, and should include but are not limited to:</p> <ul style="list-style-type: none"> a) Community collaborative activities designed to promote wellness, healthy communities, and coordinate human services delivery systems of care; b) Community emergency and trauma services; c) Partnerships with community organizations to provide specialty health services education and information; d) Outreach activities and screenings for health conditions such as depression, eating disorders, etc.; e) Participation in community planning groups.
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Reporting Requirements	1. Complete, timely and accurate entry of grievance and appeal data into management information systems/applications.

IV. Provider Network Management	
<p>The PIHP shall delegate the following Provider Network Management components to the CMHSP PARTICIPANT:</p> <p>Legal References:</p> <ul style="list-style-type: none"> ▪ 42 CFR 438.206 ▪ 42 CFR 438.106 ▪ 42 CFR 438.214(d) ▪ 42 CFR 438.12 ▪ 42 CFR 438.207(c)(2) 	<p>1. Network Development (42 CFR 438.206(b)). The CMHSP Participant shall:</p> <ul style="list-style-type: none"> a. Ensure that service availability is in alignment with State-established thresholds b. Maintain and monitor a network of appropriate providers that is supported by written agreements and is sufficient to provide adequate access to all services covered under the contract for all enrollees, including those with limited English proficiency or physical or mental disabilities. c. If the provider network is unable to provide necessary services, covered under the contract, to a particular enrollee, the CMHSP Participant must adequately and timely cover these services out of network for the enrollee, for as long as its provider network is unable to provide them. d. Demonstrate that its network providers are credentialed as required by 438.214, MDHHS contractual requirements, and SWMBH policy. e. Timely access (42 CFR 438.206(c)). The CMHSP Participant must do the following: <ul style="list-style-type: none"> i. Meet and require its network providers to meet State standards for timely access to care and services, taking into account the urgency of the need for services. ii. Ensure that the network providers offer hours of operation that are no less than the hours of operation offered to commercial enrollees or comparable to Medicaid plans/FFS, if the provider serves only Medicaid enrollees. iii. Make services included in the contract available 24 hours a day, 7 days a week, when medically necessary. iv. Establish mechanisms to ensure compliance by network providers. v. Monitor network providers regularly to determine compliance. vi. Take corrective action if there is a failure to comply by a network provider. <p>2. Contract Management. Should the participant CMHSP sub-contract any covered service to an enrolled network subpanel provider, the CMHSP Participant shall use the SWMBH provider contract boilerplate, if one is available, and the written agreement shall include the Subcontracting requirements outlined in the MDHHS-PIHP Master Contract (Part I, Section 38), and shall ensure the following:</p> <ul style="list-style-type: none"> a. Written subcontract agreements ensure that beneficiaries are not held liable when the PIHP (or CMHSP) does not pay the Provider

	<p>furnishing services under the subcontract (42 CFR 438.106(2)).</p> <p>b. Written subcontract agreements ensure that the beneficiaries are not held liable for payment of covered services furnished under the contract if those payments are in excess of the amount the beneficiary would owe, if the PIHP provided the service directly (42 CFR 438.106(c)).</p> <p>c. Upon termination of provider, written notification will be provided within 15 days to those enrollees receiving services from the provider.</p> <p>3. Network Policy Development.</p> <p>a. The participant CMHSP shall not employ or contract with any provider excluded from participation in federal health care programs under either Section 1128 or Section 1128A of the Social Security Act, and shall have internal procedures on how it can validate its exclusion review practices (42 CFR 438.214(d)).</p>
Reporting Requirements	<ol style="list-style-type: none"> 1. Monthly submission of credentialed providers for final approval by the PIHP as required by MDHHS and PIHP credentialing policies. 2. Sanctioned provider reporting as required by MDHHS and PIHP contractual provisions and policies. 3. Submission of required provider information for entry into provider directory annually with quarterly updates, as needed. 4. Documentation of provider site reviews. 5. Annually, and at any time there has been significant change (as defined by the State) in the CMHSP Participant's or SWMBH's operations that would affect the adequacy of capacity and services, provide documentation in a format as specified by the State and/or SWMBH, to demonstrate that the CMHSP Participant complies with the following requirements: <ol style="list-style-type: none"> a. Offers an appropriate range of specialty services and LTSS that is adequate for the anticipated number of enrollees for the service area; b. Maintains a network of providers that is sufficient in number, mix, and geographic distribution to meet the needs of the anticipated number of enrollees in the service area (42 CFR 428.207(b)(3)).

AMENDMENT OR TERMINATION

This Memorandum will continue to have effect unless amended in writing signed by both parties, or upon the CMHSP Participant giving sixty (60) calendar days advance written notice to SWMBH of CMHSP Participant's desire to relinquish a delegated function(s). SWMBH may revoke a delegated function(s) as provided above.

Signatures continued on next page

IN WITNESS WHEREOF, the authorize representatives of the parties hereto have fully executed this Agreement on the day and year indicated.

WITNESSED BY:

Mila C. Todd

Date 1/2/19

**SOUTHWEST MICHIGAN BEHAVIORAL
HEALTH REGIONAL ENTITY**

BY: Bradley P. Casemore
Bradley P. Casemore

ITS: Executive Officer

**COMMUNITY MENTAL HEALTH AND
SUBSTANCE ABUSE SERVICES OF ST.
JOSEPH COUNTY**

BY: Kristine Kirsch
Kristine Kirsch

Date 21 Dec 2018

ITS: Executive Director

SOUTHWEST MICHIGAN BEHAVIORAL HEALTH
PREPAID INPATIENT HEALTH PLAN
Effective October 1, 2018
CMHSP Participant: Memorandum of Understanding

This Memorandum of Understanding (hereinafter referred to as the "MOU") between Southwest Michigan Behavioral Health (SWMBH) acting in its capacity as the Pre-paid Inpatient Health Plan (PIHP) and Calhoun County Community Mental Health Authority d/b/a Summit Pointe (CMHSP Participant) made and entered into by both parties on October 1, 2018, supersedes and replaces any and all previous versions of this MOU, and sets forth Services and Responsibilities agreed to by SWMBH and Calhoun County Community Mental Health Authority d/b/a Summit Pointe.

I. Agreement Purpose:

The purpose of this Agreement is to document the terms and conditions by which SWMBH delegates certain required PIHP administrative functions and responsibilities to the CMHSP Participant consistent with the CMS regulations pertaining to subcontractual relationships and delegation [CFR: 438.230].

Delegation of each administrative responsibility is considered independent and as such, requires acknowledgement by both SWMBH and the CMHSP Participant [CFR: 438.230(c)(1)(ii)].

Delegation of each separate administrative responsibility is solely at the discretion of SWMBH. The SWMBH retains full oversight responsibility for all delegated activities, and all delegated activities must be carried out in observance of applicable federal regulations, terms of contract between MDHHS and SWMBH, SWMBH Sub-Contract Agreement and SWMBH policies and standards.

Southwest Michigan Behavioral Health is obligated to assure prospective development, documentation and distribution to CMHSP participants of new and revised policies and procedures impacting participants' functions. This shall occur, among other means, through review at Committee(s), SWMBH website placement of policies, distribution of provider manuals, Technical Advisory Bulletins, and special alerts. Terms and conditions retroactively imposed by MDHHS or other legitimate authority are exempted from this pledge.

Any SWMBH action related to participant sub-contract penalties, sanctions or termination shall be guided by and subject to the terms and conditions of the participant sub-contract.

The CMHSP Participant shall demonstrate continuous full competency and capacity to fulfill the responsibilities identified below. The CMHSP Participant shall be aware of Medicaid Managed Care Rule requirements, PIHP contractual obligations and SWMBH policies; and shall perform the delegated activities and reporting responsibilities as specified in those requirements. The CMHSP Participant agrees to comply with all applicable Medicaid laws, regulations including sub-regulatory guidance, and contract provisions (438.230(c)(2)).

The CMHSP Participant may not sub-delegate any delegated function without obtaining prior written authorization from SWMBH's Executive Officer. Participating CMHSPs are encouraged to consider functional sharing arrangements for delegated functions. Such sharing arrangements must include SWMBH Executive Officer or his/her designee in the design discussions and methodology development, prior to any implementation.

Pre-Assessment of CMHSP PARTICIPANT's Capacity to Perform Delegation:

SWMBH completed a pre-delegation assessment to evaluate the delegated entity's capacity to perform the delegated activities prior to any delegation.

On-Going/Annual Assessment of Delegation Functions:

It is understood and agreed by both parties that SWMBH maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with the State. To assure adherence with these requirements, SWMBH will monitor and assess that the CMHSP Participant is appropriately carrying out its delegated responsibilities and is complying with required SWMBH (and CMS/MDHHS) policies, standards and contract terms for all delegated functions.

Such on-going monitoring will be obtained through various performance activities of SWMBH sub-committees, contract monitoring and review(s) of the CMHSP Participant's operational practices, local policies and procedures, and internal documentation pertaining to all delegated functions. In addition, remote electronic oversight and monitoring/data analysis may occur.

The CMHSP Participant shall identify to SWMBH a single authoritative managerial point of contact for each delegated function, and update SWMBH promptly if said person(s) change over time. The CMHSP Participant shall make reasonable efforts to make this person and related persons available to SWMBH for training, reporting, and monitoring, on an as-needed basis.

Compliance Expectations:

CMHSP Participant must have and maintain practices that are adequate to fulfill its obligations under each sub-contract. In the event that the CMHSP Participant fails to meet established criteria for performance of a delegated function, corrective action will be required. Persistent non-compliance could lead to revocation of the delegated function (42 CFR 438.230(c)(1)(iii)).

A CMHSP Participant will be given written notice of areas of non-compliance and/or performance below standard of the delegated function(s). The CMHSP Participant will be expected to take immediate action to correct the performance deficiency and to document and submit such improvement efforts to SWMBH for approval and follow-up monitoring. Should the CMHSP Participant fail to comply with the requirements of the Plan of Correction or improve performance within the time-period acceptable as stated in writing by SWMBH, SWMBH may revoke the delegated function(s). Non-compliance and/or sub-standard performance in one delegated functional area does not automatically jeopardize delegation to the CMHSP Participant in another functional area. Similarly, the revocation of one delegated function may not affect another delegated function where the CMHSP Participant is performing satisfactorily.

Written notice from SWMBH to the CMHSP Participant is required prior to revocation of any delegated function. Should a delegation(s) be revoked, the CMHSP Participant still remains under obligation to the terms of its contract with SWMBH and shall continue to observe SWMBH policies and standards as a provider of service.

The CMHSP Participant understands and agrees that (42 CFR 438.230):

- 1) The State, CMS, the HHS Inspector General, the Comptroller General, or their designees have the right to audit, evaluate, and inspect any books, records, contracts, computer or other electronic systems of the CMHSP Participant or of its contractors, that pertain to any aspect of services and activities performed, or determination of amounts payable under SWMBH's

- contract with the State.
- 2) The CMHSP Participant will make available, for purposes of an audit, evaluation, or inspection under the above section (1), its premises, physical facilities, equipment, books, records, contracts, computer or other electronic systems relating to its Medicaid enrollees.
 - 3) The right to audit under exists through 10 years from the final date of the contract period or from the date of completion of any audit, whichever is later.
 - 4) If the State, CMS, or the HHS Inspector General determines that there is a reasonable possibility of fraud or similar risk, the State, CMS, or the HHS Inspector General may inspect, evaluate, and audit the CMHSP Participant at any time.

II. Delegated Functions [Includes Mental Health services, and outpatient SUD services provided by CMHSP Participant directly with the exception of SUD services covered by SUD Community Grant funds]

I. Utilization Management	
<p>The PIHP shall delegate the following Utilization Management activities to the CMHSP PARTICIPANT:</p> <p><i>Legal References:</i></p> <ul style="list-style-type: none"> ▪ 42 CFR 438.210 ▪ MDHHS Contract: Attachment P.6.7.1.1 	<ol style="list-style-type: none"> 1) Access and Eligibility Determination. The CMHSP Participant shall: <ol style="list-style-type: none"> a) Screen for both clinical eligibility and financial eligibility using MDHHS contractually mandated standardized screening tools; b) Provide for a second opinion from a network provider, or arrange for the enrollee to obtain one outside the network, at no cost to the enrollee; c) For SUD services only, offer choice of provider from SWMBH's Provider Network. 2) Utilization Management Protocols <ol style="list-style-type: none"> a) CMHSP Participant shall adhere to Payor standards for the following: <ol style="list-style-type: none"> i) Medical Necessity criteria and determinations; ii) Level of Care assessments; iii) Service intensity or selection criteria; and iv) Services requiring specialist review. b) CMHSP Participant shall be responsible for implementation and application of the PIHP Utilization Management Policy and Plan. c) CMHSP Participant shall participate in the development, dissemination, and application of Practice Guidelines. 3) Authorization <ol style="list-style-type: none"> a) Initial approval or denial of requested services (42 CFR 428.210; 42 CFR 438.240) <ol style="list-style-type: none"> i) Initial assessment for and authorization of psychiatric inpatient services up to three (3) days (or four (4) days only if necessitated by a holiday); ii) Initial assessment for and authorization of psychiatric partial hospitalization services up to three (3) days (or four (4) days only if necessitated by a holiday); iii) Initial assessment for and authorization of crisis residential services up to three (3) days (or four (4) days only if necessitated by a holiday); iv) Initial and ongoing authorization of non-SUD services to individuals receiving community based services. v) SUD Services: Initial and ongoing authorization of SUD services provided by the CMHSP Participant directly. b) CMHSP Participant shall follow SWMBH policies on prospective (preauthorization), concurrent, and retrospective reviews. When the CMHSP Participant is conducting service authorization, it shall have internal procedures that include: <ol style="list-style-type: none"> i) Review decisions are supervised by qualified medical professionals. ii) Decisions to deny or reduce services are made by health care professionals who have the appropriate clinical expertise to treat the conditions. iii) The reasons for decisions are clearly documented. iv) The reasons for decisions are provided (made available) to the beneficiary. v) Notification of any decision to deny a service authorization request, or to

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IV. Provider Network Management	
<p>The PIHP shall delegate the following Provider Network Management components to the CMHSP PARTICIPANT:</p> <p>Legal References:</p> <ul style="list-style-type: none"> ▪ 42 CFR 438.206 ▪ 42 CFR 438.106 ▪ 42 CFR 438.214(d) ▪ 42 CFR 438.12 ▪ 42 CFR 438.207(c)(2) 	<ol style="list-style-type: none"> 1. Network Development (42 CFR 438.206(b)). The CMHSP Participant shall: <ol style="list-style-type: none"> a. Ensure that service availability is in alignment with State-established thresholds b. Maintain and monitor a network of appropriate providers that is supported by written agreements and is sufficient to provide adequate access to all services covered under the contract for all enrollees, including those with limited English proficiency or physical or mental disabilities. c. If the provider network is unable to provide necessary services, covered under the contract, to a particular enrollee, the CMHSP Participant must adequately and timely cover these services out of network for the enrollee, for as long as its provider network is unable to provide them. d. Demonstrate that its network providers are credentialed as required by 438.214, MDHHS contractual requirements, and SWMBH policy. e. Timely access (42 CFR 438.206(c)). The CMHSP Participant must do the following: <ol style="list-style-type: none"> i. Meet and require its network providers to meet State standards for timely access to care and services, taking into account the urgency of the need for services. ii. Ensure that the network providers offer hours of operation that are no less than the hours of operation offered to commercial enrollees or comparable to Medicaid plans/FFS, if the provider serves only Medicaid enrollees. iii. Make services included in the contract available 24 hours a day, 7 days a week, when medically necessary. iv. Establish mechanisms to ensure compliance by network providers. v. Monitor network providers regularly to determine compliance. vi. Take corrective action if there is a failure to comply by a network provider. 2. Contract Management. Should the participant CMHSP sub-contract any covered service to an enrolled network subpanel provider, the CMHSP Participant shall use the SWMBH provider contract boilerplate, if one is available, and the written agreement shall include the Subcontracting requirements outlined in the MDHHS-PIHP Master Contract (Part I, Section 38), and shall ensure the following: <ol style="list-style-type: none"> a. Written subcontract agreements ensure that beneficiaries are not held liable when the PIHP (or CMHSP) does not pay the Provider

	<p>furnishing services under the subcontract (42 CFR 438.106(2)).</p> <p>b. Written subcontract agreements ensure that the beneficiaries are not held liable for payment of covered services furnished under the contract if those payments are in excess of the amount the beneficiary would owe, if the PIHP provided the service directly (42 CFR 438.106(c)).</p> <p>c. Upon termination of provider, written notification will be provided within 15 days to those enrollees receiving services from the provider.</p> <p>3. Network Policy Development.</p> <p>a. The participant CMHSP shall not employ or contract with any provider excluded from participation in federal health care programs under either Section 1128 or Section 1128A of the Social Security Act, and shall have internal procedures on how it can validate its exclusion review practices (42 CFR 438.214(d)).</p>
Reporting Requirements	<ol style="list-style-type: none"> 1. Monthly submission of credentialed providers for final approval by the PIHP as required by MDHHS and PIHP credentialing policies. 2. Sanctioned provider reporting as required by MDHHS and PIHP contractual provisions and policies. 3. Submission of required provider information for entry into provider directory annually with quarterly updates, as needed. 4. Documentation of provider site reviews. 5. Annually, and at any time there has been significant change (as defined by the State) in the CMHSP Participant's or SWMBH's operations that would affect the adequacy of capacity and services, provide documentation in a format as specified by the State and/or SWMBH, to demonstrate that the CMHSP Participant complies with the following requirements: <ol style="list-style-type: none"> a. Offers an appropriate range of specialty services and LTSS that is adequate for the anticipated number of enrollees for the service area; b. Maintains a network of providers that is sufficient in number, mix, and geographic distribution to meet the needs of the anticipated number of enrollees in the service area (42 CFR 428.207(b)(3)).

AMENDMENT OR TERMINATION

This Memorandum will continue to have effect unless amended in writing signed by both parties, or upon the CMHSP Participant giving sixty (60) calendar days advance written notice to SWMBH of CMHSP Participant's desire to relinquish a delegated function(s). SWMBH may revoke a delegated function(s) as provided above.

Signatures continued on next page

IN WITNESS WHEREOF, the authorize representatives of the parties hereto have fully executed this Agreement on the day and year indicated.

WITNESSED BY:

Mila C. Jodel

Date 1.4.19

SOUTHWEST MICHIGAN BEHAVIORAL
HEALTH REGIONAL ENTITY

BY: Bradley P. Casemore
Bradley P. Casemore 1-4-19

ITS: Executive Officer

CALHOUN COUNTY COMMUNITY MENTAL
HEALTH AUTHORITY D/B/A SUMMIT POINTE

BY: Jean M. Goodrich
Jean M. Goodrich

Date 1.3.19

ITS: Chief Executive Officer

APPROVED BHS
1.2.19

EXHIBIT B

EXHIBIT B

EXHIBIT B

EXHIBIT B

Ensing, Bryan R.

From: Bullock, Cameron <CBullock@pivotalstjoe.org>
Sent: Wednesday, November 13, 2024 12:03 PM
To: Marchand, Neil J.
Subject: Fw: Dispute Resolution - Step 2

CAUTION: ** Ensure you trust and expect email from "cbullock@pivotalstjoe.org" before clicking links/attachments. ** **CAUTION**

Cameron Bullock, MBA

Chief Executive Officer



677 E Main St

Centreville, MI 49032

Cell: 269.503.2814

Work: 269.467.1001 x 308

Fax: 269.467.3075

www.pivotalstjoe.org

From: John Ruddell <johnr@woodlandsbhn.org>
Sent: Wednesday, November 13, 2024 12:00:00 PM
To: Brad Casemore <Brad.Casemore@swmbh.org>; Mila Todd (Sackett) <Mila.Todd@swmbh.org>; Jeannie Goodrich <JGoodrich@summitpointe.org>; Bullock, Cameron <CBullock@pivotalstjoe.org>
Cc: Jeff Patton <jpatton@iskzoo.org>; Rich Thiemkey <rithiemkey@bccmha.org>; Sue M. Germann <sgermann@pinesbhs.org>; Debra Hess <dhes@vbcmh.com>; ric.compton@riverwoodcenter.org <ric.compton@riverwoodcenter.org>
Subject: Dispute Resolution - Step 2

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Brad;

The Operations Committee (minus the CEOs from Summit Pointe and Pivotal) discussed the Step 2 appeal requests from Summit Pointe and Pivotal's during the November 13, 2024, Operations Committee meeting. The issue in dispute is who reviews Inpatient Continuing Stay Determinations.

The decision from Operations Committee was to accept the appeal from Summit Pointe and Pivotal and that the Inpatient Continuing Stay Determinations be returned to the CMHs as soon as possible.

John W. Ruddell, CPA

Executive Director

johnr@woodlandsbhn.org

(269) 228-5130

960 M-60 East

Cassopolis, Michigan 49031



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Anne Wickham

To: Brad Casemore
Subject: RE: Dispute Resolution - Step 2

From: John Ruddell <johnr@woodlandsbhn.org>
Sent: Wednesday, November 13, 2024 12:00 PM
To: Brad Casemore <Brad.Casemore@swmbh.org>; Mila Todd <Mila.Todd@swmbh.org>; Jeannie Goodrich <JGoodrich@summitpointe.org>; Bullock, Cameron <CBullock@pivotalstjoe.org>
Cc: Jeff Patton <jpatton@iskzoo.org>; Richard Thiemkey <rithiemkey@bccmha.org>; Sue Germann <sgermann@pinesbhs.org>; Debra Hess <dhess@vbcmh.com>; Ric Compton <ric.compton@riverwoodcenter.org>
Subject: Dispute Resolution - Step 2

CAUTION: External Email

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Brad;

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John W. Ruddell, CPA

Executive Director

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Cassopolis, Michigan 49031



Woodlands

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April 3, 2013

BYLAWS **[Southwest Michigan Behavioral Health]**

ARTICLE I **FORMATION**

1.1 **Establishment of Entity.** The Southwest Michigan Behavioral Health Regional Entity (the "Regional Entity") is hereby created pursuant to MCL 330.1204b of the Michigan Mental Health Code, 1974 PA 258, MCL 330.1001 *et seq* (the "Mental Health Code") with the adoption of these Bylaws by the following Participant community mental health services programs which are organized and operated as community mental health authorities under the Mental Health Code:

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

i.e., (the "Participants").

1.2 **Form of Entity.** Pursuant to MCL § 330.1204b(3), the Regional Entity is a public governmental entity separate from the counties, authorities, or organizations that establish it.

1.3 **Service Area.** The Regional Entity's designated service area encompasses the following Michigan counties: Barry, Berrien, Branch, Cass, Calhoun, Kalamazoo, St. Joseph and Van Buren ("Service Area").

ARTICLE II **PURPOSES AND POWERS**

2.1 **Purpose.** The Regional Entity is formed for the purpose of carrying out the provisions of the Mental Health Code in the Service Area as they relate to: serving as a

prepaid inpatient health plan, as defined in 42 CFR 438.2 ("PIHP"), to manage the Medicaid Specialty Support and Services Concurrent 1915(b)/(c) Waiver Programs ("Medicaid") and the Michigan ABW NON-Pregnant Childless Adults Waiver (Adult Benefits Waiver) Section 1115 Demonstration program ("ABW"); ensuring a comprehensive array of services and supports as provided in the PIHP Medicaid and ABW contracts with MDCH; and exercising the powers and authority set forth in these Bylaws. Additional purposes may be added by the Regional Entity Board.

2.2 **Powers.** Except as otherwise stated in these Bylaws, the Regional Entity has all of the following powers provided under MCL 330.1204b(2):

2.2.1 The power, privilege, or authority that the Participants share in common and may exercise separately under the Mental Health Code, as specified in these Bylaws or as granted by the Regional Entity Board under subsection 2.2.8;

2.2.2 The power to contract with the State to serve as the Medicaid specialty service PIHP for the Service Area;

2.2.3 The power to contract with a state, federal, local, and/or commercial organization(s).

2.2.4 The power to accept funds, grants, gifts, or services from the federal government or a federal agency, the State or a State department, agency, instrumentality, or political subdivision, or any other governmental unit whether or not that governmental unit participates in the Regional Entity, and from a private, or civic source;

2.2.5 The power to enter into a contract with a Participant for any service to be performed for, by, or from the Participant; and

2.2.6 The power to create a risk pool and take other actions as necessary to reduce the risk that the Participants otherwise bear individually.

2.2.7 The power to calculate, assess, and collect from the Participant payments attributable to their designated share of the Regional Entity's costs and expenses.

2.2.8 Other powers granted by the Regional Entity Board that the Participants share in common and may exercise separately under the Mental Health Code.

2.3 **Regional Entity Actions.** The manner by which the Regional Entity's purposes will be accomplished and powers will be exercised shall be through the actions of the Participants as provided in Article III of these Bylaws and through the actions of the Regional Entity Board as set forth in these Bylaws, or as delegated by the Regional Entity Board to officers, committees or other agents.

2.4 **Participant Retained Powers.** The Participants shall retain all powers, rights and authority afforded community mental health services programs, organized and operated as county mental health authorities, agencies or organizations under the Mental Health Code. Only the powers and authority specifically delegated to the Regional Entity under these Bylaws and as further defined under an Operating Agreement, are transferred to the Regional Entity. An Operating Agreement shall be approved by the Regional Entity Board and incorporated herein by reference.

2.4.1 The Regional Entity shall have no powers, rights or authority with respect to:

- the Participants' obligations under the Mental Health Code including those related to size, composition, and authority of the Participants' Board;
- the Participants' autonomous administrative, financial, or clinical operations; or
- the Participants' relationship with other providers unless the Regional Entity's involvement is so limited that it does not prevent the Participant from collaborating with other providers.

ARTICLE III THE PARTICIPANTS

3.1 **Participants.** The Participants shall be those community mental health authorities listed in section 1.1.

3.2 **Participant Vote.** Each Participant will designate members of the Regional Entity Board, as provided in Section 4.2.

3.3 **Withdrawal of the Participant.** Any Participant may withdraw from participation with the Regional Entity effective upon providing to the Executive Director of the Regional Entity written notice (minimum notice of 6 months before the beginning of the fiscal year). Upon the effective date of such withdrawal, the Participant will have no further rights or benefits of the Participant of the Regional Entity. The withdrawing Participant is responsible for meeting all of its obligations prior to the withdrawal. The Regional Entity Board position(s) and other positions appointed by the withdrawing Participant shall terminate upon the effective date of withdrawal of the Participant and no replacement shall be appointed nor vacancy be deemed to occur by reason of the Participant's withdrawal and termination of positions.

3.4 **Removal of the Participant.** The Participants cannot be removed from the Regional Entity.

3.5 **New Participants.** New Participants may be admitted by a simple majority vote of the Participants. At any time that the new Participant is admitted and enters into an Operating Agreement to participate in the Regional Entity, the new Participant shall be entitled to the entire Participants' rights of governance and obligations provided in these Bylaws.

3.6 **Dispute Resolution.** The manner for adjudicating a dispute or disagreement among Participants shall be set forth in an Operating Agreement, approved by the Regional Entity Board and incorporated herein by reference.

3.7 **Participant Reserved Powers.** Each Participant shall possess the powers and rights retained and reserved to the Participants under Section 2.4 of these Bylaws and this Section 3.7, which shall include the power to approve the following:

- 3.7.1 all amendments, restatements or the adoption of new bylaws;
- 3.7.2 a plan of merger, consolidation or joint venture;
- 3.7.3 the sale, transfer or other disposition of substantially all the assets of the Regional Entity; and
- 3.7.4 the dissolution of the Regional Entity and distribution of assets and liabilities, if any.

3.8 **Participants' Exercise of Reserved Powers.** The Participants shall exercise their reserved powers through duly adopted written resolutions from their respective boards. The Participants Boards will unanimously 100% approve all reserved powers listed in section 3.7.

3.9 **The Participant Payment of Designated Share of the Regional Entity's Costs and Expenses.** The manner of equitably allocating costs and expenses and how they will be assessed shall be set forth in the Regional Entity's annual Financial Management Plan, which shall be approved by the Regional Entity Board and incorporated herein by reference.

ARTICLE IV REGIONAL ENTITY BOARD

4.1 **General Powers.** The business, property, and affairs of the Regional Entity shall be managed by the Regional Entity Board in accordance with the Policy Governance Model as made explicit by Dr. John Carver www.carvergovernance.com.

4.2 **Number and Composition.** The composition of the Regional Entity Board shall be consistent with all applicable statutory requirements. Each of the Participant Community Mental Health Services Program (CMHSP) Boards shall have one representative on the Regional Entity Board, who shall be an active member of the Participants' CMHSP

Board. If the Regional Entity is a department-designated community mental health entity, as defined in Section 100a(22) of 2012 PA 500, the composition of the Regional Entity Board shall also consist of representatives of mental health, developmental or intellectual disabilities and substance use disorder services as required under 2012 PA 500. The Regional Entity Board shall also include consumer representation. Each Participant CMHSP Board shall appoint one member to the Regional Entity Board. The Regional Entity Board shall determine whether all of the required categories of board members are represented on the Regional Entity Board. Each CMH shall appoint one member with one vote if there are a total of 8 Board Members. If additional members are needed to be appointed to represent all of the required categories, the Participant CMHSPs will jointly agree on and appoint additional individuals as necessary. There shall be no more than two members from any one Participant CMHSP on the Regional Entity Board. There will be no more than 2 total votes for each Participant CMHSP on the Regional Entity Board. Participant CMHSPs in which two individual board members reside will have one vote assigned to each of those members and Participant CMHSPs in which one board member resides will have two votes assigned to that member.

4.3 **Appointment.** The Participant CMHSP Boards shall appoint members of the Regional Entity Board. At any time the Participant CMHSP Boards may appoint, remove, or replace its appointee to the Regional Entity Board.

4.4 **Term.** All Regional Entity Board members shall continue to serve on the Regional Entity Board until their Participant CMHSP Board appoints a different representative.

4.5 **Removal.** The Participant CMHSP Boards may remove its appointee to the Regional Entity Board at any time. The Regional Entity Board is responsible for informing the relevant Participant board if there is a lack of participation or attendance by the Participant's appointed Board members.

4.6 **Resignation.** Any Regional Entity Board member may resign at any time by providing written notice to the Regional Entity. The resignation will be effective on receipt of the notice or at a later time designated in the notice. A successor will be appointed as provided in Section 4.3 of these Bylaws.

4.7 **Regional Entity Board Vacancies.** A vacancy on the Regional Entity Board shall be filled by the Participant CMHSP Board that originally filled the person's vacated position.

4.8 **Regular Meetings.** The Regional Entity Board shall establish a regular schedule of meetings at the beginning of each fiscal year. Notice in writing of each meeting shall be given to Regional Entity Board members and posted to the public.

4.9 **Special Meetings.** Special meetings of the Regional Entity Board may be held at the call of the Chair of the Regional Entity Board or, in the Chair's absence, the Secretary, or by a simple majority of the Regional Entity Board members.

4.10 **Meeting by Remote Communication.** A Regional Entity Board member may participate in a meeting by conference telephone or any similar communication equipment through which all persons Participant in the meeting can hear each other. Participation in a meeting pursuant to this Section constitutes presence in person at the meeting.

4.11 **Quorum and Voting.** A majority of the Regional Entity Board members then in office constitutes a quorum for the transaction of any business at any meeting of the Regional Entity Board. Actions voted on by a super majority (75% of attendees) of Regional Entity Board members present at a meeting where a quorum is present shall constitute authorized actions of the Regional Entity Board.

4.12 **Conflict of Interest Policy.** The Regional Entity Board shall adopt and adhere to a conflict of interest policy. All Regional Entity Board members will annually disclose any conflicts of interest while serving on the Regional Entity Board.

4.13 **Compliance with Laws.** The Regional Entity and its Participant CMHSP Boards, members of the Regional Entity Board, officers, staff and other employees shall fully comply with all applicable laws, regulations and rules, including without limitation 1976 PA 267 (the "Open Meetings Act") and 1976 PA 422 (the "Freedom of Information Act"). The Regional Entity shall develop such compliance policies and procedures. In the event that any such noncompliance is found, immediate corrective action as defined in the Operating Agreement shall be taken by the appropriate source to ensure compliance. Compliance policies and procedures will be defined in the Operating Agreement.

4.14 **Alternates/Designees.** The Participant CMHSP Boards may appoint official designees to serve in place of their appointed Regional Entity Board member in the event that a Regional Entity Board member is unable to attend a regularly scheduled meeting. This designee shall have full voting rights for the purpose of the meeting he/she is designated to attend.

4.15 **Per Diem and Travel Expenses:** The Regional Entity does not pay Per Diem or travel expenses of Regional Entity Board members that are part of regular Regional Entity Board activities.

ARTICLE V COMMITTEES

5.1 **Powers.** The Regional Entity Board may form committees from time to time, as it deems appropriate. A committee designated by the Regional Entity Board may exercise

any powers of the Regional Entity Board in managing the Regional Entity's business and affairs that are within the committee's jurisdiction, to the extent provided by resolution of the Regional Entity Board.

5.1.1 Operations Committee: An Operations Committee will be formed consisting of the CEOs of the Participants or their designees. The Operations Committee will have the responsibilities and authorities assigned by the Board and outlined in the Operating Agreement.

5.2 **Meetings.** Committees shall meet as directed by the Regional Entity Board; minutes shall be recorded at each committee meeting and shall be available to the Regional Entity Board.

ARTICLE VI OFFICERS

6.1 **Officers.** The Officers of the Regional Entity Board shall be the Chairperson, the Vice Chairperson, and the Secretary. Only Officers of the Regional Entity Board can speak to the press as representatives of the Regional Entity.

6.2 **Appointment.** Officers will be elected by a majority vote of the Regional Entity Board members, and must be a representative of the Participant's Board.

6.3 **Term of Office.** The term of office of Officers elected in 2013 shall be through March 30, 2014. Thereafter the term of office of Officers shall be annual April to March with annual April Officer elections. Election of Officers of the Regional Entity Board shall occur annually, or in case of vacancy.

6.4 **Vacancies.** A vacancy in an officer position shall be filled by a majority vote of the Regional Entity Board.

6.5 **Removal.** The Regional Entity Board will be able to remove any Regional Entity Board Officer by a super majority (75% of attendees) vote of Regional Entity Board members present at a meeting where a quorum is present and shall constitute an authorized action of the Regional Entity Board.

6.6 **Chair.** The Chair shall preside at all Regional Entity Board meetings. The Chair shall have the power to perform duties as may be assigned by the Regional Entity Board. The Chair shall perform all duties incident to the office.

6.7 **Vice Chair.** The Vice Chair shall have the power to perform duties that may be assigned by the Chair or the Regional Entity Board. If the Chair is absent or unable to perform his or her duties, the Vice Chair shall perform the Chair's duties until the

Regional Entity Board directs otherwise. The Vice Chair shall perform all duties incident to the office.

6.8 **Secretary.** The secretary shall: (a) ensure that minutes of Regional Entity Board meetings are recorded; (b) be responsible for providing notice to each Regional Entity Board Member as required by law or these Bylaws; (c) be the custodian of the Regional Entity records; (d) keep a register of the names and addresses of each Officer and Regional Entity Board Member ; (e) complete all required administrative filings required by the Regional Entity's legal structure; and (f) perform all duties incident to the office and other duties assigned by the Regional Entity Board.

ARTICLE VII STAFF POSITIONS

7.1 **Executive Officer.** The Regional Entity shall have at a minimum an Executive Officer, and a Fiscal Officer. The Regional Entity Board shall hire the Executive Officer; and the Executive Officer shall hire and supervise the Fiscal Officer. Both positions shall have direct access to the Regional Entity Board.

7.2 **Fiscal Officer:** The Fiscal Officer shall serve as the fiscal officer as defined in MCL 330.1204b and shall (a) have charge and custody over corporate funds and securities; (b) keep accurate books and records of corporate receipts and disbursements; (c) deposit all moneys and securities received by the Regional Entity at such depositories in the Regional Entity's name that may be designated by the Regional Entity Board. The Fiscal Officer has the responsibilities set forth in MCL 330.1204b and will be responsible for receiving, depositing, investing, and disbursing the Regional Entity's funds in the manner authorized by these Bylaws and Regional Entity Board in accordance with the Regional Entity's Operating Agreement and other duties as assigned by the Executive Officer.

ARTICLE VIII ADVISORY BODIES:

8.1 **Advisory Bodies.** The Regional Entity Board may establish Advisory Bodies.

8.2 **Purpose.** The Regional Entity Board shall define the purpose and longevity of any advisory bodies in the document creating an Advisory Body.

8.3 **Membership.** The Regional Entity Board shall define membership in each establishing agreement for each Advisory Body.

8.4 **Officers.** Officers will be elected by a majority vote of the Advisory Body members.

8.5 **Meetings.** Each Advisory Body shall establish a regular schedule of meetings at the beginning of each fiscal year. Notice in writing of each meeting shall be given to the Regional Entity Board.

ARTICLE IX REPORTS

The Regional Entity must provide an annual report of its activities to each Participant.

ARTICLE X IMMUNITY

10.1 **Governmental Immunity.** All the privileges and immunities from liability and exemptions from laws, ordinances, and rules provided under MCL § 330.1205(3)(b) of the Mental Health Code granted to county community mental health services programs and their Regional Entity Board members, officers, and administrators, and county elected officials and employees of county government are retained by the Regional Entity and the Regional Entity's Board members, Officers, agents, and employees, as provided in MCL § 330.1204b(4).

10.2 **LIABILITY.** Except as required by law, these Bylaws, or any agreement between the Participants or the Participants and the Regional Entity, the Participants shall not be responsible for the acts, omissions, debts or other obligations and responsibilities of the Regional Entity or any other Participant or the Board members, employees, agents and representatives of the Regional Entity or the other Participants, whether acting separately or jointly under these Bylaws or pursuant to any such agreements. The Participants shall only be bound and obligated as expressly agreed to by each Participant and no Participant may otherwise obligate any other Participant.

10.2.1 All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities to be carried out by the Regional Entity shall be the sole and non-transferrable responsibility of the Regional Entity, and not the responsibility of the Participant, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act by the Regional Entity, its Board members, officers, employees or representatives; provided that nothing herein shall be construed as a waiver of any governmental or other immunity that has been provided to the Regional Entity or its Board members, officers, employees or representatives, by statute or court decisions.

10.2.2 All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities to be carried out by the Participant shall be the sole and non-transferrable responsibility of the

Participant and not the responsibility of the Regional Entity, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act by the Participant, its Board members, officers, directors, employees and authorized representatives; provided that nothing herein shall be construed as a waiver of any governmental or other immunity that has been provided to the Participant or its Board members, officers, employees or representatives, by statute or court decisions.

10.2.3 Each Participant and the Regional Entity will obtain its own legal counsel, and will bear its own costs, including judgments, in any litigation which may arise out of its activities to be carried out pursuant to its obligations under these Bylaws or any agreement between the Participants or the Participants and the Regional Entity. It is specifically understood that no indemnification will be provided in such litigation.

10.2.4 In the event that liability to third parties, loss or damage arises as a result of activities conducted jointly under these Bylaws or any agreement between the Participants or the Participants and the Regional Entity, such liability, loss or damages shall be borne by each party in relation to each party's responsibilities under the joint activities, provided that nothing herein shall be construed as a waiver of any governmental or other immunity granted to any of said parties as provided by applicable statutes and/or court decisions.

10.2.5 Under these Bylaws, it is the intent that each of the Participants and the Regional Entity shall separately bear and shall be separately responsible for only those financial obligations related to their respective duties and responsibilities.

10.3 **INSURANCE.** The Regional Entity may purchase and maintain insurance on behalf of any person who is or was a Board member, officer, employee or representative of the Regional Entity, against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Regional Entity would have power to indemnify the person against such liability under these Bylaws or the laws of the State of Michigan.

ARTICLE XI ADMINISTRATION

11.1 **Allocation of Assets and Liabilities.** The Regional Entity shall allocate its assets and liabilities to each Participant in the following manner:

11.1.1 **Revenues.** The Regional Entity will equitably allocate Medicaid (including ABW) revenues to the Participants utilizing a sub-capitation methodology based

on the number of Medicaid beneficiaries in each county using regional capitation rates. The specific methodology used to allocate revenues will be provided in the annual Financial Management Plan, approved by the Regional Entity Board and incorporated herein by reference.

The allocation of other revenues derived from a federal or state grant or loan, a gift, bequest, grant, or loan from a private source, or an insurance payment or service fee shall be approved by the Regional Entity Board on a case by case basis. The specific methodology for the allocation of other revenues will be provided in the annual Financial Management Plan approved by the Regional Entity Board and incorporated herein by reference.

11.1.2 Capital and Operating Costs. The Regional Entity will deduct and retain, from the total capitation revenue, the cost of any required State and Federal Payments (for example HRA or Claims Tax). The Regional Entity will deduct capital and operating costs, payments to reserve funds authorized by law, and payments of principle and interest on obligations as approved by Board. The deductions for capital and operating costs, reserve funds, payments of principle and interest on obligations should be allocated as delineated in the Financial Management Plan.

11.1.3 Other Assets. The Regional Entity Board shall approve the allocation of other Regional Entity assets, on a case by case basis. The specific methodology for such allocation will be provided in the annual Financial Management Plan, approved by the Regional Entity Board and incorporated herein by reference.

11.1.4 Surplus Funds. Any surplus funds available after the completion of the Regional Entity's purpose will be returned to the Participants in the proportion based on the amount of sub capitation revenues in the last year of Regional Entity operations.

11.1.5 Special Fund Account. Each Participant may elect to create a special fund account under Section 226A of the Mental Health Code. Money in the special fund account represents local funds of each Participant. Each Participant will pay the Regional Entity its share of local matching fund obligation for Medicaid funding. Each Participant may use its special fund account or other local funds to meet the local matching fund obligations for Medicaid funding.

11.1.6 Accountability of Funds. The Regional Entity will maintain an accounting and financial reporting system in accordance with Generally Accepted Accounting Principles (GAAP). The accounting procedures and internal financial controls of the Regional Entity shall conform to Generally Accepted Accounting Principles (GAAP) for governmental units. The Regional Entity shall maintain accounts and source records in which any and all revenues received and expenses incurred are ascertainable and verifiable and include date of receipt / payment and sources of funds. The Regional Entity shall engage a certified public accounting

firm to perform an annual independent financial audit in conformance with the American Institute of Certified Public Accountants Guide to assess compliance with the appropriate standard accounting practices and procedures and MDCH contract requirements.

11.1.7 **Contracts.** The Regional Entity Board shall designate the positions of the Regional Entity that will have authority to enter into contracts on behalf of the Regional Entity with third parties, including contracts involving the acquisition, ownership, custody, operation, maintenance, lease or sale of real or personal property and the disposition, division or distribution of property acquired through the execution of the contract.

11.1.8 **Risk Management.** The Regional Entity shall have a Financial Risk Management Plan that is approved by the Regional Entity Board.

11.1.9 **Participants Failure to Pay:** Addressed in 3.9, 11.1.2, and 11.1.5

11.2 **Other Administration Activities.** The Regional Entity Board and/or its Operations Committee will, on an ongoing basis, consider possible administrative efficiencies where appropriate.

ARTICLE XII FISCAL YEAR

The fiscal year of the Regional Entity shall end on September 30 of each calendar year.

ARTICLE XIII AMENDMENTS

These Bylaws may be amended altered, changed, added to or repealed by a uniform resolution approved by each Participant CMH Board. No amendment to these Bylaws shall be effective until filed as provided in Article XIV.

ARTICLE XIV FILING BYLAWS

These Bylaws, including any amendment, shall be effective only after it has been duly adopted in accordance with MCL 330.1204b(1) and subsequently filed with the clerk of each county in which the Participant is located and with the Michigan Secretary of State.

ARTICLE XV TERMINATION

The Participants may terminate the Regional Entity by a vote of super majority (75%) vote of the Participants, after distributing any surplus funds to the Participants as provided in Section 11.1.4 of these Bylaws.

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Exhibit 2

Board Approved 6/9/23

SOUTHWEST MICHIGAN BEHAVIORAL HEALTH OPERATING AGREEMENT

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PURPOSE

Pursuant to Michigan Law, an Operating Agreement is “an agreement among an organization’s participant members to govern the organization’s business, and the participant member’s financial and managerial rights and duties.” (MCL 450.4102(2)(r)).

Southwest Michigan Behavioral Health (SWMBH) Operating Agreement is established between SWMBH and its participant Community Mental Health Services Programs (CMHSPs). The Operating Agreement is approved by the regional SWMBH Board, which has as its membership representatives from each of the participant CMHSP Boards.

The primary purposes of this Operating Agreement are to:

- Declare that the Regional Entity is a separate legal entity from the participant CMHSP organizations;
- Augment specific sections of the SWMBH Bylaws, as referenced therein;
- Further define the governance and management structure of SWMBH that the participant CMHSPs have chosen for the organization;
- Clarify the business and operational relationships between SWMBH and its participant CMHSPs; and
- Clarify the provisions and understandings by which SWMBH will operate.

PREAMBLE

Southwest Michigan Behavioral Health (hereinafter referred to as “SWMBH”) is a Regional Entity created pursuant to MCL 330.1204b of the Michigan Mental Health Code, 1974 PA 258. A Regional Entity is an independent public governmental entity, and is separate from the counties, authorities, or organizations that establish it. SWMBH operates under the authority of its own Board of Directors (the “SWMBH Board”), which consists of membership from each of the participant CMHSP boards, as delineated in the SWMBH Regional Entity Bylaws.

SWMBH was created with the filing of its Bylaws with Michigan’s Office of the Great Seal. These Bylaws were approved by the following participant Community Mental Health Services Programs, which are organized and operated as community mental health authorities under Michigan’s Mental Health Code (MCL 330.1001 et seq.)

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

As the Bylaws reference the Operating Agreement and require an annual review of this Operating

Agreement with revisions subject to approval by the SWMBH Board, the Operating Agreement will be filed by SWMBH with each County Clerk and the Office of the Great Seal when revisions occur.

SWMBH designated service area encompasses the following Michigan counties: Barry, Berrien, Branch, Calhoun, Cass, Kalamazoo, St. Joseph, and Van Buren. These counties are hereinafter known as the "Service Area" of SWMBH.

SWMBH was formed for the purpose of:

- (i) carrying out the provisions of the Mental Health Code in its Department designated service area as they relate to: serving as a prepaid inpatient health plan, as defined in 42 CFR 438.2 ("PIHP");
- (ii) managing the business lines for which SWMBH is the contractor to Michigan Department of Health and Human Services (MDHHS);
- (iii) ensuring a comprehensive array of services and supports as provided in the contracts with MDHHS;
- (iv) performing all the duties and responsibilities contained in the Department/Regional Entity Contract;
- (v) Substance Abuse Coordinating Agency (CA) required functions for its service area, pursuant to MCL 333.6230 et seq. (PA 501 of 2012; Amendments to Public Health Code), and MCL 330.1100a et seq. (PA 500 of 2012, Mental Health Code);
- (vi) contractual participation in the Department's MI Health Link (MiHL) demonstration project for its service area, serving persons with behavioral health needs who have both Medicare and Medicaid coverage; and finally
- (vii) exercising the powers and authority set forth by the Bylaws and governed by the SWMBH Board.

OPERATIONAL STRUCTURE

The aforementioned eight Community Mental Health Services Programs (the "Participants") have joined together to create a jointly governed regional entity operating as a Prepaid Inpatient Health Plan ("PIHP") for the purpose of supporting and furthering the work of the Participants in their roles as Community Mental Health Service Programs ("CMHSPs") as applicable in the counties they serve.

Inherent in this action is the belief that the Participants are best suited to provide services well matched to the needs of the communities and citizens served. SWMBH is established for the purpose of meeting its regulatory and statutory requirements, and other services as mutually agreed, while not encumbering, but enhancing, the efforts of the Participant CMHSPs. In serving and representing the counties of Barry, Berrien, Branch, Cass, Calhoun, Kalamazoo, Saint Joseph, Van Buren, SWMBH shall be dedicated to ensuring that equality in voice and governance exists, and that the benefit to the person participating in services is uniform, person centered, and locally available.

SWMBH is founded on a shared governance structure, using standing committees to create avenues for input. Certain checks and balances are created to ensure that governance remains balanced and equal.

SWMBH exists to support all Participants, and all Participants must work collaboratively to ensure that SWMBH is successful in its core mission.

The SWMBH Board has final authority over governing SWMBH, as set forth in the Bylaws approved by the Participants and subject to those powers reserved to the Participants in the Bylaws. This Operating Agreement reinforces the responsibility for governance of the Regional Entity to the SWMBH Board, and management of the Regional Entity to its Executive Officer (EO).

The SWMBH Board will be best served by an EO who is an accomplished administrator and facilitator, capable of bringing many and varied voices together to achieve consensus. The EO must promote compliance, fiscal responsibility, quality programs, meaningful outcomes, and efficiencies that will funnel more resources to direct services. The SWMBH Board shall also be advised by an Operations Committee that brings management expertise, local perspectives, local needs, and greater vision to the operation of the PIHP.

ORGANIZATION

Formation and Qualification. SWMBH has been formed by the Participants pursuant to the authority granted under the Michigan Mental Health Code, MCL § 330.1204b and by filing Bylaws with the County Clerks of each of the eight counties and the Michigan Secretary of State, Office of the Great Seal.

Name. The business of SWMBH may be conducted under that name or, in compliance with applicable laws, any other name that the SWMBH Board deems appropriate or advisable. SWMBH shall file any certificates, articles, fictitious business name statements and the like, and any amendments and supplements thereto, as SWMBH considers appropriate or advisable.

Office. The principal office of SWMBH shall be at such place or places of business within the eight counties as the SWMBH Executive Officer may determine.

SCOPE AND AUTHORITY

The intention of this Operating Agreement is to provide a paradigm for decision-making, and a structure for effective communication among members of the SWMBH Board, the Participants, SWMBH administration and, potentially, provider representatives, persons in service, SWMBH staff, and stakeholders, that is inclusive, collegial, equal and responsive.

The Operations Committee participates meaningfully in the establishment of and alignment to regional, SWMBH, and common CMHSPs goals.

- **Meetings.** The Operations Committee shall meet as often as it deems necessary in order to perform its responsibilities. The Operations Committee may also meet by video and phone options and may act by unanimous written consent via e-mail in lieu of a meeting. Records of Operations Committee Meetings shall be kept.

- Annual Self-Evaluation. At least annually, the Operations Committee shall evaluate its own performance, and provide recommendations and conclusions to the Board.
- Standing Committees and Subcommittees. The Operations Committee may form and delegate authority to one or more Standing Committees made up of CEOs, or it may form self-populated subcommittees or workgroups as it deems appropriate from time to time under the circumstances. Such efforts will avoid duplication or role confusion.

SWMBH BOARD COMMITTEES AND OVERSIGHT BOARDS

Pursuant to the SWMBH Bylaws, the SWMBH Board shall create the following Committees or Oversight Boards:

- Operations Committee;

Operations Committee

“An Operations Committee will be formed consisting of the CEOs of the CMHSPs or their designees. The Operations Committee will have the responsibilities and authorities assigned by the Board and outlined in the Operating Agreement.” (*SWMBH Bylaws 5.1.1*)

The SWMBH Operations Committee is comprised of the Participant CEOs/Executive Directors, or their designees, and the SWMBH EO. The SWMBH EO participates in an ex-officio capacity without vote. The Operations Committee, in collaboration with the EO and SWMBH Board, participates in the development of the vision, mission and long-term plans of SWMBH. The Operations Committee, in a manner consistent with SWMBH Board directives, contributes to the hiring and evaluation process of the EO. The EO, in concert with the Operations Committee, develops and recommends priorities for the SWMBH Board’s consideration and makes recommendations to the SWMBH Board with respect to policy and fiscal matters. The EO collaborates with the Operations Committee in the development of the contracts between the Participants and SWMBH. Each CMHSP CEO is charged with assuring that its CMHSP complies with applicable federal and state standards and regulations. The Operations Committee is advisory to both the EO and SWMBH Board. Any items requiring approval from the Operations Committee requires a super majority (75% of present members) vote.

The Operations Committee shall function with a large degree of independence in the discharge of its responsibilities. The Operations Committee shall assess the information provided by the SWMBH management, in accordance with its business judgment; and will work in collaborative partnership with the SWMBH Executive Officer (EO) in carrying-out its responsibilities, and in the provision of advice and recommendations to the Board.

Operations Committee Responsibilities and Authorities

The Operations Committee and the individual CMHSP CEOs/Executive Directors will work actively and constructively to:

- A. Assure Participant CMHSP and community awareness of and alignment to SWMBH approved contracts, Participant subcontracts and related Plans, Policy and Procedures.
- B. Assure its CMHSP personnel are constructively involved in SWMBH Committees and

related activities.

- C. Contribute to SWMBH and Participant CMHSP environmental awareness and SWMBH regional planning activities, including but not limited to strategic planning, Mission development, operational and capital budgeting, growth, infrastructure, products and markets.
- D. Seek to resolve boundary issues, differences and disputes.
- E. On an ongoing basis consider possible administrative efficiencies where appropriate (Bylaws 11.2).

As listed throughout the Operating Agreement the Operations Committee does the following:

- A. Advises both the EO and SWMBH Board.
- B. Participates in the development of the vision, mission, and long-term plans of SWMBH and ensures alignment with common CMHSP goals.
- C. Reviews the annual operating and capital budget, Financial Management Plan, Cost Allocation Plan and Financial Risk Management Plan prior to presentation and approval by the SWMBH Board.
- D. Reviews the Quality Assurance and Program Improvement Program (QAPI) prior to presentation and approval by the SWMBH Board.
- E. Reviews the Utilization Management Program (UM Plan) prior to implementation and/or presentation to the SWMBH Board.
- F. Advises the EO in advance of, and throughout, engaging in any meaningful discussion with other entities that may impact the operations or decision of participants' CMHSP or SWMBH.
- G. Attempts to resolve disputes between the Participants or one or more Participants and SWMBH at step 2 in the formal Dispute Resolution process.
- H. Assists the SWMBH Board in hiring and retention decisions regarding the SWMBH EO in a manner consistent with Board policy, and as requested.
- I. Responds to the EO's consultation before the EO renders a formal policy interpretation that may materially or negatively affect the Participants - where feasible.
- J. Reviews all grant applications submitted on behalf of SWMBH prior to being submitted.
- K. Responds to the EO's consultation before the EO determines what functions remain with SWMBH and which can be delegated to the Participants consistent with the Balanced Budget Act. Medicaid Managed Care Regulations.
- L. Advises the EO regarding any additional SWMBH contractual arrangements that involve the Participants.
- M. Provides a recommendation to the SWMBH Governing Board regarding any additional SWMBH contractual arrangements that involve the Participants and/or other vendors and requires approval by the SWMBH Governing Board.
- N. Where appropriate, reviews and comments on agendas, materials, and minutes of the Substance Use Disorder Oversight Policy Board (SUDOPB).

OPERATIONAL COMMITTEES AND POLICY BOARD COMMITTEES

SWMBH POLICY BOARDS AND COMMITTEES

Substance Use Disorder Oversight Policy Board is established to assist SWMBH develop and sustain a comprehensive array of prevention programs, treatment and other services and a provider network

capable of meeting the needs of persons with substance use disorders. SWMBH has executed an Intergovernmental Contract with 8 county commissions. This contract and related statutes and regulations shall guide the responsibilities of the SUD Oversight Policy Board. The Substance Use Disorder Oversight Policy Board will be constituted as required under MCL 330.1100a et seq. (PA 500 of 2012; Mental Health Code) and shall advise the SWMBH on issues concerning services to persons with substance use disorders. The functions and responsibilities assigned to the Board under law will include:

- A. Approval of that portion of SWMBH budget that includes local funds (PA2) for treatment or prevention of substance use disorders;
- B. Advice and recommendations regarding SWMBH budget for substance use disorder treatment or prevention using other nonlocal funding sources;
- C. Advice and recommendations regarding contracts with substance use disorder treatment or prevention providers;
- D. Other functions and responsibilities requested by SWMBH and accepted by amending Intergovernmental Contract.

Customer Advisory Committee (CAC) is established to advise SWMBH. The CAC is comprised of active or former customers, and may also include family members. Membership will include at least two but not more than three representatives from each county, nominated by Participants and other sources, recommended by the SWMBH EO, and appointed by the SWMBH Board, unless otherwise required by contract or regulation. Representatives will reflect the SWMBH population served and include those living with developmental disabilities, mental illness, serious emotional disturbance, and substance use disorders.

SWMBH Corporate Compliance Committee is established to develop the Compliance Plan for SWMBH Board approval and assist in implementing Program Integrity/Compliance Program of SWMBH. Committee members will include the SWMBH key functional areas such as Compliance, Utilization Management, Quality Management, Information Technologies, Finance, etc. as appointed by the EO. The Corporate Compliance Officer has a dual reporting relationship with the EO and the SWMBH Board. The Operations Committee will appoint a member to the SWMBH Compliance Committee.

SWMBH Standing Committees

Standing Operating Committees of SWMBH are:

- Finance Committee
- Quality Management Committee
- Utilization Management Committee
- Clinical Practices Committee
- Provider Network Management Committee
- Regional Information Technology Committee
- Customer Services Committee
- Regional Compliance Coordinating Committee

The CMHSP CEOs will ensure representatives from participant CMHSPs on all SWMBH Standing Committees. Each Participant CMHSP shall identify their representative to each committee. The EO with CMHSP support and involvement will actively pursue customer representation on standing committees. Committee work plans and goals shall be reviewed by the Operations Committee annually

and in the event of changes to ensure alignment with SWMBH and common CMHSP goals. At its discretion, the Operations Committee may request an in-depth committee report or update.

Finance Committee is established to advise the EO and is comprised of the SWMBH Fiscal Officer and participant CMHSP Fiscal Officer or Finance Director, as appointed by the Participant CEOs/Executive Directors. The Finance Committee will be charged with advising the EO and SWMBH CFO in the development of the annual operating and capital budget; Financial Management Plan, Cost Allocation Plan, and Financial Risk Management Plan, for review by the SWMBH Operating Committee prior to presentation and approval by the SWMBH Board.

Quality Management Committee is established to advise the EO and is comprised of both SWMBH QAPI leader and Participant CMHSP QM staff. The Quality Management Committee will be charged with advising the EO and SWMBH QAPI Director in the development of the Quality Assurance and Program Improvement Program (QAPIP), for review by the SWMBH Operating Committee prior to presentation and approval by the SWMBH Board.

Utilization Management Committee is established to advise the EO and is comprised of both SWMBH Clinical leader and Participant CMHSP UM staff. The UM Committee will be charged with advising the EO and the SWMBH staff in the development of the Utilization Management Program (UM Plan) for review by the SWMBH Operations Committee prior to implementation, and/or presentation to the SWMBH Board.

Clinical Practices Committee is established to advise the EO and is comprised of both SWMBH Clinical leader and Participant CMHSP clinical staff. The CP Committee will be charged with advising the EO and the SWMBH staff in the development of the Clinical Practices Program for review by the SWMBH Operations Committee prior to implementation, and/or presentation to the SWMBH Board.

Provider Network Management Committee is established to advise the EO and is comprised of both SWMBH Provider Network Manager Leader and Participant CMHSP PNM staff, as appointed by the Participant CEOs/Executive Directors.

Regional Information Technology Committee is established to advise the EO and is comprised of both SWMBH CIO and Participant CMHSP IS/IT staff, as appointed by the Participant CEOs/Executive Directors.

Customer Services Committee is established to advise the EO and is comprised of both SWMBH staff and Participant CMHSP CS leader, as appointed by the Participant CEOs/Executive Directors.

Regional Compliance Coordinating Committee consists of both SWMBH Chief Compliance Officer and CMHSP Compliance Officers as appointed by the Participant CEOs/Executive Directors. It is established to insure sharing of Compliance knowledge and best practice among the participants.

Each Committee shall have a Charter, subject to review by the Operations Committee. Periodic Operations Committee reviews of Committee Charters at the direction of the Operations Committee and SWMBH EO.

Responsibilities of SWMBH and Participants Regarding the Participants and Committees

SWMBH EO and the Participant CMHSP CEOs/Executive Directors shall mutually assure communication and collaboration including but not limited to:

- A. Provide all parties, in a timely manner, copies of correspondence of a substantive nature to allow full consideration and deliberation prior to being called on to take action on such items. This includes but is not limited to: 1) policy, 2) contracts, 3) funding, 4) State and federal mandates, 5) items requiring a parties action and 6) legislative initiatives;
- B. Provide all parties with copies of minutes from meetings attended by staff as representatives of SWMBH, and provide timely reports to the Operations Committee, as requested;
- C. It is the intent of the parties to operate an efficient and well managed organization, keeping cost reasonable, thus allowing a maximum flow of funding for services. To this end all parties will share in representing the SWMBH at State level meetings and on committees at the regional, State, federal, and any association levels. Only those authorized to do so by the EO may speak on behalf of SWMBH, and those representing SWMBH are to provide a written summary or minutes of the proceedings. Determination of SWMBH representation, if other than SWMBH staff appointed by the EO, at standing statewide PIHP committees or meetings will be discussed by the Operations Committee;
- D. Provide timely and accurate financial reports, with detail at the level necessary to allow the Participant CEOs/Executive Directors to have a full understanding of fiscal operations and status of SWMBH matters;
- E. Provide data to all parties Boards in a complete and timely manner, and provide additional reasonable detail as requested by the Participants;
- F. Contribute to SWMBH and Participant CMHSPs environmental awareness and SWMBH regional planning activities, including but not limited to strategic planning, Mission development, operational and capital budgeting, growth, infrastructure, products and markets;
- G. Advise the Operations Committee in advance of engaging in any meaningful discussion with other entities that may impact the operations or decision of CMHSPs; and
- H. Establish and sustain a regular schedule for standing committee meetings and arrange for appropriate space and clerical support.

DISPUTE RESOLUTION PROCESS

"The manner for adjudicating a dispute or disagreement among Participants shall be set forth in an Operating Agreement, approved by the Regional Entity Board and incorporated herein by reference."
(SWMBH Bylaws 3.6)

Occasionally disputes may arise that cannot be resolved through amiable discussion. Any unresolved disputes between the Participants or one or more Participant and SWMBH will be resolved as follows:

- 1. The Participant CMHSP CEOs/Executive Directors will attempt to resolve the dispute through discussion with each other, or the SWMBH EO if the dispute is with SWMBH.
- 2. If the dispute remains unresolved, the Participant CMHSP CEOs/Executive Directors, or the SWMBH EO if the dispute is with SWMBH, will bring the matter to the Operations Committee no later than its next scheduled meeting, which will discuss the matter and render a decision within fifteen (15) calendar days of the meeting, or within agreed upon timeframe by involved parties.
- 3. If the dispute continues to be unresolved to the satisfaction of the Participant/s or SWMBH, all parties to the dispute will provide written descriptions of the issue in dispute and propose a solution to the SWMBH Board within fifteen (15) calendar days or within agreed upon timeframe by involved parties. The SWMBH Board will have thirty (30) calendar days or a

mutually agreed upon timeframe to provide a written decision.

4. If the Participant/s or SWMBH remain dissatisfied, the Participant/s or SWMBH may seek mediation, arbitration or legal recourse as provided by PIHP-CMHSP contract and law.
5. Participant sub-contracts will include a Dispute Resolution section congruous with this approach.

OPERATION OF SWMBH

A. Budget

The Finance Committee is charged with advising the EO and SWMBH CFO in the development of the regional annual operating and capital budget; Financial Management Plan, Cost Allocation Plan, and Financial Risk Management Plan, for review by the SWMBH Operating Committee prior to presentation and approval by the SWMBH Board as applicable.

From these plans, annual operating and capital budgets will be developed. The Participants play an integral part in the budget development via its representatives on the SWMBH Finance Committee.

Annual operating and capital budgets will be developed in accordance with the principles outlined in SWMBH Financial Management and Financial Risk Management Plan and Cost Allocation Plans which are incorporated herein by reference and considered a part of this Operating Agreement. The annual operating and capital budgets will be reviewed by the Operations Committee prior to presentation to the SWMBH Board.

The annual operating budget shall plan for adequate funds for projected supports and services to beneficiaries. Budgeting shall consider Participant CMHSPs needs for capital and operating costs, payments of principal and interest on obligations; prudent risk management; reinvestment of Medicaid savings to ensure benefit stabilization; Participant CMHSPs meeting local match obligations for Medicaid; equitable distribution of any surplus funds available after the completion of the Regional Entity's purpose, and operations efficiency and effectiveness across the region.

The SWMBH CFO and Finance Committee may recommend to the EO potential areas where functional consolidation and administrative efficiencies may be achieved. These in turn will be considered by the EO and the Operations Committee. After thorough review, a proposal may be presented to the SWMBH Board for approval if necessary.

Purchase of Services (POS)

Participant CMHSPs singly or in groups may purchase services from SWMBH. Such arrangements shall be documented in writing with mutual agreement as to specification and pricing.

Where there is a POS agreement between SWMBH and one or more Participants, only those Participants who are a party to the agreement will be subject to the terms and conditions of the agreement. Cost associated with any agreements shall be managed between SWMBH and applicable Participants, subject to request for review by the Operations Committee.

Nothing shall prohibit a Participant from withdrawing from an agreement established with SWMBH to provide a service on behalf of the Participant. However, the Participant, once a party to an agreement, will be bound by that agreement and may withdraw only according to the terms of the agreement.

The SWMBH CFO and Finance Committee will establish a financial management system sufficient to monitor revenues and expenditures by funding source (Medicaid, HMP, General Fund, etc.) and the Participants. SWMBH shall maintain accounts and source records in which any and all revenues received and expenses incurred are ascertainable and verifiable and include date of receipt /payment and sources of funds. The SWMBH CFO has the responsibilities set forth in MCL § 330.1204b and will be responsible for receiving, depositing, investing, and disbursing SWMBH's funds in the manner authorized by SWMBH Bylaws, Board policy, and operational policy.

B. Planning

The SWMBH Board, in collaboration with the Operations Committee and the EO, will develop and publish a mission statement and vision statement consistent with the principles of SWMBH.

Per Board directive the EO will facilitate a planning session, involving the SWMBH Board and the Operations Committee to create, update, or modify the Long-Term Plan of SWMBH. The process will allow for broad input and is intended to meet all contractual and accreditation requirements. The SWMBH Board will approve the Long-term Plan prior to its publication.

C. Compliance

All parties recognize that SWMBH is a regional entity, and holds distinct and different legal status and responsibilities than the Participants. SWMBH is the Department designated PIHP and CA Office for the Southwest Michigan service area.

Throughout the implementation of this Operating Agreement, all parties enter into this arrangement in a spirit of good faith and cooperation. All parties recognize that SWMBH may need to, at the discretion and with the advanced approval of the SWMBH EO and his/her designee, conduct random audits and/or reviews of the Participants. Such activity would occur with timely notice to the Participant CEOs/Executive Directors and Participant Compliance Officer to communicate rationale for the review and findings. The Participants acknowledge that SWMBH is responsible for ensuring that covered services and administrative services furnished by and through the Participants are furnished and compensated in accordance with applicable laws and regulations. Accordingly, on behalf of itself and its providers, the Participants acknowledge that SWMBH has the right, responsibility and authority:

1. To detect and deter compliance violations by the Participants and their providers by any lawful means, including monitoring and announced audits; and
2. In conjunction with the Participant CMHSPs Compliance Officer to independently investigate alleged or suspected compliance violations by the Participants, a network provider, or an employee, owner, or governing body members of either.

The Participants acknowledge their obligation to submit all requested financial and quality data and reports within the timelines as found in subcontracts, MDHHS directives or as agreed upon. Should a Participant CMHSPs not submit requested financial and quality data and reports in a complete, valid and timely manner, SWMBH will be empowered to take corrective action, including agreed upon sanctions, in accordance with the terms of the SWMBH/CMHSP Contract.

D. Human Resources

SWMBH will directly employ the EO, CFO, and CIO. The Operations Committee may recommend to the SWMBH EO the use of other hired staff, or the use of a contract to secure other established positions as required.

The SWMBH EO shall appoint, or contract with, an individual or an organization to perform Human Resources functions.

The employee handbook of SWMBH shall be made available upon request to the Operations Committee.

The SWMBH Board has sole responsibility for all hiring and retention decisions regarding the SWMBH EO. The Operations Committee shall assist the SWMBH Board in this process as requested. This may include screening candidates to ensure the SWMBH Board receives only qualified applicants to consider and participation in the interview and evaluation process

E. Policy Development

The SWMBH EO, making full use of the Operations committee and standing committees, shall develop policies, exclusive of SWMBH internal operational policies.

The SWMBH EO shall consult with the Operations Committee before rendering a formal policy interpretation that may materially or negatively affect the Participants where feasible.

F. Contracts

SWMBH shall contract with the Participants as its CMHSP providers.

SWMBH, consistent with regulatory requirements and funds availability may consider with review from Operations Committee providing Participants with pilot or startup funding. Nothing other than federal or state statutory or regulatory prohibition should inhibit or prohibit a Participant CMHSPs from participating in opportunities to provide integrated and accountable care to serve the Medicaid population in its CMHSP catchment area provided that they are consistent with SWMBH policies, financial plan, financial risk management plan and cost allocation plan.

Consistent with the SWMBH mission, vision, and principles, all grant applications submitted on behalf of SWMBH must be reviewed by the Operations Committee prior to being submitted. This may necessitate review outside the regularly scheduled Operations Committee meetings due to funding application grant timelines.

The SWMBH EO shall, in consultation with Operations Committee, determine what functions remain with SWMBH and which can be delegated to the Participants consistent with the Medicaid Managed Care Rules.

The Operating Committee shall be consulted regarding significant contract arrangements that involve SWMBH and Participant CMHSPs. Nothing herein prohibits the participant CMHSPs from entering into opportunities at the local level to provide services.

“2.4.1 The Regional Entity shall have no powers, rights or authority with respect to:

- the Participants’ obligations under the Mental Health Code including those related to size,

composition, and authority of the Participants' Board;

- the Participants' autonomous administrative, financial, or clinical operations; or
- the Participants' relationship with other providers unless the Regional Entity's involvement is so limited that it does not prevent the Participant from collaborating with other providers."

(SWMBH Bylaws 2.4)

AMENDMENTS

This Operating Agreement shall be reviewed and an Operations Committee Self-Evaluation shall be performed by the Operations Committee on an annual basis, with a report to the Board on both. Any recommended changes to the Operating Agreement will be forwarded to the SWMBH Board for consideration. All revisions or amendments to the Operating Agreement shall be in writing and formally approved by the SWMBH Board.

June 5th, 2024

To: Brad Casemore, Chief Executive Officer - SWMBH
Mila Todd, Chief Compliance Officer - SWMBH

RE: Inpatient Hospitalization Continued Stays Authorization

As you know, I have been diligently looking to get back inpatient hospitalizations from SWMBH. I know that SWMBH has taken the stance that you are in full authority to delegate or not delegate functions, in this case, inpatient hospitalizations. I believe that you have taken authority that you do not have when it comes to inpatient hospitalizations:

I have thoroughly reviewed as many documents as I can. These documents include the SWMBH Contract, SWMBH Bylaws, SWMBH MOUs, SWMBH Operating Agreement, Constitution of the state of Michigan, DHHS Behavioral Health and Developmental Disabilities Administration—Community Health Programs, and finally, Michigan Department of Community Health Behavioral Health and Developmental Disabilities Administration (Cost Reporting Instructions).

I would like to start with the Administrative Rules:

- R330.2005 Minimum Services to be Provided.
 - Rule 2005. A community mental health board shall ensure that the following minimum types and scopes of mental health services are provided to all age groups **directly by the board**, by contract, or by formal agreement with public or private agencies or individuals contingent on legislative appropriation of matching funds for provision of these services
 - Emergency Intervention Services.
 - Prevention services.
 - Outpatient Services .
 - Aftercare services.
 - Day Program and activity services.
 - Public information services.
 - **Inpatient services.**
 - Community/caregiver services.

As a community mental health, I am responsible for providing Inpatient services. This doesn't say that it can be limited, or granted via the PIHP, it says that I am to provide those services.

Michigan State MCL (Mental Health Code) 330.1116:

Section 116 2 b

(b) Administer the provisions of Chapter 2 so as to promote and maintain an adequate and appropriate system of community mental health services programs throughout the state. In the administration of Chapter 2, it shall be the objective of the department to shift primary responsibility for the direct delivery of public mental health services from the state to a community mental health services program whenever the community mental health services program has demonstrated a willingness and capacity to provide an adequate and appropriate system of mental health services for the citizens of that service area.

Rest assured that we are more than willing and able to provide St. Joseph County citizens with the authorizations and coordination of care required for inpatient hospitalization.

SWMBH MOU, specifically CFR 438.210 & 438.230:

- 210 specifically speaks to coverage and authorization of services. It doesn't state that you must provide the authorization; it does instead state that you:
 - (a)(1) Identify, define, and specify the amount, duration, and scope of each service that the MCO, PIHP, or PAHP is required to offer.
 - **(b) Authorization of services.** For the processing of requests for initial and continuing authorizations of services, each contract must require—
 - **(1)** That the MCO, PIHP, or PAHP and its subcontractors have in place and follow written policies and procedures.
 - **(2)** That the MCO, PIHP, or PAHP—
 - **(i)** Have in effect mechanisms to ensure consistent application of review criteria for authorization decisions.
 - **(ii)** Consult with the requesting provider for medical services when appropriate.\
 - **(iii)** Authorize LTSS based on an enrollee's current needs assessment and consistent with the person-centered service plan.
 - **3)** That any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested be made by an individual who has appropriate expertise in addressing the enrollee's medical, behavioral health, or long-term services and supports needs.

SWMBH has taken undue authority to claim responsibility for this process.

- 230 specifically speaks to your requirement to document any delegation and information needed for a subcontract. Again, this doesn't state that you have the authority to withhold my ability to provide, authorize, and handle all aspects of inpatient care.
- 240 (as referenced in MOU) specifically talks about Quality Assessment and performance improvement projects, which have nothing to do with authorizing services. It does speak to you monitoring our over- and underutilization, which you do yearly for our annual audits. Again, this has nothing to do with you authorizing the services; it does speak to you reviewing what we authorize and whether we follow standards set forth via the PIHP.



SWMBH Operating Agreement

Page 12 of 13 specifically states: The regional entity shall have no powers, rights, or authority with respect to:

- The participant's obligations under the Mental Health code, including those related to size, composition, and authority of the Participants' board;
- the Participants' autonomous administrative, financial, or clinical operations;

SWMBH limiting my ability to authorize, continue to authorize (continued stays), and participate in the discharging of clients as part of the continued stay process, is one of the core responsibilities of a community mental health organization regardless of insurance source, and this is particularly true concerning inpatient authorization, etc. found in Chapter 4 of the mental health code. This is of particular interest as SWMBH does not have the authority to authorize or continue to authorize the use of my GF, especially when it comes to inpatient hospitalizations, and there are no provisions in any of our contracts, MOUs, etc., that delineate that.

SWMBH BYLAWS

- 2.4 Participant Retained Powers: The participant shall retain all powers, rights, and authority afforded community mental health services programs, organized and operated as county mental health authorities, agencies, or organizations under the Mental Health Code.
- SWMBH limiting my ability to authorize, continue to authorize, and participate in the discharging of clients is one of the core responsibilities of a community mental health organization.

Lastly, the Michigan Department of Community Health Behavioral Health and Developmental Disability's Administration Administrative Costs reporting.

- Page 6
 - SWMBH has taken the stance that they have used this document to determine what UM is and what can or cannot be delegated. However, this document does something completely different. It tells the PIHP and the CMHSP how to allocate their funding while performing the services described by the Administrative Costs. This does not in any way limit the CMH agency from performing or not performing any duty, task, or requirement.



Main Office
677 E. Main Street
Centreville, MI 49032

Three Rivers Office
1020 Millard Street
Three Rivers, MI 49093

Sturgis Office
1555 E. Chicago Rd., Suite A
Sturgis, MI 49091

Phone: 269.467.1000 • Crisis Line: 1.800.622.3967 • www.PivotalStJoe.org





Given the following documentation provided and the Mental Health Code, I suspect we will need to have a further conversation amongst all CMHs minus ISK as they are still "granted" the "authority" from SWMBH to retain this function.

Thank you for your time, and I look forward to hearing from you soon.

Respectfully,

Cameron Bullock, MBA

Pivotal Chief Executive Officer



Main Office
677 E. Main Street
Centreville, MI 49032

Three Rivers Office
1020 Millard Street
Three Rivers, MI 49093

Sturgis Office
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Exhibit 4

Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI, 49002

P: 800-676-0423

F: 269-883-6670

September 19, 2024

Cameron Bullock

CEO, Pivotal

Via email only

Re: Request for Delegation of Inpatient Continuing Stay Reviews

Dear Cameron:

Pivotal requested that SWMBH delegate inpatient continuing stay reviews to Pivotal. SWMBH is declining to move forward with a pre-delegation assessment, which is required under the Code of Federal Regulations, at this time based on the following:

- MDHHS has indicated that under its Conflict Free Access and Planning (CFAP) implementation plan, PIHPs will be precluded from delegating Utilization Management to Participant CMHSPs. There is an MDHHS-initiated CFAP meeting with PIHPs on November 1, 2024. In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time.
- Pivotal was cited in the FY24 CMH Site Review process for UM Standard 11, related to training staff on the Milliman Care Guidelines (MCG). Deficiencies noted included that staff were not trained on MCG for use in inpatient Pre-Admission Screening determinations. MCG is the MDHHS-required medical necessity criteria for both pre-admission screening as well as continuing stay determinations. Continued monitoring of Pivotal's implementation of its Corrective Action Plan will occur according to the Site Review monitoring process.

Pivotal's request for delegation further asserted that SWMBH has no authority over Pivotal's General Funds, and therefore Pivotal should complete inpatient continuing stay review determinations for Individuals funded under General Fund. It is a correct assertion that SWMBH does not have authority over Pivotal's General Funds. Historically, these reviews have been completed by SWMBH because hospitals are required to assist individuals in submitting applications for Medicaid coverage, and often individuals who received inpatient psychiatric services receive retroactive Medicaid coverage such that the inpatient stay is ultimately paid out of Medicaid funds. At Pivotal's request, SWMBH will cease in performing continuing stay reviews for Pivotal members who do not have Medicaid coverage, effective October 1, 2024 for all new admissions. **Please provide a telephone number for Pivotal UM reviewers that SWMBH may provide to hospitals that contact SWMBH.** It is SWMBH's very strong recommendation that Pivotal:

- Notify inpatient providers of the change in process.
- Ensure continuing stay reviews are being completed in accordance with all Medicaid requirements. In the event an individual receives retroactive Medicaid coverage, all Medicaid requirements must have been met, including use and documentation of MCG criteria for continuing stay medical necessity determinations, in order for Medicaid funds to be used. As you know, it is in the Region's best interest to capture every valid Medicaid cost and encounter, including those for retroactive Medicaid enrollment.

Should you have any questions or concerns, please feel free to contact me. Thank you.

Regards,



Mila C. Todd, Esq., CHC, CHPC
Chief Compliance & Privacy Officer
Director of Provider Network Management

Cc: Brad Casemore, Anne Wickham



Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI, 49002

P: 800-676-0423

F: 269-883-6670

September 19, 2024

Jean M. Goodrich
CEO, Summit Pointe
Via email only

Re: Request for Delegation of Inpatient Continuing Stay Reviews

Dear Jeannie:

On August 25, 2024, Summit Pointe requested that SWMBH delegate inpatient continuing stay reviews to Summit Pointe by October 1, 2024. SWMBH is declining to move forward with a pre-delegation assessment, which is required under the Code of Federal Regulations, at this time based on the following:

- MDHHS has indicated that under its Conflict Free Access and Planning (CFAP) implementation plan, PIHPs will be precluded from delegating Utilization Management to Participant CMHSPs. There is an MDHHS-initiated CFAP meeting with PIHPs on November 1, 2024. In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time.
- Summit Pointe was cited in the FY24 CMH Site Review process for UM Standard 11, related to training staff on the Milliman Care Guidelines (MCG). Deficiencies noted included that staff were not trained on MCG for use in inpatient Pre-Admission Screening determinations. MCG is the MDHHS-required medical necessity criteria for both pre-admission screening as well as continuing stay determinations. Continued monitoring of Summit Pointe's implementation of its Corrective Action Plan will occur according to the Site Review monitoring process.

Should you have any questions or concerns, please feel free to contact me. Thank you.

Regards,

A handwritten signature in cursive script that reads "Mila C. Todd".

Mila C. Todd, Esq., CHC, CHPC
Chief Compliance & Privacy Officer
Director of Provider Network Management

Cc: Brad Casemore, Anne Wickham

Ensing, Bryan R.

From: Bullock, Cameron <CBullock@pivotalstjoe.org>
Sent: Thursday, October 24, 2024 11:30 AM
To: Marchand, Neil J.
Cc: Jeannie Goodrich
Subject: Fw: Pivotal Dispute Resolution Step 1 10-14-24

Exhibit 5

CAUTION: ** Ensure you trust and expect email from "cbullock@pivotalstjoe.org" before clicking links/attachments. ** **CAUTION**

See communication below:

Thank you



Cameron Bullock, MBA

Chief Executive Officer

From: Mila Todd <Mila.Todd@swmbh.org>
Sent: Thursday, October 24, 2024 11:27 AM
To: Bullock, Cameron <CBullock@pivotalstjoe.org>
Cc: Brad Casemore <Brad.Casemore@swmbh.org>; Anne Wickham <Anne.Wickham@swmbh.org>
Subject: RE: Pivotal Dispute Resolution Step 1 10-14-24

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning:

Brad asked I respond while he is away – he is included on this response. SWMBH maintains the position that we will not consider completing a pre-delegation assessment until such time as MDHHS announces CFAP specifications and requirements. I emailed Kristen Jordan on Monday asking when we can expect that information to be released. In previous iterations of MDHHS's CFAP implementation plan, PIHPs were precluded from delegating Utilization Management (albeit "utilization management" was undefined). I am happy to schedule a bilateral meeting with applicable subject matter experts for the purpose of developing strategies to improve existing business processes including communication and coordination, with the ultimate goal of improving member care by reducing lengths of stay and readmissions. We can also use this meeting to discuss the delegation consideration process and timeline. The MDHHS-PIHP Agreement contains a specific requirement that revised Delegation Agreements be sent to MDHHS at least 90 calendar days prior to the proposed effective date of any new delegation for MDHHS review and approval (Standard Contract Terms, Paragraph 11).

Let me know if you'd like me to schedule the meeting referenced above. Thank you.

Regards,
Mila C. Todd, Esq., CHC, CHPC
Chief Compliance & Privacy Officer
Director of Provider Network
www.swmbh.org

From: "Bullock, Cameron" <CBullock@pivotalstjoe.org>
Date: October 22, 2024 at 10:05:48 AM EDT
Cc: Brad Casemore <Brad.Casemore@swmbh.org>
Subject: Re: Pivotal Dispute Resolution Step 1 10-14-24

CAUTION: External Email

Brad,

As CFAP meeting was canceled. What are my next steps to get this back?

I would to have this back no later than 12/1.

I do not believe that waiting for CFAP is going to be a hindering me taking it back, or negatively affect my ability to fo continue stays.

Thank-you

Cameron

Cameron Bullock, MBA
Chief Executive Officer



677 E Main St
Centreville, MI 49032
Cell: 269.503.2814
Work: 269.467.1001 x 308
Fax: 269.467.3075
www.pivotalstjoe.org

From: Michelle Jacobs <Michelle.Jacobs@swmbh.org>
Sent: Monday, October 14, 2024 1:30:14 PM
To: Bullock, Cameron <CBullock@pivotalstjoe.org>
Cc: Brad Casemore <Brad.Casemore@swmbh.org>; Mila Todd <Mila.Todd@swmbh.org>; Anne Wickham <Anne.Wickham@swmbh.org>
Subject: Pivotal Dispute Resolution Step 1 10-14-24

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Cameron,

Attached please find a letter regarding Pivotal Dispute Resolution Step 1 10-14-24.

Thank you,

Michelle Jacobs
Senior Operations Specialist - Office of the CEO;
Rights Advisor
Southwest Michigan Behavioral Health
P: 269-488-6845
www.swmbh.org



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Exhibit 6

Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI 49002

P: 800-676-0423

F: 269-883-6670

October 14, 2024

Cameron Bullock CEO Pivotal

Regarding Pivotal Dispute Resolution Process Step 1 expansion of delegation of inpatient psychiatric services Utilization Management (UM)

Cameron,

This serves as my response subsequent to our October 10, 2024 Dispute Resolution Step 1 meeting on the above-captioned topic. I referred to our September 19, 2024 letter to you throughout the meeting.

1. I clarified and confirmed that our September 19 declination was a temporary pause in initiating our consideration process and was not a blanket "no, never."
2. I reinforced that further MDHHS pronouncements on Conflict Free Access & Planning (aka conflict free case management) will inform SWMBH central care management and CMH local care management utilization management roles, authorities and business processes. At September 19 2024 there was to be a November 1, 2024 MDHHS-PIHP meeting on CFAP. That meeting has been canceled by MDHHS with no known reschedule date. Current lack of MDHHS CFAP specifications remains a basis for our pause in considering your requested expansion of delegated utilization management for inpatient psychiatric services. From our September 19 letter *"In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time."* More information from MDHHS will be known and shared with the region hopefully in the near future. Until that time our pause on considering your request remains. I recognize you disagree with this decision and further that you believe we do not have the authority to determine delegation of utilization management for Medicaid.
3. Regarding MCG Criteria training and proper usage I understand your position that no CAP request should have been issued by SWMBH based on your view that there is no or limited guidance from SWMBH on this. Regardless please continue your efforts to know and plan for adherence to written SWMBH guidance on MCG Criteria and related training. Once your prospective assurances are in place we will no longer consider this a contingency to considering your request.

Serving Barry, Berrien, Branch, Calhoun, Cass, Kalamazoo, St. Joseph and Van Buren Counties



You mentioned that you seek written contractual and/or SWMBH Policy clarity on the MCG Annual Training requirement as you cannot find that guidance. I agree SWMBH needs to put specifications in place if they are lacking.

4. I confirmed that our October 10, 2024 meeting fulfills the Dispute Resolution Step 1 process on this topic thus any future Dispute Resolution moves to Step 2 if on this same topic.

I take seriously your examples of opportunities to improve communications amongst and between Pivotal, SWMBH Central Care Management and hospitals. Anne Wickham the Chief responsible for Call Center and UM stands ready to hear and address opportunities for improvement apart from any Dispute Resolution process.

I mentioned some of our probable future considerations regarding your Ask. Pivotal is free to but not obligated to prepare responses to those and/or other pre-delegation assessment issues anticipating future consideration of your Ask. Please note that process if initiated is an operational matter not a component of this Dispute.

Respectfully,

Bradley P. Casemore



Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI 49002

P: 800-676-0423

F: 269-883-6670

October 8, 2024

Jeannie Goodrich CEO Summit Pointe

RE: Summit Pointe Dispute Resolution Process Step 1 Expansion of Delegation of inpatient psychiatric services Utilization Management (UM)

Jeannie,

This serves as my response subsequent to October 3, 2024 Dispute Resolution Step 1 meeting on the above-captioned topic. I referred to our September 19, 2024 letter to you throughout the meeting.

1. I clarified and confirmed that our September 19 declination was in reference to your request to expand the delegation October 1, 2024 and was not a blanket "no, never."
2. I reinforced that further MDHHS pronouncements on Conflict Free Access & Planning (aka conflict free case management) will inform SWMBH central care management and CMH local care management utilization management roles, authorities and business processes. There is a November 1, 2024 MDHHS-PIHP meeting on CFAP. This current lack of certainty remains a basis for our pause in considering your requested expansion of delegated utilization management for inpatient psychiatric services. From our September 19 letter *"In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time."* More information will be known and shared with the region after we analyze MDHHS November 1 guidance. I suggested scheduling a bilateral SWMBH-Summit Pointe follow-up meeting regarding your request the week of November 11, 2024. That meeting would not include me and is not part of the Dispute Resolution process. Please let Mila know if you would like to set that meeting.
3. Regarding MCG Criteria training and proper usage please continue your efforts to complete the related Corrective Action Plan. Once that is lifted and the prospective assurances are in place and underway we will no longer consider this a contingency to considering your request. You mentioned that you seek contractual and/or SWMBH Policy clarity on the MCG Annual Training requirement. I concur SWMBH needs to put that in place if it is lacking.
4. I confirmed that our October 3, 2024 meeting fulfills the Dispute Resolution Step 1 process thus any future Dispute Resolution steps move to Step 2 if on this same topic.

Serving Barry, Berrien, Branch, Calhoun, Cass, Kalamazoo, St. Joseph and Van Buren Counties



I mentioned some of our probable future considerations regarding your Ask. Summit Pointe is free to but not obligated to prepare responses to those and/or other pre-delegation assessment issues. Please note that process if initiated is an operational matter not a component of this Dispute.

Respectfully,

A handwritten signature in black ink that reads 'Bradley P Casemore'. The signature is written in a cursive, flowing style.

Bradley P. Casemore

SOUTHWEST MICHIGAN BEHAVIORAL HEALTH PREPAID INPATIENT HEALTH PLAN

Effective October 1, 2018

CMHSP Participant: Memorandum of Understanding

This Memorandum of Understanding (hereinafter referred to as the "MOU") between Southwest Michigan Behavioral Health (SWMBH) acting in its capacity as the Pre-paid Inpatient Health Plan (PIHP) and Community Mental Health and Substance Abuse Services of St. Joseph County (CMHSP Participant) made and entered into by both parties on October 1, 2018, supersedes and replaces any and all previous versions of this MOU, and sets forth Services and Responsibilities agreed to by SWMBH and Community Mental Health and Substance Abuse Services of St. Joseph County.

I. Agreement Purpose:

The purpose of this Agreement is to document the terms and conditions by which SWMBH delegates certain required PIHP administrative functions and responsibilities to the CMHSP Participant consistent with the CMS regulations pertaining to subcontractual relationships and delegation [CFR: 438.230].

Delegation of each administrative responsibility is considered independent and as such, requires acknowledgement by both SWMBH and the CMHSP Participant [CFR: 438.230(c)(1)(ii)].

Delegation of each separate administrative responsibility is solely at the discretion of SWMBH. The SWMBH retains full oversight responsibility for all delegated activities, and all delegated activities must be carried out in observance of applicable federal regulations, terms of contract between MDHHS and SWMBH, SWMBH Sub-Contract Agreement and SWMBH policies and standards.

Southwest Michigan Behavioral Health is obligated to assure prospective development, documentation and distribution to CMHSP participants of new and revised policies and procedures impacting participants' functions. This shall occur, among other means, through review at Committee(s), SWMBH website placement of policies, distribution of provider manuals, Technical Advisory Bulletins, and special alerts. Terms and conditions retroactively imposed by MDHHS or other legitimate authority are exempted from this pledge.

Any SWMBH action related to participant sub-contract penalties, sanctions or termination shall be guided by and subject to the terms and conditions of the participant sub-contract.

The CMHSP Participant shall demonstrate continuous full competency and capacity to fulfill the responsibilities identified below. The CMHSP Participant shall be aware of Medicaid Managed Care Rule requirements, PIHP contractual obligations and SWMBH policies; and shall perform the delegated activities and reporting responsibilities as specified in those requirements. The CMHSP Participant agrees to comply with all applicable Medicaid laws, regulations including sub-regulatory guidance, and contract provisions (438.230(c)(2)).

The CMHSP Participant may not sub-delegate any delegated function without obtaining prior written authorization from SWMBH's Executive Officer. Participating CMHSPs are encouraged to consider functional sharing arrangements for delegated functions. Such sharing arrangements must include SWMBH Executive Officer or his/her designee in the design discussions and methodology development, prior to any implementation.

Pre-Assessment of CMHSP PARTICIPANT's Capacity to Perform Delegation:

SWMBH completed a pre-delegation assessment to evaluate the delegated entity's capacity to perform the delegated activities prior to any delegation.

On-Going/Annual Assessment of Delegation Functions:

It is understood and agreed by both parties that SWMBH maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with the State. To assure adherence with these requirements, SWMBH will monitor and assess that the CMHSP Participant is appropriately carrying out its delegated responsibilities and is complying with required SWMBH (and CMS/MDHHS) policies, standards and contract terms for all delegated functions.

Such on-going monitoring will be obtained through various performance activities of SWMBH sub-committees, contract monitoring and review(s) of the CMHSP Participant's operational practices, local policies and procedures, and internal documentation pertaining to all delegated functions. In addition, remote electronic oversight and monitoring/data analysis may occur.

The CMHSP Participant shall identify to SWMBH a single authoritative managerial point of contact for each delegated function, and update SWMBH promptly if said person(s) change over time. The CMHSP Participant shall make reasonable efforts to make this person and related persons available to SWMBH for training, reporting, and monitoring, on an as-needed basis.

Compliance Expectations:

CMHSP Participant must have and maintain practices that are adequate to fulfill its obligations under each sub-contract. In the event that the CMHSP Participant fails to meet established criteria for performance of a delegated function, corrective action will be required. Persistent non-compliance could lead to revocation of the delegated function (42 CFR 438.230(c)(1)(iii)).

A CMHSP Participant will be given written notice of areas of non-compliance and/or performance below standard of the delegated function(s). The CMHSP Participant will be expected to take immediate action to correct the performance deficiency and to document and submit such improvement efforts to SWMBH for approval and follow-up monitoring. Should the CMHSP Participant fail to comply with the requirements of the Plan of Correction or improve performance within the time-period acceptable as stated in writing by SWMBH, SWMBH may revoke the delegated function(s). Non-compliance and/or sub-standard performance in one delegated functional area does not automatically jeopardize delegation to the CMHSP Participant in another functional area. Similarly, the revocation of one delegated function may not affect another delegated function where the CMHSP Participant is performing satisfactorily.

Written notice from SWMBH to the CMHSP Participant is required prior to revocation of any delegated function. Should a delegation(s) be revoked, the CMHSP Participant still remains under obligation to the terms of its contract with SWMBH and shall continue to observe SWMBH policies and standards as a provider of service.

The CMHSP Participant understands and agrees that (42 CFR 438.230):

- 1) The State, CMS, the HHS Inspector General, the Comptroller General, or their designees have the right to audit, evaluate, and inspect any books, records, contracts, computer or other electronic systems of the CMHSP Participant or of its contractors, that pertain to any aspect of services and activities performed, or determination of amounts payable under SWMBH's

contract with the State.

- 2) The CMHSP Participant will make available, for purposes of an audit, evaluation, or inspection under the above section (1), its premises, physical facilities, equipment, books, records, contracts, computer or other electronic systems relating to its Medicaid enrollees.
- 3) The right to audit under exists through 10 years from the final date of the contract period or from the date of completion of any audit, whichever is later.
- 4) If the State, CMS, or the HHS Inspector General determines that there is a reasonable possibility of fraud or similar risk, the State, CMS, or the HHS Inspector General may inspect, evaluate, and audit the CMHSP Participant at any time.

II. Delegated Functions [Mental Health services and outpatient SUD services provided by the CMHSP Participant directly]

I. Utilization Management	
<p>The PIHP shall delegate the following Utilization Management activities to the CMHSP PARTICIPANT:</p> <p><i>Legal References:</i></p> <ul style="list-style-type: none"> ▪ 42 CFR 438.210 ▪ MDHHS Contract: Attachment P.6.7.1.1 	<ol style="list-style-type: none"> 1) Access and Eligibility Determination. The CMHSP Participant shall: <ol style="list-style-type: none"> a) Screen for both clinical eligibility and financial eligibility using MDHHS contractually mandated standardized screening tools; b) Provide for a second opinion from a network provider, or arrange for the enrollee to obtain one outside the network, at no cost to the enrollee; c) For SUD services only, offer choice of provider from SWMBH's Provider Network. 2) Utilization Management Protocols <ol style="list-style-type: none"> a) CMHSP Participant shall adhere to Payor standards for the following: <ol style="list-style-type: none"> i) Medical Necessity criteria and determinations; ii) Level of Care assessments; iii) Service intensity or selection criteria; and iv) Services requiring specialist review. b) CMHSP Participant shall be responsible for implementation and application of the PIHP Utilization Management Policy and Plan. c) CMHSP Participant shall participate in the development, dissemination, and application of Practice Guidelines. 3) Authorization <ol style="list-style-type: none"> a) Initial approval or denial of requested services (42 CFR 428.210; 42 CFR 438.240) <ol style="list-style-type: none"> i) Initial assessment for and authorization of psychiatric inpatient services up to three (3) days (or four (4) days only if necessitated by a holiday); ii) Initial assessment for and authorization of psychiatric partial hospitalization services up to three (3) days (or four (4) days only if necessitated by a holiday); iii) Initial assessment for and authorization of crisis residential services up to three (3) days (or four (4) days only if necessitated by a holiday); iv) Initial and ongoing authorization of non-SUD services to individuals receiving community based services. v) SUD Services: Initial and ongoing authorization of SUD services provided by the CMHSP Participant directly. b) CMHSP Participant shall follow SWMBH policies on prospective (preauthorization), concurrent, and retrospective reviews. When the CMHSP Participant is conducting service authorization, it shall have internal procedures that include: <ol style="list-style-type: none"> i) Review decisions are supervised by qualified medical professionals. ii) Decisions to deny or reduce services are made by health care professionals who have the appropriate clinical expertise to treat the conditions. iii) The reasons for decisions are clearly documented. iv) The reasons for decisions are provided (made available) to the beneficiary. v) Notification of any decision to deny a service authorization request, or to authorize a service in an amount, duration, or scope that is less than requested, is

	<p>sent to the beneficiary in writing. (42 CFR 438.404).</p> <p>vi) Notification is given to the provider, in writing, of any decision to deny a service authorization request, or to authorize a service in an amount, duration, or scope that is less than requested.</p> <p>vii) Notification of a denial includes a description of how to file an appeal.</p> <p>viii) UM decisions are made in a timely manner in accordance with SWMBH policies and applicable laws, rules, and regulations.</p> <p>ix) Decisions on appeals are made in a timely manner in accordance with SWMBH policies (timelines).</p> <p>4) Utilization Review</p> <p>a) CMHSP Participant shall:</p> <ol style="list-style-type: none"> Have procedures to ensure review of individual, provider and programmatic data to ensure Level of Care criteria is being consistently applied; and Participate in regional review of aggregate data and improvement to Level of Care guidelines. <p>5) Coordination of Care</p> <p>a) CMHSP Participant shall have procedures to ensure the following:</p> <ol style="list-style-type: none"> Coordination occurs between the primary care physicians and the CMHSP Participant and/or its sub-network. (42 CFR 438.208) The services of the CMHSP (or sub-network) furnished to a Medicaid beneficiary are coordinated with other MCO (MHPs, ICOs), and PIHPs/CMHSPs. (42 CFR 438.208(b)(2)) Results of beneficiary assessments performed by the CMHSP (or sub-network) are shared with MCOs (i.e. MHPs and their PCPs), and other PIHPs serving the beneficiary in order to prevent duplication of services. (42 CFR 438.208(b)(3))
Reporting Requirements	<ol style="list-style-type: none"> Pre-screen documentation for acute care admissions must be completed according to SWMBH policy. Maintenance and submission of documentation of non-emergent CMHSP Participant utilization management activities when requested. Submission of functional assessment tool scores.

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<p>The PIHP shall delegate the following Customer Services activities to the CMHSP PARTICIPANT:</p> <p>Legal References:</p> <ul style="list-style-type: none"> ▪ 42 CFR 438.10 ▪ 42 CFR 438.100 ▪ 42 CFR 438.228 ▪ 42 CFR 438.400 ▪ 42 CFR 438.402 ▪ LEP Policy Guideline 	<p>The CMHSP participant shall possess knowledge of and adhere to related Managed Care Final Rule requirements under sections 438.10 and 438.100, and SWMBH policies regarding Enrollee Rights</p> <ol style="list-style-type: none"> Information Services <ol style="list-style-type: none"> Including but not limited to: <ol style="list-style-type: none"> Development and dissemination of informational brochures, coordination of community and stakeholder input and dissemination of specialized information about PIHP benefit plans, beneficiary (recipient) rights, grievance and appeals and second opinion processes, service providers and treatment and support practices, including development of culturally sensitive and/or alternative communication systems. Orienting new and potential plan members to the services and benefits available, the process for accessing services, due process rights, and how to receive services in language of preference (Limited English Proficiency). Make oral interpretation services available free of charge to each potential enrollee and enrollee. Provide written materials in an easily understood format; taking into consideration the special needs of those who, for example, are visually limited or have limited reading proficiency Accommodations for customers with physical disabilities, hearing and vision

<p>(Executive Order 13166 of August 11, 2002).</p> <ul style="list-style-type: none"> ■ Federal Register Vol 65, August 16, 2002. ■ Americans with Disability Act (ADA) 	<p>impairments, limited-English proficiency, and/or alternative forms of communication.</p> <ul style="list-style-type: none"> vi) Orienting the general community on the availability of eligibility criteria, services offered, and accessibility including who may be excluded from enrollment, subject to mandatory enrollment or free to voluntarily enroll. vii) Outreach activities to identify and establish communication with under-served groups. viii) The CMH participant will answer customer questions; provide requested information, and assist customers in filing complaints, grievances or requesting appeals. Customer Services Representatives of the CMHSP must maintain information concerning benefits, network providers, network policies and procedures, access to services, authorizations, grievance/appeals process, and local transportation options for those customers that are eligible. ix) Enrollee Rights or Customer Services departments will maintain a current participating provider and community resource list available to plan customers upon request. x) The CMHSP participant shall provide the following information to all customers of its CMHSP participant sub-network: Names, locations, telephone numbers of, and non-English languages spoken by current sub-network providers in the customer's service area, including information at least on sub-panel providers and panel specialists when determined needed or requested. xi) The CMH participant will ensure that enrollees are informed of their right to be treated with dignity and respect, to participate in decisions regarding their health care- including the right to refuse treatment, to be free from seclusion or restraint, and that they may request a copy of their medical records as held by the CMHSP. xii) The CMHSP participant must ensure each enrollee is free to exercise their rights and that exercise of those rights does not adversely affect how they are treated. xiii) The CMHSP participant shall make a good faith effort to give written notice of termination of a contracted provider (organizational) within 15 days after receipt or issuance of the termination notice, to each customer who received his or her services from the terminated provider. <p>2) Customer Complaint, Grievance and Appeals Processes</p> <ul style="list-style-type: none"> a) Ensure that staff members are trained in Grievance and Appeal options for customers as well as Notice of Adverse Benefit Determination requirements, if applicable to their job responsibilities; b) Investigation, management, and documentation of informal issues and grievances; c) Investigation, management, and documentation of all formal grievances, appeals, and complaints, including local dispute resolution (Due Process, Recipient Rights); d) Cooperate and support SWMBH with the Fair Hearing investigation and process; e) Maintain logs of customers who have been subject to an "Adverse Benefit Determination"; f) Ensure that Notice of Adverse Benefit Determination forms and provision procedures are in compliance with Payor standards, the Managed Care Final Rule, MDHHS contractual Technical Requirements, and any other applicable rules and regulations; g) Ensure complete, timely, and accurate entries into management information systems/applications; h) Active involvement in regional information management analysis and remediation activities. <p>3) Community Benefit. These activities are focused on the entire service area population, or sub-groups of that population, and should include but are not limited to:</p> <ul style="list-style-type: none"> a) Community collaborative activities designed to promote wellness, healthy communities, and coordinate human services delivery systems of care; b) Community emergency and trauma services; c) Partnerships with community organizations to provide specialty health services education and information; d) Outreach activities and screenings for health conditions such as depression, eating disorders, etc.; e) Participation in community planning groups.
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Reporting Requirements	1. Complete, timely and accurate entry of grievance and appeal data into management information systems/applications.

IV. Provider Network Management	
<p>The PIHP shall delegate the following Provider Network Management components to the CMHSP PARTICIPANT:</p> <p>Legal References:</p> <ul style="list-style-type: none"> ▪ 42 CFR 438.206 ▪ 42 CFR 438.106 ▪ 42 CFR 438.214(d) ▪ 42 CFR 438.12 ▪ 42 CFR 438.207(c)(2) 	<ol style="list-style-type: none"> 1. Network Development (42 CFR 438.206(b)). The CMHSP Participant shall: <ol style="list-style-type: none"> a. Ensure that service availability is in alignment with State-established thresholds b. Maintain and monitor a network of appropriate providers that is supported by written agreements and is sufficient to provide adequate access to all services covered under the contract for all enrollees, including those with limited English proficiency or physical or mental disabilities. c. If the provider network is unable to provide necessary services, covered under the contract, to a particular enrollee, the CMHSP Participant must adequately and timely cover these services out of network for the enrollee, for as long as its provider network is unable to provide them. d. Demonstrate that its network providers are credentialed as required by 438.214, MDHHS contractual requirements, and SWMBH policy. e. Timely access (42 CFR 438.206(c)). The CMHSP Participant must do the following: <ol style="list-style-type: none"> i. Meet and require its network providers to meet State standards for timely access to care and services, taking into account the urgency of the need for services. ii. Ensure that the network providers offer hours of operation that are no less than the hours of operation offered to commercial enrollees or comparable to Medicaid plans/FFS, if the provider serves only Medicaid enrollees. iii. Make services included in the contract available 24 hours a day, 7 days a week, when medically necessary. iv. Establish mechanisms to ensure compliance by network providers. v. Monitor network providers regularly to determine compliance. vi. Take corrective action if there is a failure to comply by a network provider. 2. Contract Management. Should the participant CMHSP sub-contract any covered service to an enrolled network subpanel provider, the CMHSP Participant shall use the SWMBH provider contract boilerplate, if one is available, and the written agreement shall include the Subcontracting requirements outlined in the MDHHS-PIHP Master Contract (Part I, Section 38), and shall ensure the following: <ol style="list-style-type: none"> a. Written subcontract agreements ensure that beneficiaries are not held liable when the PIHP (or CMHSP) does not pay the Provider

	<p>furnishing services under the subcontract (42 CFR 438.106(2)).</p> <p>b. Written subcontract agreements ensure that the beneficiaries are not held liable for payment of covered services furnished under the contract if those payments are in excess of the amount the beneficiary would owe, if the PIHP provided the service directly (42 CFR 438.106(c)).</p> <p>c. Upon termination of provider, written notification will be provided within 15 days to those enrollees receiving services from the provider.</p> <p>3. Network Policy Development.</p> <p>a. The participant CMHSP shall not employ or contract with any provider excluded from participation in federal health care programs under either Section 1128 or Section 1128A of the Social Security Act, and shall have internal procedures on how it can validate its exclusion review practices (42 CFR 438.214(d)).</p>
Reporting Requirements	<ol style="list-style-type: none"> 1. Monthly submission of credentialed providers for final approval by the PIHP as required by MDHHS and PIHP credentialing policies. 2. Sanctioned provider reporting as required by MDHHS and PIHP contractual provisions and policies. 3. Submission of required provider information for entry into provider directory annually with quarterly updates, as needed. 4. Documentation of provider site reviews. 5. Annually, and at any time there has been significant change (as defined by the State) in the CMHSP Participant's or SWMBH's operations that would affect the adequacy of capacity and services, provide documentation in a format as specified by the State and/or SWMBH, to demonstrate that the CMHSP Participant complies with the following requirements: <ol style="list-style-type: none"> a. Offers an appropriate range of specialty services and LTSS that is adequate for the anticipated number of enrollees for the service area; b. Maintains a network of providers that is sufficient in number, mix, and geographic distribution to meet the needs of the anticipated number of enrollees in the service area (42 CFR 428.207(b)(3)).

AMENDMENT OR TERMINATION

This Memorandum will continue to have effect unless amended in writing signed by both parties, or upon the CMHSP Participant giving sixty (60) calendar days advance written notice to SWMBH of CMHSP Participant's desire to relinquish a delegated function(s). SWMBH may revoke a delegated function(s) as provided above.

Signatures continued on next page

IN WITNESS WHEREOF, the authorize representatives of the parties hereto have fully executed this Agreement on the day and year indicated.

WITNESSED BY:

Anna C. Todd

Date 1/2/19

**SOUTHWEST MICHIGAN BEHAVIORAL
HEALTH REGIONAL ENTITY**

BY: Bradley P. Casemore
Bradley P. Casemore

ITS: Executive Officer

**COMMUNITY MENTAL HEALTH AND
SUBSTANCE ABUSE SERVICES OF ST.
JOSEPH COUNTY**

BY: Kristine Kirsch
Kristine Kirsch

Date 21 Dec 2018

ITS: Executive Director

SOUTHWEST MICHIGAN BEHAVIORAL HEALTH PREPAID INPATIENT HEALTH PLAN

Effective October 1, 2018

CMHSP Participant: Memorandum of Understanding

This Memorandum of Understanding (hereinafter referred to as the "MOU") between Southwest Michigan Behavioral Health (SWMBH) acting in its capacity as the Pre-paid Inpatient Health Plan (PIHP) and Calhoun County Community Mental Health Authority d/b/a Summit Pointe (CMHSP Participant) made and entered into by both parties on October 1, 2018, supersedes and replaces any and all previous versions of this MOU, and sets forth Services and Responsibilities agreed to by SWMBH and Calhoun County Community Mental Health Authority d/b/a Summit Pointe.

I. Agreement Purpose:

The purpose of this Agreement is to document the terms and conditions by which SWMBH delegates certain required PIHP administrative functions and responsibilities to the CMHSP Participant consistent with the CMS regulations pertaining to subcontractual relationships and delegation [CFR: 438.230].

Delegation of each administrative responsibility is considered independent and as such, requires acknowledgement by both SWMBH and the CMHSP Participant [CFR: 438.230(c)(1)(ii)].

Delegation of each separate administrative responsibility is solely at the discretion of SWMBH. The SWMBH retains full oversight responsibility for all delegated activities, and all delegated activities must be carried out in observance of applicable federal regulations, terms of contract between MDHHS and SWMBH, SWMBH Sub-Contract Agreement and SWMBH policies and standards.

Southwest Michigan Behavioral Health is obligated to assure prospective development, documentation and distribution to CMHSP participants of new and revised policies and procedures impacting participants' functions. This shall occur, among other means, through review at Committee(s), SWMBH website placement of policies, distribution of provider manuals, Technical Advisory Bulletins, and special alerts. Terms and conditions retroactively imposed by MDHHS or other legitimate authority are exempted from this pledge.

Any SWMBH action related to participant sub-contract penalties, sanctions or termination shall be guided by and subject to the terms and conditions of the participant sub-contract.

The CMHSP Participant shall demonstrate continuous full competency and capacity to fulfill the responsibilities identified below. The CMHSP Participant shall be aware of Medicaid Managed Care Rule requirements, PIHP contractual obligations and SWMBH policies; and shall perform the delegated activities and reporting responsibilities as specified in those requirements. The CMHSP Participant agrees to comply with all applicable Medicaid laws, regulations including sub-regulatory guidance, and contract provisions (438.230(c)(2)).

The CMHSP Participant may not sub-delegate any delegated function without obtaining prior written authorization from SWMBH's Executive Officer. Participating CMHSPs are encouraged to consider functional sharing arrangements for delegated functions. Such sharing arrangements must include SWMBH Executive Officer or his/her designee in the design discussions and methodology development, prior to any implementation.

Pre-Assessment of CMHSP PARTICIPANT's Capacity to Perform Delegation:

SWMBH completed a pre-delegation assessment to evaluate the delegated entity's capacity to perform the delegated activities prior to any delegation.

On-Going/Annual Assessment of Delegation Functions:

It is understood and agreed by both parties that SWMBH maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with the State. To assure adherence with these requirements, SWMBH will monitor and assess that the CMHSP Participant is appropriately carrying out its delegated responsibilities and is complying with required SWMBH (and CMS/MDHHS) policies, standards and contract terms for all delegated functions.

Such on-going monitoring will be obtained through various performance activities of SWMBH sub-committees, contract monitoring and review(s) of the CMHSP Participant's operational practices, local policies and procedures, and internal documentation pertaining to all delegated functions. In addition, remote electronic oversight and monitoring/data analysis may occur.

The CMHSP Participant shall identify to SWMBH a single authoritative managerial point of contact for each delegated function, and update SWMBH promptly if said person(s) change over time. The CMHSP Participant shall make reasonable efforts to make this person and related persons available to SWMBH for training, reporting, and monitoring, on an as-needed basis.

Compliance Expectations:

CMHSP Participant must have and maintain practices that are adequate to fulfill its obligations under each sub-contract. In the event that the CMHSP Participant fails to meet established criteria for performance of a delegated function, corrective action will be required. Persistent non-compliance could lead to revocation of the delegated function (42 CFR 438.230(c)(1)(iii)).

A CMHSP Participant will be given written notice of areas of non-compliance and/or performance below standard of the delegated function(s). The CMHSP Participant will be expected to take immediate action to correct the performance deficiency and to document and submit such improvement efforts to SWMBH for approval and follow-up monitoring. Should the CMHSP Participant fail to comply with the requirements of the Plan of Correction or improve performance within the time-period acceptable as stated in writing by SWMBH, SWMBH may revoke the delegated function(s). Non-compliance and/or sub-standard performance in one delegated functional area does not automatically jeopardize delegation to the CMHSP Participant in another functional area. Similarly, the revocation of one delegated function may not affect another delegated function where the CMHSP Participant is performing satisfactorily.

Written notice from SWMBH to the CMHSP Participant is required prior to revocation of any delegated function. Should a delegation(s) be revoked, the CMHSP Participant still remains under obligation to the terms of its contract with SWMBH and shall continue to observe SWMBH policies and standards as a provider of service.

The CMHSP Participant understands and agrees that (42 CFR 438.230):

- 1) The State, CMS, the HHS Inspector General, the Comptroller General, or their designees have the right to audit, evaluate, and inspect any books, records, contracts, computer or other electronic systems of the CMHSP Participant or of its contractors, that pertain to any aspect of services and activities performed, or determination of amounts payable under SWMBH's

contract with the State.

- 2) The CMHSP Participant will make available, for purposes of an audit, evaluation, or inspection under the above section (1), its premises, physical facilities, equipment, books, records, contracts, computer or other electronic systems relating to its Medicaid enrollees.
- 3) The right to audit under exists through 10 years from the final date of the contract period or from the date of completion of any audit, whichever is later.
- 4) If the State, CMS, or the HHS Inspector General determines that there is a reasonable possibility of fraud or similar risk, the State, CMS, or the HHS Inspector General may inspect, evaluate, and audit the CMHSP Participant at any time.

II. Delegated Functions [Includes Mental Health services, and outpatient SUD services provided by CMHSP Participant directly with the exception of SUD services covered by SUD Community Grant funds]

I. Utilization Management	
<p>The PIHP shall delegate the following Utilization Management activities to the CMHSP PARTICIPANT:</p> <p><i>Legal References:</i></p> <ul style="list-style-type: none"> ▪ 42 CFR 438.210 ▪ MDHHS Contract: Attachment P.6.7.1.1 	<ol style="list-style-type: none"> 1) Access and Eligibility Determination. The CMHSP Participant shall: <ol style="list-style-type: none"> a) Screen for both clinical eligibility and financial eligibility using MDHHS contractually mandated standardized screening tools; b) Provide for a second opinion from a network provider, or arrange for the enrollee to obtain one outside the network, at no cost to the enrollee; c) For SUD services only, offer choice of provider from SWMBH's Provider Network. 2) Utilization Management Protocols <ol style="list-style-type: none"> a) CMHSP Participant shall adhere to Payor standards for the following: <ol style="list-style-type: none"> i) Medical Necessity criteria and determinations; ii) Level of Care assessments; iii) Service intensity or selection criteria; and iv) Services requiring specialist review. b) CMHSP Participant shall be responsible for implementation and application of the PIHP Utilization Management Policy and Plan. c) CMHSP Participant shall participate in the development, dissemination, and application of Practice Guidelines. 3) Authorization <ol style="list-style-type: none"> a) Initial approval or denial of requested services (42 CFR 428.210; 42 CFR 438.240) <ol style="list-style-type: none"> i) Initial assessment for and authorization of psychiatric inpatient services up to three (3) days (or four (4) days only if necessitated by a holiday); ii) Initial assessment for and authorization of psychiatric partial hospitalization services up to three (3) days (or four (4) days only if necessitated by a holiday); iii) Initial assessment for and authorization of crisis residential services up to three (3) days (or four (4) days only if necessitated by a holiday); iv) Initial and ongoing authorization of non-SUD services to individuals receiving community based services. v) SUD Services: Initial and ongoing authorization of SUD services provided by the CMHSP Participant directly. b) CMHSP Participant shall follow SWMBH policies on prospective (preauthorization), concurrent, and retrospective reviews. When the CMHSP Participant is conducting service authorization, it shall have internal procedures that include: <ol style="list-style-type: none"> i) Review decisions are supervised by qualified medical professionals. ii) Decisions to deny or reduce services are made by health care professionals who have the appropriate clinical expertise to treat the conditions. iii) The reasons for decisions are clearly documented. iv) The reasons for decisions are provided (made available) to the beneficiary. v) Notification of any decision to deny a service authorization request, or to

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Reporting Requirements	1. Complete, timely and accurate entry of grievance and appeal data into management information systems/applications.

IV. Provider Network Management	
<p>The PIHP shall delegate the following Provider Network Management components to the CMHSP PARTICIPANT:</p> <p>Legal References:</p> <ul style="list-style-type: none"> ▪ 42 CFR 438.206 ▪ 42 CFR 438.106 ▪ 42 CFR 438.214(d) ▪ 42 CFR 438.12 ▪ 42 CFR 438.207(c)(2) 	<p>1. Network Development (42 CFR 438.206(b)). The CMHSP Participant shall:</p> <ul style="list-style-type: none"> a. Ensure that service availability is in alignment with State-established thresholds b. Maintain and monitor a network of appropriate providers that is supported by written agreements and is sufficient to provide adequate access to all services covered under the contract for all enrollees, including those with limited English proficiency or physical or mental disabilities. c. If the provider network is unable to provide necessary services, covered under the contract, to a particular enrollee, the CMHSP Participant must adequately and timely cover these services out of network for the enrollee, for as long as its provider network is unable to provide them. d. Demonstrate that its network providers are credentialed as required by 438.214, MDHHS contractual requirements, and SWMBH policy. e. Timely access (42 CFR 438.206(c)). The CMHSP Participant must do the following: <ul style="list-style-type: none"> i. Meet and require its network providers to meet State standards for timely access to care and services, taking into account the urgency of the need for services. ii. Ensure that the network providers offer hours of operation that are no less than the hours of operation offered to commercial enrollees or comparable to Medicaid plans/FFS, if the provider serves only Medicaid enrollees. iii. Make services included in the contract available 24 hours a day, 7 days a week, when medically necessary. iv. Establish mechanisms to ensure compliance by network providers. v. Monitor network providers regularly to determine compliance. vi. Take corrective action if there is a failure to comply by a network provider. <p>2. Contract Management. Should the participant CMHSP sub-contract any covered service to an enrolled network subpanel provider, the CMHSP Participant shall use the SWMBH provider contract boilerplate, if one is available, and the written agreement shall include the Subcontracting requirements outlined in the MDHHS-PIHP Master Contract (Part I, Section 38), and shall ensure the following:</p> <ul style="list-style-type: none"> a. Written subcontract agreements ensure that beneficiaries are not held liable when the PIHP (or CMHSP) does not pay the Provider

	<p>furnishing services under the subcontract (42 CFR 438.106(2)).</p> <p>b. Written subcontract agreements ensure that the beneficiaries are not held liable for payment of covered services furnished under the contract if those payments are in excess of the amount the beneficiary would owe, if the PIHP provided the service directly (42 CFR 438.106(c)).</p> <p>c. Upon termination of provider, written notification will be provided within 15 days to those enrollees receiving services from the provider.</p> <p>3. Network Policy Development.</p> <p>a. The participant CMHSP shall not employ or contract with any provider excluded from participation in federal health care programs under either Section 1128 or Section 1128A of the Social Security Act, and shall have internal procedures on how it can validate its exclusion review practices (42 CFR 438.214(d)).</p>
Reporting Requirements	<ol style="list-style-type: none"> 1. Monthly submission of credentialed providers for final approval by the PIHP as required by MDHHS and PIHP credentialing policies. 2. Sanctioned provider reporting as required by MDHHS and PIHP contractual provisions and policies. 3. Submission of required provider information for entry into provider directory annually with quarterly updates, as needed. 4. Documentation of provider site reviews. 5. Annually, and at any time there has been significant change (as defined by the State) in the CMHSP Participant's or SWMBH's operations that would affect the adequacy of capacity and services, provide documentation in a format as specified by the State and/or SWMBH, to demonstrate that the CMHSP Participant complies with the following requirements: <ol style="list-style-type: none"> a. Offers an appropriate range of specialty services and LTSS that is adequate for the anticipated number of enrollees for the service area; b. Maintains a network of providers that is sufficient in number, mix, and geographic distribution to meet the needs of the anticipated number of enrollees in the service area (42 CFR 428.207(b)(3)).

AMENDMENT OR TERMINATION

This Memorandum will continue to have effect unless amended in writing signed by both parties, or upon the CMHSP Participant giving sixty (60) calendar days advance written notice to SWMBH of CMHSP Participant's desire to relinquish a delegated function(s). SWMBH may revoke a delegated function(s) as provided above.

Signatures continued on next page

IN WITNESS WHEREOF, the authorize representatives of the parties hereto have fully executed this Agreement on the day and year indicated.

WITNESSED BY:

Mila C. Zedel

Date 1.4.19

SOUTHWEST MICHIGAN BEHAVIORAL
HEALTH REGIONAL ENTITY

BY: Bradley P. Casemore
Bradley P. Casemore 1-4-19

ITS: Executive Officer

CALHOUN COUNTY COMMUNITY MENTAL
HEALTH AUTHORITY D/B/A SUMMIT POINTE

BY: Jean M. Goodrich
Jean M. Goodrich

Date 1.3.19

ITS: Chief Executive Officer

APPROVED BHS
1.2.19



45 Ottawa Avenue SW
Suite 1100
P.O. Box 306
Grand Rapids, MI 49501-0306



NEIL J. MARCHAND
Attorney at Law

616.831.1764
616.988.1764 fax
marchandn@millerjohnson.com

November 13, 2024

VIA HAND DELIVERY

Operations Committee
Southwest Michigan Behavioral Health
SWMBH Moses L. Walker Room

Re: Pivotal's and Summit Pointe's Step 2 Appeal regarding
Inpatient Continuing Stay Determinations

Dear SWMBH Operations Committee:

Miller Johnson represents Community Mental Health & Substance Abuse Services of St. Joseph County d/b/a Pivotal ("Pivotal") and Calhoun County Community Mental Health Authority d/b/a Summit Pointe ("Summit Pointe"). We are writing in support of Pivotal's and Summit Pointe's appeal to Southwest Michigan Behavioral Health's ("SWMBH") Operations Committee relating to SWMBH's unauthorized and illegal exercise of authority for inpatient continuing stay determinations. As discussed below, (1) SWMBH does not have the legal right to make inpatient continuing stay determinations; and (2) to the extent SWMBH relies on its October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe for such authority, then SWMBH's interpretation renders that agreement void. Therefore, Pivotal and Summit Pointe request that the Operations Committee immediately direct SWMBH to cease its interference with Pivotal's and Summit Pointe's inpatient continuing stay authority.

I. SWMBH lacks the legal authority to perform inpatient continuing stay reviews.

The issue is whether SWMBH has the legal authority to perform inpatient continuing stay reviews. As discussed below, SWMBH does not.

A. SWMBH's power is derived from the participating community mental health service programs ("CMHSPs").

MCL 330.1204b governs the creation of regional entities and the regional entity's purpose and power. MCL 330.1204b(2) provides, "*Except as otherwise stated in the bylaws*, a regional entity has [. . .] [t]he power, privilege, or authority that the participating community mental health services programs share in common and may exercise separately under this act, whether or not that power, privilege, or authority is specified in the bylaws establishing the regional entity." MCL 1204b(2)(a) (emphasis added).

B. SWMBH's Bylaws and Operating Agreement prohibit SWMBH from exercising any power or authority relating to Pivotal's and Summit Pointe's obligations under the Mental Health Code and their clinical operations.

SWMBH's Bylaws describe SWMBH's powers in Article II. (**Exhibit 1**.) Consistent with the enabling statute, Article 2.2 states, "Except as otherwise stated in these Bylaws, the Regional Entity has all of the following powers provided under MCL 330.1204b(2) [...]." (*Id.*, at 2.) Article 2.4 provides:

The Participants shall retain **all powers, rights and authority afforded community mental health services programs**, organized and operated as county mental health authorities, agencies or organizations **under the Mental Health Code.** *Only the powers and authority specifically delegated* to the Regional Entity under these Bylaws and as further defined under an Operating Agreement, [sic] are transferred to the Regional Entity. (*Id.*, at 3 (emphasis added).)

Further, Article 2.4.1 provides that SWMBH "shall have no powers, rights or authority" relating to "the Participants' obligations under the Mental Health Code" and "the Participants' autonomous administrative, financial, or clinical operations[.]" (*Id.* at 3.) SWMBH's Operating Agreement, which is incorporated by reference into the Bylaws, reiterates SWMBH's lack of authority in these areas. (**Exhibit 2**, at 12-13.)

C. Michigan's Mental Health Code gives CMHSPs the authority to perform all inpatient stay determinations.

MCL 330.1206(1) states that the "purpose of a community mental health services program shall be to provide a comprehensive array of mental health services[.]" including "the provision of inpatient or other protective environment for treatment." MCL 330.1206(1)(a); *see also* Mich. Admin. R 330.2005 (providing that a "community mental health board shall ensure that" inpatient services are provided).

Chapter 4 of the Mental Health Code gives CMHSPs the power to authorize inpatient hospitalization. Specifically, MCL 330.1409(1) provides that the community mental health services program shall establish a preadmission screening unit or contract with an agency that provides the preadmission screening services. The CMHSPs must authorize hospitalization where "the individual is clinically suitable for hospitalization[.]" MCL 330.1409(3); *see also* MCL 330.1410 (stating that an individual who requests or assents to voluntary admission to a hospital or outpatient treatment program may be considered for admission "only after authorization by a community mental health services preadmission screening unit."); MCL 330.1423 (requiring a hospital to hospitalize an individual if *inter alia* an authorization by a preadmission screening unit has been executed). If an individual is denied hospitalization and requests a second opinion, the

“executive director” shall arrange for that second opinion and, with the medical director, “shall make a decision based on all clinical information available” where there is a conflict between the first and second opinions. MCL 330.1409(4). Notably, “executive director” is defined as the “individual appointed under section 226 to direct a community mental health services program or his or her designee.” MCL 330.1100a(32).

The CMHSPs’ authority over inpatient stay determinations extends to whether to *continue* the individual’s inpatient hospitalization. MCL 330.1482 states, “Six months from the date of a 1-year order of involuntary mental health treatment, *the executive director of the community mental health services program responsible for treatment* [. . .] shall assign a physician or licensed psychologist to review the individual’s clinical status as a person requiring treatment.” MCL 330.1482 (emphasis added). Moreover, the CMHSP executive director (1) is responsible for providing the individual and others notice of the periodic review results and information on the individual’s right to petition for discharge, MCL 330.1483; and (2) has standing to object to the periodic review’s conclusions and petition for discharge, MCL 330.1484. *Nothing* in the Mental Health Code gives inpatient stay determination authority to a regional entity.

D. Pivotal and Summit Pointe have the exclusive authority to make inpatient stay, and continuing stay, determinations.

SWMBH derives its power from its participating CMHSPs, not vice versa. And SWMBH’s exercise of inpatient continuing stay authority violates Michigan law, its Bylaws, and its Operating Agreement in three ways. First, under Article 2.4 of SWMBH’s Bylaws, *only* the powers and authority specifically delegated to SWMBH are transferred to SWMBH, and nothing in SWMBH’s Bylaws or Operating Agreement delegates inpatient continuing stay determination authority to SWMBH. Second, Article 2.4 of the Bylaws states that the Participants—in this case, Pivotal and Summit Pointe—retain “all powers, rights and authority afforded community mental health services programs” under the Mental Health Code, and the Mental Health Code gives CMHSPs the authority to perform all inpatient stay determinations, both initial admission and continuing stay. And third, Article 2.4.1 of the Bylaws and SWMBH’s Operating Agreement provide that SWMBH “shall have no powers, rights or authority” with regards to “the Participants’ obligations under the Mental Health Code” or “the Participants’ autonomous administrative, financial, or clinical operations[.]” By making inpatient continuing stay determinations, SWMBH is interfering with Pivotal’s and Summit Pointe’s authority under the Mental Health Code and their exclusive clinical operations.

Despite raising these issues with SWMBH, (Exhibit 3), SWMBH’s response failed to address its lack of legal authority to act or why SWMBH allows Kalamazoo County Community Mental Health Authority d/b/a Kalamazoo Community Mental Health and Substance Abuse Services (and no other CMHSP) to perform their own inpatient continuing stay determinations (Exhibit 4). Instead, SWMBH has made vague references to: (i) the Code of Federal Regulations;

(ii) MDHHS pronouncements on Conflict Free Access & Planning purportedly prohibiting delegation of utilization management; and (iii) Corrective Action Plans relating to Milliman Care Guidelines. However, the portions of the Code of Federal Regulations upon which I understand SWMBH to rely do not support SWMBH's position, as explained in Pivotal's June 5, 2024 correspondence. (**Exhibit 3.**) Moreover, MDHHS and SWMBH have conceded that "utilization management" is not defined, (**Exhibit 5**), and SWMBH admitted that it does not have any written contractual obligations or policy relating to the Milliman Care Guidelines. (**Exhibit 6.**) Finally, SWMBH admitted that it was exceeding its authority as to Pivotal members who do not have Medicaid coverage. (**Exhibit 4.**)

Because SWMBH lacks the legal authority to perform inpatient continuing stay reviews, SWMBH's exercise of decision making authority constitutes an ultra vires activity that is not protected by governmental immunity. *Dextrom v Wexford County*, 287 Mich App 406, 417; 789 NW2d 211 (2010) (explaining that ultra vires activities are activities that are not expressly or impliedly mandated or authorized by law). Moreover, the "immunity" afforded SWMBH under Article 10.2.2 of the Bylaws does not apply because Pivotal's and Summit Pointe's liability, loss, and damages are caused by SWMBH's actions. Pivotal and Summit Pointe reserve all of their rights against SWMBH and its employees and directors.

II. SWMBH's claim that it has the authority to delegate inpatient continuing stay reviews means that SWMBH's October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe is unenforceable as written.

SWMBH has framed the dispute as an "expansion of delegation" of inpatient psychiatric services utilization management. As discussed above, SWMBH's posture is misleading because SWMBH's authority is derived from the participant CMHSPs, the CMHSPs retained all authority afforded them under the Mental Health Code, and SWMBH's Bylaws expressly state that it does not have any authority over a CMHSP's clinical operations.

Nevertheless, my understanding is that SWMBH will cite Section 2 of its October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe to argue that the authorization of inpatient services and partial hospitalization services is limited to the initial authorization for up to three days. (**Exhibit 7.**) As discussed above, the Mental Health Code grants CMHSPs, *and only CMHSPs*, the authority to make initial and continuing inpatient stay determinations. And it is axiomatic that "an agreement that violates the laws of Michigan is unenforceable as written." *Wasenko v Auto Club Group*, — Mich App —; — NW3d — (2023 WL 4671210) (citation omitted). Thus, accepting SWMBH's position means that SWMBH's October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe is unenforceable as written.

MILLER JOHNSON

Operations Committee
November 13, 2024
Page 5

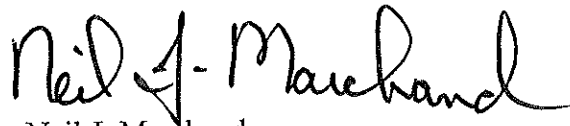
Therefore, to the extent SWMBH relies on the October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe, SWMBH's interpretation renders those agreements void.

For the reasons discussed above, Pivotal and Summit Pointe request that the Operations Committee immediately direct SWMBH to cease its interference with Pivotal's and Summit Pointe's inpatient continuing stay authority and allowing Pivotal and Summit Pointe to perform their statutorily authorized clinical operations.

Sincerely,

MILLER JOHNSON

By


Neil J. Marchand

Enclosures

Preliminary Management Response for Pivotal Dispute Resolution Step 3

I. Background

Pivotal seeks expansion of the SWMBH delegation of utilization management from the current CMH authority for admission authorization and the first three days of inpatient psychiatric hospitalization to authorization authority for the entire inpatient psychiatric hospital stay. SWMBH has not declined this proposal, rather has paused initiation of the required readiness review pending MDHHS written specifications on Conflict Free Access & Planning, a.k.a., conflict free case management, which are certain to alter the boundaries of utilization management authorities for both PIHPs and CMHSPs.

Pivotal local care management has a delegation of utilization management from SWMBH for inpatient psychiatric hospital services which includes admission decision authority and approval of the first three (3) days after which SWMBH central care management has the authority for concurrent reviews and service authorizations. Utilization Management is a managed care function with uniform statewide inpatient psychiatric hospital criteria applied by qualified utilization managers. Utilization Management is separate and distinct from the undisputed authority of CMH for discharge planning and post-hospitalization service implementation.

After a SWMBH management – Pivotal conversation on the topic, a written response was sent to Pivotal from Ms. Todd (Attachment A for Board packet, currently available to Pivotal).

Pivotal requested the Dispute Resolution Process on this topic per the Operating Agreement. Step 1, a meeting of the Pivotal CEO and SWMBH EO, was held. A response affirming a pause, not a declination of the request, was sent to Pivotal from the SWMBH EO (Attachment B for Board packet, currently available to Pivotal).

Pivotal requested Dispute Resolution Step 2 with the Operations Committee which occurred on 11/13/24, even though SWMBH had not rendered a decision. Pivotal distributed hard copy binders to Operations Committee members and Mila Todd who represented SWMBH in Brad Casemore's absence. (Attachment C for Board packet, currently available to Pivotal). SWMBH did not receive that information beforehand and it is unclear if the CMH CEOs received the information in advance of the Step 2 meeting.

Neil Marchand JD of Miller Johnson was present representing Pivotal at the Step 2 meeting. SWMBH was informed of Mr. Marchand's planned attendance 30 minutes before the meeting. Not receiving materials before the meeting, nor informing SWMBH Management counsel would be present at the Step 2 meeting, is contrary to the spirit of the Operating Agreement Dispute Resolution process, good faith dispute resolution efforts, and raises concern where SWMBH is represented by counsel but its counsel was not notified of any of the above by Pivotal's counsel.

The Operations Committee upheld the Pivotal position via email on 11/13/24 (Attachment D for Board packet, currently available to Pivotal).

The Pivotal Step 2 document is a legal opinion which SWMBH had no prior access to before the Step 2 meeting thus had no prior considered basis to respond to it there. (Attachment E for Board

packet, currently available to Pivotal). Analysis of Pivotal's legal opinion and analysis is being prepared for the Board Step 3 process by Varnum.

Also at the Step 2 Operations Committee meeting, Pivotal made the claim through Counsel (Attachment F for Board, currently available to Pivotal) that utilization management functions are reserved to CMHs and that PIHPs have no authority over utilization management. This infers that SWMBH must relinquish all forms of utilization management to them – and by inference to all SWMBH CMHs. This view is a position taken assertively by CMHAM and some CMHs. Simultaneously it is the view of reasonable persons that the claim is contrary to 22 years of system understanding and practices, MDHHS – PIHP contracts and federal Medicaid managed care regulations.

The legal premise on which this assertion has been based has not been adjudicated in any court of competent jurisdiction to SWMBH's knowledge.

II. Management Analysis

SWMBH is considering Pivotal's request to expand delegation of inpatient psychiatric hospital services utilization management to Pivotal. However, it is likely premature to initiate the regulatory, contractual and prudent process for consideration given the remaining uncertainty around details for Conflict Free Access and Planning (CFAP), aka conflict free case management, in federal nomenclature. In addition, the request departs from the current regional approach at other CMHs and thus requires diligent consideration from SWMBH and CMH partners so as to preserve and protect the most effective and efficient fulfillment of federal and state requirements for demonstrable uniformity of benefit for entitled Medicaid services. Taking on an exercise to dispute the CMH legal opinion claims will be expensive and distract from core required activities of SWMBH and CMHs, thus has been referred to SWMBH Counsel for review and response to assist management and the Board in its deliberations. ***Notably, SWMBH Management requests the Board consider whether it even has authority at this stage to make a determination on Pivotal's request, possibly voiding the applicability of Step 3.***

SWMBH Management is concerned that this Pivotal claim constitutes a Member CMH Board pursuing through legal recourse the diminution or decrease of the Regional Entity's PIHP roles and functions as stated in the Regional Entity Bylaws, Operating Agreement and SWMBH-MDHHS Agreement and using Medicaid funds to do so. Management will consult with SWMBH Counsel and independent auditors as to the permissibility of using Medicaid funds for all parties involved in this matter thus far and into the future.

The Pivotal claim and dispute may create an existential question for SWMBH. Due to the magnitude of the implications of the sought after business process changes, MDHHS interests, legal costs, opportunity costs and the practical and political ramifications of an Owner CMH Board setting the stage for a complete or severe contraction of SWMBH, the Board is in the position to determine its course of action for Step 3 beginning with whether this is even the Board's decision to make. Additionally, the Board should consider SWMBH Management's differing opinion to that of Pivotal's in full, should the Board first determine that it has the authority to do so and further

consider that SWMBH has not yet rendered a decision on Pivotal's request—thus this decision being requested of the Board may not yet be ripe for the Board's consideration.

SWMBH's CEO has also asked Varnum Partner Sarah Wixson and Board Policy Governance Consultant Susan Radwan to opine in writing to the Board on conflict of interest handling in Dispute Resolution Step 3 activities. Those opinions will appear in the Board packet for the December 13, 2024 SWMBH Board meeting.

Relevant Board Policies are excerpted below in no particular order; not necessarily exclusive of other applicable Board Policies.

BG-011 Governing Style and Commitment: "The Board's major focus will be on the intended long-term impacts, ***not on administrative or programmatic means*** of attaining those impacts." "<The Board> will enforce upon itself whatever discipline is needed to govern with excellence. Discipline will apply to matters such as attendance, preparation for meetings, policy-making principles, respect of roles, and ensuring the continuance of governance capability. "When a <Board> Member either must recuse themselves or chooses to recuse themselves for voting on a Board decision their prior potential vote count will be removed from the vote tally denominator." "When a <Board> Member abstains from voting on a Board decision their potential vote count will not be removed from the vote tally denominator." (emphasis added).

EO-001 Executive Role and Job Description: "The Board will instruct the EO through written policies or directives consistent with Board policies, delegating to the EO the interpretation and implementation of those policies and Ends."

BEL-009 Global Executive Constraint: "The EO shall not cause or allow any practice, activity, decision, or organizational circumstance which is either illegal, imprudent or in violation of commonly accepted business and professional ethics or in violation of contractual obligations."

BEL-008 Communication and Counsel to the Board: " The EO will not allow the Board to be unaware that, in the EO's opinion, the Board is not in compliance with its own policies, particularly in the case of Board behavior that is detrimental to the work relationship between the Board and the EO."

BG-003 Delegation Unity of Control: "Only officially passed motions of the Board are binding on the EO."

BG-007 Code of Conduct: "The Board commits itself to ethical, lawful, and businesslike conduct including proper use of authority and appropriate decorum when acting as Board Members. It shall be the policy of SWMBH Board that SWMBH Board Members represent the interests of SWMBH. This accountability supersedes any potential conflicts of loyalty to other interests including advocacy or interest groups, membership on other Boards, relationships with others or personal interests of any Board Member." "<Board> Members commenting on the agency and EO performance must be done collectively and as regards to explicit Board policies."

<END>



Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI, 49002

P: 800-676-0423

F: 269-883-6670

September 19, 2024

Cameron Bullock

CEO, Pivotal

Via email only

Re: Request for Delegation of Inpatient Continuing Stay Reviews

Dear Cameron:

Pivotal requested that SWMBH delegate inpatient continuing stay reviews to Pivotal. SWMBH is declining to move forward with a pre-delegation assessment, which is required under the Code of Federal Regulations, at this time based on the following:

- MDHHS has indicated that under its Conflict Free Access and Planning (CFAP) implementation plan, PIHPs will be precluded from delegating Utilization Management to Participant CMHSPs. There is an MDHHS-initiated CFAP meeting with PIHPs on November 1, 2024. In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time.
- Pivotal was cited in the FY24 CMH Site Review process for UM Standard 11, related to training staff on the Milliman Care Guidelines (MCG). Deficiencies noted included that staff were not trained on MCG for use in inpatient Pre-Admission Screening determinations. MCG is the MDHHS-required medical necessity criteria for both pre-admission screening as well as continuing stay determinations. Continued monitoring of Pivotal's implementation of its Corrective Action Plan will occur according to the Site Review monitoring process.

Pivotal's request for delegation further asserted that SWMBH has no authority over Pivotal's General Funds, and therefore Pivotal should complete inpatient continuing stay review determinations for individuals funded under General Fund. It is a correct assertion that SWMBH does not have authority over Pivotal's General Funds. Historically, these reviews have been completed by SWMBH because hospitals are required to assist individuals in submitting applications for Medicaid coverage, and often individuals who received inpatient psychiatric services receive retroactive Medicaid coverage such that the inpatient stay is ultimately paid out of Medicaid funds. At Pivotal's request, SWMBH will cease in performing continuing stay reviews for Pivotal members who do not have Medicaid coverage, effective October 1, 2024 for all new admissions. **Please provide a telephone number for Pivotal UM reviewers that SWMBH may provide to hospitals that contact SWMBH.** It is SWMBH's very strong recommendation that Pivotal:

- Notify inpatient providers of the change in process.
- Ensure continuing stay reviews are being completed in accordance with all Medicaid requirements. In the event an individual receives retroactive Medicaid coverage, all Medicaid requirements must have been met, including use and documentation of MCG criteria for continuing stay medical necessity determinations, in order for Medicaid funds to be used. As you know, it is in the Region's best interest to capture every valid Medicaid cost and encounter, including those for retroactive Medicaid enrollment.

Should you have any questions or concerns, please feel free to contact me. Thank you.

Regards,



Mila C. Todd, Esq., CHC, CHPC
Chief Compliance & Privacy Officer
Director of Provider Network Management

Cc: Brad Casemore, Anne Wickham



Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI 49002

P: 800-676-0423

F: 269-883-6670

October 14, 2024

Cameron Bullock CEO Pivotal

Regarding Pivotal Dispute Resolution Process Step 1 expansion of delegation of inpatient psychiatric services Utilization Management (UM)

Cameron,

This serves as my response subsequent to our October 10, 2024 Dispute Resolution Step 1 meeting on the above-captioned topic. I referred to our September 19, 2024 letter to you throughout the meeting.

1. I clarified and confirmed that our September 19 declination was a temporary pause in initiating our consideration process and was not a blanket "no, never."
2. I reinforced that further MDHHS pronouncements on Conflict Free Access & Planning (aka conflict free case management) will inform SWMBH central care management and CMH local care management utilization management roles, authorities and business processes. At September 19 2024 there was to be a November 1, 2024 MDHHS-PIHP meeting on CFAP. That meeting has been canceled by MDHHS with no known reschedule date. Current lack of MDHHS CFAP specifications remains a basis for our pause in considering your requested expansion of delegated utilization management for inpatient psychiatric services. From our September 19 letter *"In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time."* More information from MDHHS will be known and shared with the region hopefully in the near future. Until that time our pause on considering your request remains. I recognize you disagree with this decision and further that you believe we do not have the authority to determine delegation of utilization management for Medicaid.
3. Regarding MCG Criteria training and proper usage I understand your position that no CAP request should have been issued by SWMBH based on your view that there is no or limited guidance from SWMBH on this. Regardless please continue your efforts to know and plan for adherence to written SWMBH guidance on MCG Criteria and related training. Once your prospective assurances are in place we will no longer consider this a contingency to considering your request.



You mentioned that you seek written contractual and/or SWMBH Policy clarity on the MCG Annual Training requirement as you cannot find that guidance. I agree SWMBH needs to put specifications in place if they are lacking.

4. I confirmed that our October 10, 2024 meeting fulfills the Dispute Resolution Step 1 process on this topic thus any future Dispute Resolution moves to Step 2 if on this same topic.

I take seriously your examples of opportunities to improve communications amongst and between Pivotal, SWMBH Central Care Management and hospitals. Anne Wickham the Chief responsible for Call Center and UM stands ready to hear and address opportunities for improvement apart from any Dispute Resolution process.

I mentioned some of our probable future considerations regarding your Ask. Pivotal is free to but not obligated to prepare responses to those and/or other pre-delegation assessment issues anticipating future consideration of your Ask. Please note that process if initiated is an operational matter not a component of this Dispute.

Respectfully,

A handwritten signature in dark ink that reads "Bradley Casemore". The signature is fluid and cursive.

Bradley P. Casemore



45 Ottawa Avenue SW
Suite 1100
P.O. Box 306
Grand Rapids, MI 49501-0306



NEIL J. MARCHAND
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marchandn@millerjohnson.com

November 13, 2024

VIA HAND DELIVERY

Operations Committee
Southwest Michigan Behavioral Health
SWMBH Moses L. Walker Room

Re: Pivotal's and Summit Pointe's Step 2 Appeal regarding
Inpatient Continuing Stay Determinations

Dear SWMBH Operations Committee:

Miller Johnson represents Community Mental Health & Substance Abuse Services of St. Joseph County d/b/a Pivotal ("Pivotal") and Calhoun County Community Mental Health Authority d/b/a Summit Pointe ("Summit Pointe"). We are writing in support of Pivotal's and Summit Pointe's appeal to Southwest Michigan Behavioral Health's ("SWMBH") Operations Committee relating to SWMBH's unauthorized and illegal exercise of authority for inpatient continuing stay determinations. As discussed below, (1) SWMBH does not have the legal right to make inpatient continuing stay determinations; and (2) to the extent SWMBH relies on its October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe for such authority, then SWMBH's interpretation renders that agreement void. Therefore, Pivotal and Summit Pointe request that the Operations Committee immediately direct SWMBH to cease its interference with Pivotal's and Summit Pointe's inpatient continuing stay authority.

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A. SWMBH's power is derived from the participating community mental health service programs ("CMHSPs").

MCL 330.1204b governs the creation of regional entities and the regional entity's purpose and power. MCL 330.1204b(2) provides, "*Except as otherwise stated in the bylaws*, a regional entity has [. . .] [t]he power, privilege, or authority that the participating community mental health services programs share in common and may exercise separately under this act, whether or not that power, privilege, or authority is specified in the bylaws establishing the regional entity." MCL 1204b(2)(a) (emphasis added).

B. SWMBH's Bylaws and Operating Agreement prohibit SWMBH from exercising any power or authority relating to Pivotal's and Summit Pointe's obligations under the Mental Health Code and their clinical operations.

SWMBH's Bylaws describe SWMBH's powers in Article II. (**Exhibit 1**.) Consistent with the enabling statute, Article 2.2 states, "Except as otherwise stated in these Bylaws, the Regional Entity has all of the following powers provided under MCL 330.1204b(2) [...]." (*Id.*, at 2.) Article 2.4 provides:

The Participants shall retain **all powers, rights and authority afforded community mental health services programs**, organized and operated as county mental health authorities, agencies or organizations **under the Mental Health Code.** *Only the powers and authority specifically delegated* to the Regional Entity under these Bylaws and as further defined under an Operating Agreement, [sic] are transferred to the Regional Entity. (*Id.*, at 3 (emphasis added).)

Further, Article 2.4.1 provides that SWMBH "shall have no powers, rights or authority" relating to "the Participants' obligations under the Mental Health Code" and "the Participants' autonomous administrative, financial, or clinical operations[.]" (*Id.* at 3.) SWMBH's Operating Agreement, which is incorporated by reference into the Bylaws, reiterates SWMBH's lack of authority in these areas. (**Exhibit 2**, at 12-13.)

C. Michigan's Mental Health Code gives CMHSPs the authority to perform all inpatient stay determinations.

MCL 330.1206(1) states that the "purpose of a community mental health services program shall be to provide a comprehensive array of mental health services[.]" including "the provision of inpatient or other protective environment for treatment." MCL 330.1206(1)(a); *see also* Mich. Admin. R 330.2005 (providing that a "community mental health board shall ensure that" inpatient services are provided).

Chapter 4 of the Mental Health Code gives CMHSPs the power to authorize inpatient hospitalization. Specifically, MCL 330.1409(1) provides that the community mental health services program shall establish a preadmission screening unit or contract with an agency that provides the preadmission screening services. The CMHSPs must authorize hospitalization where "the individual is clinically suitable for hospitalization[.]" MCL 330.1409(3); *see also* MCL 330.1410 (stating that an individual who requests or assents to voluntary admission to a hospital or outpatient treatment program may be considered for admission "only after authorization by a community mental health services preadmission screening unit."); MCL 330.1423 (requiring a hospital to hospitalize an individual if *inter alia* an authorization by a preadmission screening unit has been executed). If an individual is denied hospitalization and requests a second opinion, the

“executive director” shall arrange for that second opinion and, with the medical director, “shall make a decision based on all clinical information available” where there is a conflict between the first and second opinions. MCL 330.1409(4). Notably, “executive director” is defined as the “individual appointed under section 226 to direct a community mental health services program or his or her designee.” MCL 330.1100a(32).

The CMHSPs’ authority over inpatient stay determinations extends to whether to *continue* the individual’s inpatient hospitalization. MCL 330.1482 states, “Six months from the date of a 1-year order of involuntary mental health treatment, *the executive director of the community mental health services program responsible for treatment* [. . .] shall assign a physician or licensed psychologist to review the individual’s clinical status as a person requiring treatment.” MCL 330.1482 (emphasis added). Moreover, the CMHSP executive director (1) is responsible for providing the individual and others notice of the periodic review results and information on the individual’s right to petition for discharge, MCL 330.1483; and (2) has standing to object to the periodic review’s conclusions and petition for discharge, MCL 330.1484. *Nothing* in the Mental Health Code gives inpatient stay determination authority to a regional entity.

D. Pivotal and Summit Pointe have the exclusive authority to make inpatient stay, and continuing stay, determinations.

SWMBH derives its power from its participating CMHSPs, not vice versa. And SWMBH’s exercise of inpatient continuing stay authority violates Michigan law, its Bylaws, and its Operating Agreement in three ways. First, under Article 2.4 of SWMBH’s Bylaws, *only* the powers and authority specifically delegated to SWMBH are transferred to SWMBH, and nothing in SWMBH’s Bylaws or Operating Agreement delegates inpatient continuing stay determination authority to SWMBH. Second, Article 2.4 of the Bylaws states that the Participants—in this case, Pivotal and Summit Pointe—retain “all powers, rights and authority afforded community mental health services programs” under the Mental Health Code, and the Mental Health Code gives CMHSPs the authority to perform all inpatient stay determinations, both initial admission and continuing stay. And third, Article 2.4.1 of the Bylaws and SWMBH’s Operating Agreement provide that SWMBH “shall have no powers, rights or authority” with regards to “the Participants’ obligations under the Mental Health Code” or “the Participants’ autonomous administrative, financial, or clinical operations[.]” By making inpatient continuing stay determinations, SWMBH is interfering with Pivotal’s and Summit Pointe’s authority under the Mental Health Code and their exclusive clinical operations.

Despite raising these issues with SWMBH, (Exhibit 3), SWMBH’s response failed to address its lack of legal authority to act or why SWMBH allows Kalamazoo County Community Mental Health Authority d/b/a Kalamazoo Community Mental Health and Substance Abuse Services (and no other CMHSP) to perform their own inpatient continuing stay determinations (Exhibit 4). Instead, SWMBH has made vague references to: (i) the Code of Federal Regulations;

(ii) MDHHS pronouncements on Conflict Free Access & Planning purportedly prohibiting delegation of utilization management; and (iii) Corrective Action Plans relating to Milliman Care Guidelines. However, the portions of the Code of Federal Regulations upon which I understand SWMBH to rely do not support SWMBH's position, as explained in Pivotal's June 5, 2024 correspondence. (**Exhibit 3.**) Moreover, MDHHS and SWMBH have conceded that "utilization management" is not defined, (**Exhibit 5**), and SWMBH admitted that it does not have any written contractual obligations or policy relating to the Milliman Care Guidelines. (**Exhibit 6.**) Finally, SWMBH admitted that it was exceeding its authority as to Pivotal members who do not have Medicaid coverage. (**Exhibit 4.**)

Because SWMBH lacks the legal authority to perform inpatient continuing stay reviews, SWMBH's exercise of decision making authority constitutes an ultra vires activity that is not protected by governmental immunity. *Dextrom v Wexford County*, 287 Mich App 406, 417; 789 NW2d 211 (2010) (explaining that ultra vires activities are activities that are not expressly or impliedly mandated or authorized by law). Moreover, the "immunity" afforded SWMBH under Article 10.2.2 of the Bylaws does not apply because Pivotal's and Summit Pointe's liability, loss, and damages are caused by SWMBH's actions. Pivotal and Summit Pointe reserve all of their rights against SWMBH and its employees and directors.

II. SWMBH's claim that it has the authority to delegate inpatient continuing stay reviews means that SWMBH's October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe is unenforceable as written.

SWMBH has framed the dispute as an "expansion of delegation" of inpatient psychiatric services utilization management. As discussed above, SWMBH's posture is misleading because SWMBH's authority is derived from the participant CMHSPs, the CMHSPs retained all authority afforded them under the Mental Health Code, and SWMBH's Bylaws expressly state that it does not have any authority over a CMHSP's clinical operations.

Nevertheless, my understanding is that SWMBH will cite Section 2 of its October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe to argue that the authorization of inpatient services and partial hospitalization services is limited to the initial authorization for up to three days. (**Exhibit 7.**) As discussed above, the Mental Health Code grants CMHSPs, *and only CMHSPs*, the authority to make initial and continuing inpatient stay determinations. And it is axiomatic that "an agreement that violates the laws of Michigan is unenforceable as written." *Wasenko v Auto Club Group*, — Mich App —; — NW3d — (2023 WL 4671210) (citation omitted). Thus, accepting SWMBH's position means that SWMBH's October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe is unenforceable as written.

MILLER JOHNSON

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November 13, 2024
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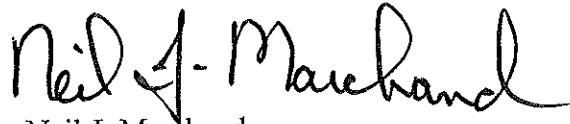
Therefore, to the extent SWMBH relies on the October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe, SWMBH's interpretation renders those agreements void.

For the reasons discussed above, Pivotal and Summit Pointe request that the Operations Committee immediately direct SWMBH to cease its interference with Pivotal's and Summit Pointe's inpatient continuing stay authority and allowing Pivotal and Summit Pointe to perform their statutorily authorized clinical operations.

Sincerely,

MILLER JOHNSON

By


Neil J. Marchand

Enclosures



45 Ottawa Avenue SW
Suite 1100
P.O. Box 306
Grand Rapids, MI 49501-0306



NEIL J. MARCHAND
Attorney at Law

616.831.1764
616.988.1764 fax
marchandn@millerjohnson.com

November 13, 2024

VIA HAND DELIVERY

Operations Committee
Southwest Michigan Behavioral Health
SWMBH Moses L. Walker Room

Re: Pivotal's and Summit Pointe's Step 2 Appeal regarding
Inpatient Continuing Stay Determinations

Dear SWMBH Operations Committee:

Miller Johnson represents Community Mental Health & Substance Abuse Services of St. Joseph County d/b/a Pivotal ("Pivotal") and Calhoun County Community Mental Health Authority d/b/a Summit Pointe ("Summit Pointe"). We are writing in support of Pivotal's and Summit Pointe's appeal to Southwest Michigan Behavioral Health's ("SWMBH") Operations Committee relating to SWMBH's unauthorized and illegal exercise of authority for inpatient continuing stay determinations. As discussed below, (1) SWMBH does not have the legal right to make inpatient continuing stay determinations; and (2) to the extent SWMBH relies on its October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe for such authority, then SWMBH's interpretation renders that agreement void. Therefore, Pivotal and Summit Pointe request that the Operations Committee immediately direct SWMBH to cease its interference with Pivotal's and Summit Pointe's inpatient continuing stay authority.

I. SWMBH lacks the legal authority to perform inpatient continuing stay reviews.

The issue is whether SWMBH has the legal authority to perform inpatient continuing stay reviews. As discussed below, SWMBH does not.

A. SWMBH's power is derived from the participating community mental health service programs ("CMHSPs").

MCL 330.1204b governs the creation of regional entities and the regional entity's purpose and power. MCL 330.1204b(2) provides, "*Except as otherwise stated in the bylaws*, a regional entity has [. . .] [t]he power, privilege, or authority that the participating community mental health services programs share in common and may exercise separately under this act, whether or not that power, privilege, or authority is specified in the bylaws establishing the regional entity." MCL 1204b(2)(a) (emphasis added).

B. SWMBH's Bylaws and Operating Agreement prohibit SWMBH from exercising any power or authority relating to Pivotal's and Summit Pointe's obligations under the Mental Health Code and their clinical operations.

SWMBH's Bylaws describe SWMBH's powers in Article II. (**Exhibit 1**.) Consistent with the enabling statute, Article 2.2 states, "Except as otherwise stated in these Bylaws, the Regional Entity has all of the following powers provided under MCL 330.1204b(2) [...]." (*Id.*, at 2.) Article 2.4 provides:

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Further, Article 2.4.1 provides that SWMBH "shall have no powers, rights or authority" relating to "the Participants' obligations under the Mental Health Code" and "the Participants' autonomous administrative, financial, or clinical operations[.]" (*Id.* at 3.) SWMBH's Operating Agreement, which is incorporated by reference into the Bylaws, reiterates SWMBH's lack of authority in these areas. (**Exhibit 2**, at 12-13.)

C. Michigan's Mental Health Code gives CMHSPs the authority to perform all inpatient stay determinations.

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(ii) MDHHS pronouncements on Conflict Free Access & Planning purportedly prohibiting delegation of utilization management; and (iii) Corrective Action Plans relating to Milliman Care Guidelines. However, the portions of the Code of Federal Regulations upon which I understand SWMBH to rely do not support SWMBH's position, as explained in Pivotal's June 5, 2024 correspondence. (**Exhibit 3.**) Moreover, MDHHS and SWMBH have conceded that "utilization management" is not defined, (**Exhibit 5**), and SWMBH admitted that it does not have any written contractual obligations or policy relating to the Milliman Care Guidelines. (**Exhibit 6.**) Finally, SWMBH admitted that it was exceeding its authority as to Pivotal members who do not have Medicaid coverage. (**Exhibit 4.**)

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MILLER JOHNSON

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November 13, 2024
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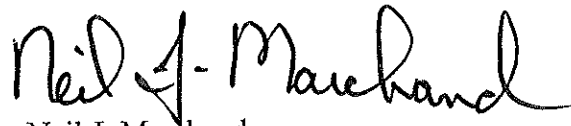
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Sincerely,

MILLER JOHNSON

By


Neil J. Marchand

Enclosures

Anne Wickham

To: Brad Casemore
Subject: RE: Dispute Resolution - Step 2

From: John Ruddell <johnr@woodlandsbhn.org>
Sent: Wednesday, November 13, 2024 12:00 PM
To: Brad Casemore <Brad.Casemore@swmbh.org>; Mila Todd <Mila.Todd@swmbh.org>; Jeannie Goodrich <JGoodrich@summitpointe.org>; Bullock, Cameron <CBullock@pivotalstjoe.org>
Cc: Jeff Patton <jpatton@iskzoo.org>; Richard Thiemkey <rithiemkey@bccmha.org>; Sue Germann <sgermann@pinesbhs.org>; Debra Hess <dhess@vbcmh.com>; Ric Compton <ric.compton@riverwoodcenter.org>
Subject: Dispute Resolution - Step 2

CAUTION: External Email

This message was sent securely using Zix®

Brad;

The Operations Committee (minus the CEOs from Summit Pointe and Pivotal) discussed the Step 2 appeal requests from Summit Pointe and Pivotal's during the November 13, 2024, Operations Committee meeting. The issue in dispute is who reviews Inpatient Continuing Stay Determinations.

The decision from Operations Committee was to accept the appeal from Summit Pointe and Pivotal and that the Inpatient Continuing Stay Determinations be returned to the CMHs as soon as possible.

John W. Ruddell, CPA

Executive Director

johnr@woodlandsbhn.org

(269) 228-5130

960 M-60 East

Cassopolis, Michigan 49031



Woodlands

This message was secured by Zix®.

April 3, 2013

BYLAWS [Southwest Michigan Behavioral Health]

ARTICLE I FORMATION

1.1 **Establishment of Entity.** The Southwest Michigan Behavioral Health Regional Entity (the "Regional Entity") is hereby created pursuant to MCL 330.1204b of the Michigan Mental Health Code, 1974 PA 258, MCL 330.1001 *et seq* (the "Mental Health Code") with the adoption of these Bylaws by the following Participant community mental health services programs which are organized and operated as community mental health authorities under the Mental Health Code:

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

i.e., (the "Participants").

1.2 **Form of Entity.** Pursuant to MCL § 330.1204b(3), the Regional Entity is a public governmental entity separate from the counties, authorities, or organizations that establish it.

1.3 **Service Area.** The Regional Entity's designated service area encompasses the following Michigan counties: Barry, Berrien, Branch, Cass, Calhoun, Kalamazoo, St. Joseph and Van Buren ("Service Area").

ARTICLE II PURPOSES AND POWERS

2.1 **Purpose.** The Regional Entity is formed for the purpose of carrying out the provisions of the Mental Health Code in the Service Area as they relate to: serving as a

prepaid inpatient health plan, as defined in 42 CFR 438.2 ("PIHP"), to manage the Medicaid Specialty Support and Services Concurrent 1915(b)/(c) Waiver Programs ("Medicaid") and the Michigan ABW NON-Pregnant Childless Adults Waiver (Adult Benefits Waiver) Section 1115 Demonstration program ("ABW"); ensuring a comprehensive array of services and supports as provided in the PIHP Medicaid and ABW contracts with MDCH; and exercising the powers and authority set forth in these Bylaws. Additional purposes may be added by the Regional Entity Board.

2.2 **Powers.** Except as otherwise stated in these Bylaws, the Regional Entity has all of the following powers provided under MCL 330.1204b(2):

2.2.1 The power, privilege, or authority that the Participants share in common and may exercise separately under the Mental Health Code, as specified in these Bylaws or as granted by the Regional Entity Board under subsection 2.2.8;

2.2.2 The power to contract with the State to serve as the Medicaid specialty service PIHP for the Service Area;

2.2.3 The power to contract with a state, federal, local, and/or commercial organization(s).

2.2.4 The power to accept funds, grants, gifts, or services from the federal government or a federal agency, the State or a State department, agency, instrumentality, or political subdivision, or any other governmental unit whether or not that governmental unit participates in the Regional Entity, and from a private, or civic source;

2.2.5 The power to enter into a contract with a Participant for any service to be performed for, by, or from the Participant; and

2.2.6 The power to create a risk pool and take other actions as necessary to reduce the risk that the Participants otherwise bear individually.

2.2.7 The power to calculate, assess, and collect from the Participant payments attributable to their designated share of the Regional Entity's costs and expenses.

2.2.8 Other powers granted by the Regional Entity Board that the Participants share in common and may exercise separately under the Mental Health Code.

2.3 **Regional Entity Actions.** The manner by which the Regional Entity's purposes will be accomplished and powers will be exercised shall be through the actions of the Participants as provided in Article III of these Bylaws and through the actions of the Regional Entity Board as set forth in these Bylaws, or as delegated by the Regional Entity Board to officers, committees or other agents.

2.4 **Participant Retained Powers.** The Participants shall retain all powers, rights and authority afforded community mental health services programs, organized and operated as county mental health authorities, agencies or organizations under the Mental Health Code. Only the powers and authority specifically delegated to the Regional Entity under these Bylaws and as further defined under an Operating Agreement, are transferred to the Regional Entity. An Operating Agreement shall be approved by the Regional Entity Board and incorporated herein by reference.

2.4.1 The Regional Entity shall have no powers, rights or authority with respect to:

- the Participants' obligations under the Mental Health Code including those related to size, composition, and authority of the Participants' Board;
- the Participants' autonomous administrative, financial, or clinical operations; or
- the Participants' relationship with other providers unless the Regional Entity's involvement is so limited that it does not prevent the Participant from collaborating with other providers.

ARTICLE III THE PARTICIPANTS

3.1 **Participants.** The Participants shall be those community mental health authorities listed in section 1.1.

3.2 **Participant Vote.** Each Participant will designate members of the Regional Entity Board, as provided in Section 4.2.

3.3 **Withdrawal of the Participant.** Any Participant may withdraw from participation with the Regional Entity effective upon providing to the Executive Director of the Regional Entity written notice (minimum notice of 6 months before the beginning of the fiscal year). Upon the effective date of such withdrawal, the Participant will have no further rights or benefits of the Participant of the Regional Entity. The withdrawing Participant is responsible for meeting all of its obligations prior to the withdrawal. The Regional Entity Board position(s) and other positions appointed by the withdrawing Participant shall terminate upon the effective date of withdrawal of the Participant and no replacement shall be appointed nor vacancy be deemed to occur by reason of the Participant's withdrawal and termination of positions.

3.4 **Removal of the Participant.** The Participants cannot be removed from the Regional Entity.

3.5 **New Participants.** New Participants may be admitted by a simple majority vote of the Participants. At any time that the new Participant is admitted and enters into an Operating Agreement to participate in the Regional Entity, the new Participant shall be entitled to the entire Participants' rights of governance and obligations provided in these Bylaws.

3.6 **Dispute Resolution.** The manner for adjudicating a dispute or disagreement among Participants shall be set forth in an Operating Agreement, approved by the Regional Entity Board and incorporated herein by reference.

3.7 **Participant Reserved Powers.** Each Participant shall possess the powers and rights retained and reserved to the Participants under Section 2.4 of these Bylaws and this Section 3.7, which shall include the power to approve the following:

- 3.7.1 all amendments, restatements or the adoption of new bylaws;
- 3.7.2 a plan of merger, consolidation or joint venture;
- 3.7.3 the sale, transfer or other disposition of substantially all the assets of the Regional Entity; and
- 3.7.4 the dissolution of the Regional Entity and distribution of assets and liabilities, if any.

3.8 **Participants' Exercise of Reserved Powers.** The Participants shall exercise their reserved powers through duly adopted written resolutions from their respective boards. The Participants Boards will unanimously 100% approve all reserved powers listed in section 3.7.

3.9 **The Participant Payment of Designated Share of the Regional Entity's Costs and Expenses.** The manner of equitably allocating costs and expenses and how they will be assessed shall be set forth in the Regional Entity's annual Financial Management Plan, which shall be approved by the Regional Entity Board and incorporated herein by reference.

ARTICLE IV REGIONAL ENTITY BOARD

4.1 **General Powers.** The business, property, and affairs of the Regional Entity shall be managed by the Regional Entity Board in accordance with the Policy Governance Model as made explicit by Dr. John Carver www.carvergovernance.com.

4.2 **Number and Composition.** The composition of the Regional Entity Board shall be consistent with all applicable statutory requirements. Each of the Participant Community Mental Health Services Program (CMHSP) Boards shall have one representative on the Regional Entity Board, who shall be an active member of the Participants' CMHSP

Board. If the Regional Entity is a department-designated community mental health entity, as defined in Section 100a(22) of 2012 PA 500, the composition of the Regional Entity Board shall also consist of representatives of mental health, developmental or intellectual disabilities and substance use disorder services as required under 2012 PA 500. The Regional Entity Board shall also include consumer representation. Each Participant CMHSP Board shall appoint one member to the Regional Entity Board. The Regional Entity Board shall determine whether all of the required categories of board members are represented on the Regional Entity Board. Each CMH shall appoint one member with one vote if there are a total of 8 Board Members. If additional members are needed to be appointed to represent all of the required categories, the Participant CMHSPs will jointly agree on and appoint additional individuals as necessary. There shall be no more than two members from any one Participant CMHSP on the Regional Entity Board. There will be no more than 2 total votes for each Participant CMHSP on the Regional Entity Board. Participant CMHSPs in which two individual board members reside will have one vote assigned to each of those members and Participant CMHSPs in which one board member resides will have two votes assigned to that member.

4.3 **Appointment.** The Participant CMHSP Boards shall appoint members of the Regional Entity Board. At any time the Participant CMHSP Boards may appoint, remove, or replace its appointee to the Regional Entity Board.

4.4 **Term.** All Regional Entity Board members shall continue to serve on the Regional Entity Board until their Participant CMHSP Board appoints a different representative.

4.5 **Removal.** The Participant CMHSP Boards may remove its appointee to the Regional Entity Board at any time. The Regional Entity Board is responsible for informing the relevant Participant board if there is a lack of participation or attendance by the Participant's appointed Board members.

4.6 **Resignation.** Any Regional Entity Board member may resign at any time by providing written notice to the Regional Entity. The resignation will be effective on receipt of the notice or at a later time designated in the notice. A successor will be appointed as provided in Section 4.3 of these Bylaws.

4.7 **Regional Entity Board Vacancies.** A vacancy on the Regional Entity Board shall be filled by the Participant CMHSP Board that originally filled the person's vacated position.

4.8 **Regular Meetings.** The Regional Entity Board shall establish a regular schedule of meetings at the beginning of each fiscal year. Notice in writing of each meeting shall be given to Regional Entity Board members and posted to the public.

4.9 **Special Meetings.** Special meetings of the Regional Entity Board may be held at the call of the Chair of the Regional Entity Board or, in the Chair's absence, the Secretary, or by a simple majority of the Regional Entity Board members.

4.10 **Meeting by Remote Communication.** A Regional Entity Board member may participate in a meeting by conference telephone or any similar communication equipment through which all persons Participant in the meeting can hear each other. Participation in a meeting pursuant to this Section constitutes presence in person at the meeting.

4.11 **Quorum and Voting.** A majority of the Regional Entity Board members then in office constitutes a quorum for the transaction of any business at any meeting of the Regional Entity Board. Actions voted on by a super majority (75% of attendees) of Regional Entity Board members present at a meeting where a quorum is present shall constitute authorized actions of the Regional Entity Board.

4.12 **Conflict of Interest Policy.** The Regional Entity Board shall adopt and adhere to a conflict of interest policy. All Regional Entity Board members will annually disclose any conflicts of interest while serving on the Regional Entity Board.

4.13 **Compliance with Laws.** The Regional Entity and its Participant CMHSP Boards, members of the Regional Entity Board, officers, staff and other employees shall fully comply with all applicable laws, regulations and rules, including without limitation 1976 PA 267 (the "Open Meetings Act") and 1976 PA 422 (the "Freedom of Information Act"). The Regional Entity shall develop such compliance policies and procedures. In the event that any such noncompliance is found, immediate corrective action as defined in the Operating Agreement shall be taken by the appropriate source to ensure compliance. Compliance policies and procedures will be defined in the Operating Agreement.

4.14 **Alternates/Designees.** The Participant CMHSP Boards may appoint official designees to serve in place of their appointed Regional Entity Board member in the event that a Regional Entity Board member is unable to attend a regularly scheduled meeting. This designee shall have full voting rights for the purpose of the meeting he/she is designated to attend.

4.15 **Per Diem and Travel Expenses:** The Regional Entity does not pay Per Diem or travel expenses of Regional Entity Board members that are part of regular Regional Entity Board activities.

ARTICLE V COMMITTEES

5.1 **Powers.** The Regional Entity Board may form committees from time to time, as it deems appropriate. A committee designated by the Regional Entity Board may exercise

any powers of the Regional Entity Board in managing the Regional Entity's business and affairs that are within the committee's jurisdiction, to the extent provided by resolution of the Regional Entity Board.

5.1.1 Operations Committee: An Operations Committee will be formed consisting of the CEOs of the Participants or their designees. The Operations Committee will have the responsibilities and authorities assigned by the Board and outlined in the Operating Agreement.

5.2 **Meetings.** Committees shall meet as directed by the Regional Entity Board; minutes shall be recorded at each committee meeting and shall be available to the Regional Entity Board.

ARTICLE VI OFFICERS

6.1 **Officers.** The Officers of the Regional Entity Board shall be the Chairperson, the Vice Chairperson, and the Secretary. Only Officers of the Regional Entity Board can speak to the press as representatives of the Regional Entity.

6.2 **Appointment.** Officers will be elected by a majority vote of the Regional Entity Board members, and must be a representative of the Participant's Board.

6.3 **Term of Office.** The term of office of Officers elected in 2013 shall be through March 30, 2014. Thereafter the term of office of Officers shall be annual April to March with annual April Officer elections. Election of Officers of the Regional Entity Board shall occur annually, or in case of vacancy.

6.4 **Vacancies.** A vacancy in an officer position shall be filled by a majority vote of the Regional Entity Board.

6.5 **Removal.** The Regional Entity Board will be able to remove any Regional Entity Board Officer by a super majority (75% of attendees) vote of Regional Entity Board members present at a meeting where a quorum is present and shall constitute an authorized action of the Regional Entity Board.

6.6 **Chair.** The Chair shall preside at all Regional Entity Board meetings. The Chair shall have the power to perform duties as may be assigned by the Regional Entity Board. The Chair shall perform all duties incident to the office.

6.7 **Vice Chair.** The Vice Chair shall have the power to perform duties that may be assigned by the Chair or the Regional Entity Board. If the Chair is absent or unable to perform his or her duties, the Vice Chair shall perform the Chair's duties until the

Regional Entity Board directs otherwise. The Vice Chair shall perform all duties incident to the office.

6.8 **Secretary.** The secretary shall: (a) ensure that minutes of Regional Entity Board meetings are recorded; (b) be responsible for providing notice to each Regional Entity Board Member as required by law or these Bylaws; (c) be the custodian of the Regional Entity records; (d) keep a register of the names and addresses of each Officer and Regional Entity Board Member ; (e) complete all required administrative filings required by the Regional Entity's legal structure; and (f) perform all duties incident to the office and other duties assigned by the Regional Entity Board.

ARTICLE VII STAFF POSITIONS

7.1 **Executive Officer.** The Regional Entity shall have at a minimum an Executive Officer, and a Fiscal Officer. The Regional Entity Board shall hire the Executive Officer; and the Executive Officer shall hire and supervise the Fiscal Officer. Both positions shall have direct access to the Regional Entity Board.

7.2 **Fiscal Officer:** The Fiscal Officer shall serve as the fiscal officer as defined in MCL 330.1204b and shall (a) have charge and custody over corporate funds and securities; (b) keep accurate books and records of corporate receipts and disbursements; (c) deposit all moneys and securities received by the Regional Entity at such depositories in the Regional Entity's name that may be designated by the Regional Entity Board. The Fiscal Officer has the responsibilities set forth in MCL 330.1204b and will be responsible for receiving, depositing, investing, and disbursing the Regional Entity's funds in the manner authorized by these Bylaws and Regional Entity Board in accordance with the Regional Entity's Operating Agreement and other duties as assigned by the Executive Officer.

ARTICLE VIII ADVISORY BODIES:

8.1 **Advisory Bodies.** The Regional Entity Board may establish Advisory Bodies.

8.2 **Purpose.** The Regional Entity Board shall define the purpose and longevity of any advisory bodies in the document creating an Advisory Body.

8.3 **Membership.** The Regional Entity Board shall define membership in each establishing agreement for each Advisory Body.

8.4 **Officers.** Officers will be elected by a majority vote of the Advisory Body members.

8.5 **Meetings.** Each Advisory Body shall establish a regular schedule of meetings at the beginning of each fiscal year. Notice in writing of each meeting shall be given to the Regional Entity Board.

ARTICLE IX REPORTS

The Regional Entity must provide an annual report of its activities to each Participant.

ARTICLE X IMMUNITY

10.1 **Governmental Immunity.** All the privileges and immunities from liability and exemptions from laws, ordinances, and rules provided under MCL § 330.1205(3)(b) of the Mental Health Code granted to county community mental health services programs and their Regional Entity Board members, officers, and administrators, and county elected officials and employees of county government are retained by the Regional Entity and the Regional Entity's Board members, Officers, agents, and employees, as provided in MCL § 330.1204b(4).

10.2 **LIABILITY.** Except as required by law, these Bylaws, or any agreement between the Participants or the Participants and the Regional Entity, the Participants shall not be responsible for the acts, omissions, debts or other obligations and responsibilities of the Regional Entity or any other Participant or the Board members, employees, agents and representatives of the Regional Entity or the other Participants, whether acting separately or jointly under these Bylaws or pursuant to any such agreements. The Participants shall only be bound and obligated as expressly agreed to by each Participant and no Participant may otherwise obligate any other Participant.

10.2.1 All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities to be carried out by the Regional Entity shall be the sole and non-transferrable responsibility of the Regional Entity, and not the responsibility of the Participant, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act by the Regional Entity, its Board members, officers, employees or representatives; provided that nothing herein shall be construed as a waiver of any governmental or other immunity that has been provided to the Regional Entity or its Board members, officers, employees or representatives, by statute or court decisions.

10.2.2 All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities to be carried out by the Participant shall be the sole and non-transferrable responsibility of the

Participant and not the responsibility of the Regional Entity, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act by the Participant, its Board members, officers, directors, employees and authorized representatives; provided that nothing herein shall be construed as a waiver of any governmental or other immunity that has been provided to the Participant or its Board members, officers, employees or representatives, by statute or court decisions.

10.2.3 Each Participant and the Regional Entity will obtain its own legal counsel, and will bear its own costs, including judgments, in any litigation which may arise out of its activities to be carried out pursuant to its obligations under these Bylaws or any agreement between the Participants or the Participants and the Regional Entity. It is specifically understood that no indemnification will be provided in such litigation.

10.2.4 In the event that liability to third parties, loss or damage arises as a result of activities conducted jointly under these Bylaws or any agreement between the Participants or the Participants and the Regional Entity, such liability, loss or damages shall be borne by each party in relation to each party's responsibilities under the joint activities, provided that nothing herein shall be construed as a waiver of any governmental or other immunity granted to any of said parties as provided by applicable statutes and/or court decisions.

10.2.5 Under these Bylaws, it is the intent that each of the Participants and the Regional Entity shall separately bear and shall be separately responsible for only those financial obligations related to their respective duties and responsibilities.

10.3 **INSURANCE.** The Regional Entity may purchase and maintain insurance on behalf of any person who is or was a Board member, officer, employee or representative of the Regional Entity, against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Regional Entity would have power to indemnify the person against such liability under these Bylaws or the laws of the State of Michigan.

ARTICLE XI ADMINISTRATION

11.1 **Allocation of Assets and Liabilities.** The Regional Entity shall allocate its assets and liabilities to each Participant in the following manner:

11.1.1 **Revenues.** The Regional Entity will equitably allocate Medicaid (including ABW) revenues to the Participants utilizing a sub-capitation methodology based

on the number of Medicaid beneficiaries in each county using regional capitation rates. The specific methodology used to allocate revenues will be provided in the annual Financial Management Plan, approved by the Regional Entity Board and incorporated herein by reference.

The allocation of other revenues derived from a federal or state grant or loan, a gift, bequest, grant, or loan from a private source, or an insurance payment or service fee shall be approved by the Regional Entity Board on a case by case basis. The specific methodology for the allocation of other revenues will be provided in the annual Financial Management Plan approved by the Regional Entity Board and incorporated herein by reference.

11.1.2 Capital and Operating Costs. The Regional Entity will deduct and retain, from the total capitation revenue, the cost of any required State and Federal Payments (for example HRA or Claims Tax). The Regional Entity will deduct capital and operating costs, payments to reserve funds authorized by law, and payments of principle and interest on obligations as approved by Board. The deductions for capital and operating costs, reserve funds, payments of principle and interest on obligations should be allocated as delineated in the Financial Management Plan.

11.1.3 Other Assets. The Regional Entity Board shall approve the allocation of other Regional Entity assets, on a case by case basis. The specific methodology for such allocation will be provided in the annual Financial Management Plan, approved by the Regional Entity Board and incorporated herein by reference.

11.1.4 Surplus Funds. Any surplus funds available after the completion of the Regional Entity's purpose will be returned to the Participants in the proportion based on the amount of sub capitation revenues in the last year of Regional Entity operations.

11.1.5 Special Fund Account. Each Participant may elect to create a special fund account under Section 226A of the Mental Health Code. Money in the special fund account represents local funds of each Participant. Each Participant will pay the Regional Entity its share of local matching fund obligation for Medicaid funding. Each Participant may use its special fund account or other local funds to meet the local matching fund obligations for Medicaid funding.

11.1.6 Accountability of Funds. The Regional Entity will maintain an accounting and financial reporting system in accordance with Generally Accepted Accounting Principles (GAAP). The accounting procedures and internal financial controls of the Regional Entity shall conform to Generally Accepted Accounting Principles (GAAP) for governmental units. The Regional Entity shall maintain accounts and source records in which any and all revenues received and expenses incurred are ascertainable and verifiable and include date of receipt / payment and sources of funds. The Regional Entity shall engage a certified public accounting

firm to perform an annual independent financial audit in conformance with the American Institute of Certified Public Accountants Guide to assess compliance with the appropriate standard accounting practices and procedures and MDCH contract requirements.

11.1.7 **Contracts.** The Regional Entity Board shall designate the positions of the Regional Entity that will have authority to enter into contracts on behalf of the Regional Entity with third parties, including contracts involving the acquisition, ownership, custody, operation, maintenance, lease or sale of real or personal property and the disposition, division or distribution of property acquired through the execution of the contract.

11.1.8 **Risk Management.** The Regional Entity shall have a Financial Risk Management Plan that is approved by the Regional Entity Board.

11.1.9 **Participants Failure to Pay:** Addressed in 3.9, 11.1.2, and 11.1.5

11.2 **Other Administration Activities.** The Regional Entity Board and/or its Operations Committee will, on an ongoing basis, consider possible administrative efficiencies where appropriate.

ARTICLE XII FISCAL YEAR

The fiscal year of the Regional Entity shall end on September 30 of each calendar year.

ARTICLE XIII AMENDMENTS

These Bylaws may be amended altered, changed, added to or repealed by a uniform resolution approved by each Participant CMH Board. No amendment to these Bylaws shall be effective until filed as provided in Article XIV.

ARTICLE XIV FILING BYLAWS

These Bylaws, including any amendment, shall be effective only after it has been duly adopted in accordance with MCL 330.1204b(1) and subsequently filed with the clerk of each county in which the Participant is located and with the Michigan Secretary of State.

ARTICLE XV TERMINATION

The Participants may terminate the Regional Entity by a vote of super majority (75%) vote of the Participants, after distributing any surplus funds to the Participants as provided in Section 11.1.4 of these Bylaws.

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Exhibit 2

Board Approved 6/9/23

SOUTHWEST MICHIGAN BEHAVIORAL HEALTH OPERATING AGREEMENT

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PURPOSE

Pursuant to Michigan Law, an Operating Agreement is “an agreement among an organization’s participant members to govern the organization’s business, and the participant member’s financial and managerial rights and duties.” (MCL 450.4102(2)(r)).

Southwest Michigan Behavioral Health (SWMBH) Operating Agreement is established between SWMBH and its participant Community Mental Health Services Programs (CMHSPs). The Operating Agreement is approved by the regional SWMBH Board, which has as its membership representatives from each of the participant CMHSP Boards.

The primary purposes of this Operating Agreement are to:

- Declare that the Regional Entity is a separate legal entity from the participant CMHSP organizations;
- Augment specific sections of the SWMBH Bylaws, as referenced therein;
- Further define the governance and management structure of SWMBH that the participant CMHSPs have chosen for the organization;
- Clarify the business and operational relationships between SWMBH and its participant CMHSPs; and
- Clarify the provisions and understandings by which SWMBH will operate.

PREAMBLE

Southwest Michigan Behavioral Health (hereinafter referred to as “SWMBH”) is a Regional Entity created pursuant to MCL 330.1204b of the Michigan Mental Health Code, 1974 PA 258. A Regional Entity is an independent public governmental entity, and is separate from the counties, authorities, or organizations that establish it. SWMBH operates under the authority of its own Board of Directors (the “SWMBH Board”), which consists of membership from each of the participant CMHSP boards, as delineated in the SWMBH Regional Entity Bylaws.

SWMBH was created with the filing of its Bylaws with Michigan’s Office of the Great Seal. These Bylaws were approved by the following participant Community Mental Health Services Programs, which are organized and operated as community mental health authorities under Michigan’s Mental Health Code (MCL 330.1001 et seq.)

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

As the Bylaws reference the Operating Agreement and require an annual review of this Operating

Agreement with revisions subject to approval by the SWMBH Board, the Operating Agreement will be filed by SWMBH with each County Clerk and the Office of the Great Seal when revisions occur.

SWMBH designated service area encompasses the following Michigan counties: Barry, Berrien, Branch, Calhoun, Cass, Kalamazoo, St. Joseph, and Van Buren. These counties are hereinafter known as the "Service Area" of SWMBH.

SWMBH was formed for the purpose of:

- (i) carrying out the provisions of the Mental Health Code in its Department designated service area as they relate to: serving as a prepaid inpatient health plan, as defined in 42 CFR 438.2 ("PIHP");
- (ii) managing the business lines for which SWMBH is the contractor to Michigan Department of Health and Human Services (MDHHS);
- (iii) ensuring a comprehensive array of services and supports as provided in the contracts with MDHHS;
- (iv) performing all the duties and responsibilities contained in the Department/Regional Entity Contract;
- (v) Substance Abuse Coordinating Agency (CA) required functions for its service area, pursuant to MCL 333.6230 et seq. (PA 501 of 2012; Amendments to Public Health Code), and MCL 330.1100a et seq. (PA 500 of 2012, Mental Health Code);
- (vi) contractual participation in the Department's MI Health Link (MiHL) demonstration project for its service area, serving persons with behavioral health needs who have both Medicare and Medicaid coverage; and finally
- (vii) exercising the powers and authority set forth by the Bylaws and governed by the SWMBH Board.

OPERATIONAL STRUCTURE

The aforementioned eight Community Mental Health Services Programs (the "Participants") have joined together to create a jointly governed regional entity operating as a Prepaid Inpatient Health Plan ("PIHP") for the purpose of supporting and furthering the work of the Participants in their roles as Community Mental Health Service Programs ("CMHSPs") as applicable in the counties they serve.

Inherent in this action is the belief that the Participants are best suited to provide services well matched to the needs of the communities and citizens served. SWMBH is established for the purpose of meeting its regulatory and statutory requirements, and other services as mutually agreed, while not encumbering, but enhancing, the efforts of the Participant CMHSPs. In serving and representing the counties of Barry, Berrien, Branch, Cass, Calhoun, Kalamazoo, Saint Joseph, Van Buren, SWMBH shall be dedicated to ensuring that equality in voice and governance exists, and that the benefit to the person participating in services is uniform, person centered, and locally available.

SWMBH is founded on a shared governance structure, using standing committees to create avenues for input. Certain checks and balances are created to ensure that governance remains balanced and equal.

SWMBH exists to support all Participants, and all Participants must work collaboratively to ensure that SWMBH is successful in its core mission.

The SWMBH Board has final authority over governing SWMBH, as set forth in the Bylaws approved by the Participants and subject to those powers reserved to the Participants in the Bylaws. This Operating Agreement reinforces the responsibility for governance of the Regional Entity to the SWMBH Board, and management of the Regional Entity to its Executive Officer (EO).

The SWMBH Board will be best served by an EO who is an accomplished administrator and facilitator, capable of bringing many and varied voices together to achieve consensus. The EO must promote compliance, fiscal responsibility, quality programs, meaningful outcomes, and efficiencies that will funnel more resources to direct services. The SWMBH Board shall also be advised by an Operations Committee that brings management expertise, local perspectives, local needs, and greater vision to the operation of the PIHP.

ORGANIZATION

Formation and Qualification. SWMBH has been formed by the Participants pursuant to the authority granted under the Michigan Mental Health Code, MCL § 330.1204b and by filing Bylaws with the County Clerks of each of the eight counties and the Michigan Secretary of State, Office of the Great Seal.

Name. The business of SWMBH may be conducted under that name or, in compliance with applicable laws, any other name that the SWMBH Board deems appropriate or advisable. SWMBH shall file any certificates, articles, fictitious business name statements and the like, and any amendments and supplements thereto, as SWMBH considers appropriate or advisable.

Office. The principal office of SWMBH shall be at such place or places of business within the eight counties as the SWMBH Executive Officer may determine.

SCOPE AND AUTHORITY

The intention of this Operating Agreement is to provide a paradigm for decision-making, and a structure for effective communication among members of the SWMBH Board, the Participants, SWMBH administration and, potentially, provider representatives, persons in service, SWMBH staff, and stakeholders, that is inclusive, collegial, equal and responsive.

The Operations Committee participates meaningfully in the establishment of and alignment to regional, SWMBH, and common CMHSPs goals.

- **Meetings.** The Operations Committee shall meet as often as it deems necessary in order to perform its responsibilities. The Operations Committee may also meet by video and phone options and may act by unanimous written consent via e-mail in lieu of a meeting. Records of Operations Committee Meetings shall be kept.

- Annual Self-Evaluation. At least annually, the Operations Committee shall evaluate its own performance, and provide recommendations and conclusions to the Board.
- Standing Committees and Subcommittees. The Operations Committee may form and delegate authority to one or more Standing Committees made up of CEOs, or it may form self-populated subcommittees or workgroups as it deems appropriate from time to time under the circumstances. Such efforts will avoid duplication or role confusion.

SWMBH BOARD COMMITTEES AND OVERSIGHT BOARDS

Pursuant to the SWMBH Bylaws, the SWMBH Board shall create the following Committees or Oversight Boards:

- Operations Committee;

Operations Committee

“An Operations Committee will be formed consisting of the CEOs of the CMHSPs or their designees. The Operations Committee will have the responsibilities and authorities assigned by the Board and outlined in the Operating Agreement.” (*SWMBH Bylaws 5.1.1*)

The SWMBH Operations Committee is comprised of the Participant CEOs/Executive Directors, or their designees, and the SWMBH EO. The SWMBH EO participates in an ex-officio capacity without vote. The Operations Committee, in collaboration with the EO and SWMBH Board, participates in the development of the vision, mission and long-term plans of SWMBH. The Operations Committee, in a manner consistent with SWMBH Board directives, contributes to the hiring and evaluation process of the EO. The EO, in concert with the Operations Committee, develops and recommends priorities for the SWMBH Board’s consideration and makes recommendations to the SWMBH Board with respect to policy and fiscal matters. The EO collaborates with the Operations Committee in the development of the contracts between the Participants and SWMBH. Each CMHSP CEO is charged with assuring that its CMHSP complies with applicable federal and state standards and regulations. The Operations Committee is advisory to both the EO and SWMBH Board. Any items requiring approval from the Operations Committee requires a super majority (75% of present members) vote.

The Operations Committee shall function with a large degree of independence in the discharge of its responsibilities. The Operations Committee shall assess the information provided by the SWMBH management, in accordance with its business judgment; and will work in collaborative partnership with the SWMBH Executive Officer (EO) in carrying-out its responsibilities, and in the provision of advice and recommendations to the Board.

Operations Committee Responsibilities and Authorities

The Operations Committee and the individual CMHSP CEOs/Executive Directors will work actively and constructively to:

- A. Assure Participant CMHSP and community awareness of and alignment to SWMBH approved contracts, Participant subcontracts and related Plans, Policy and Procedures.
- B. Assure its CMHSP personnel are constructively involved in SWMBH Committees and

related activities.

- C. Contribute to SWMBH and Participant CMHSP environmental awareness and SWMBH regional planning activities, including but not limited to strategic planning, Mission development, operational and capital budgeting, growth, infrastructure, products and markets.
- D. Seek to resolve boundary issues, differences and disputes.
- E. On an ongoing basis consider possible administrative efficiencies where appropriate (Bylaws 11.2).

As listed throughout the Operating Agreement the Operations Committee does the following:

- A. Advises both the EO and SWMBH Board.
- B. Participates in the development of the vision, mission, and long-term plans of SWMBH and ensures alignment with common CMHSP goals.
- C. Reviews the annual operating and capital budget, Financial Management Plan, Cost Allocation Plan and Financial Risk Management Plan prior to presentation and approval by the SWMBH Board.
- D. Reviews the Quality Assurance and Program Improvement Program (QAPI) prior to presentation and approval by the SWMBH Board.
- E. Reviews the Utilization Management Program (UM Plan) prior to implementation and/or presentation to the SWMBH Board.
- F. Advises the EO in advance of, and throughout, engaging in any meaningful discussion with other entities that may impact the operations or decision of participants' CMHSP or SWMBH.
- G. Attempts to resolve disputes between the Participants or one or more Participants and SWMBH at step 2 in the formal Dispute Resolution process.
- H. Assists the SWMBH Board in hiring and retention decisions regarding the SWMBH EO in a manner consistent with Board policy, and as requested.
- I. Responds to the EO's consultation before the EO renders a formal policy interpretation that may materially or negatively affect the Participants - where feasible.
- J. Reviews all grant applications submitted on behalf of SWMBH prior to being submitted.
- K. Responds to the EO's consultation before the EO determines what functions remain with SWMBH and which can be delegated to the Participants consistent with the Balanced Budget Act. Medicaid Managed Care Regulations.
- L. Advises the EO regarding any additional SWMBH contractual arrangements that involve the Participants.
- M. Provides a recommendation to the SWMBH Governing Board regarding any additional SWMBH contractual arrangements that involve the Participants and/or other vendors and requires approval by the SWMBH Governing Board.
- N. Where appropriate, reviews and comments on agendas, materials, and minutes of the Substance Use Disorder Oversight Policy Board (SUDOPB).

OPERATIONAL COMMITTEES AND POLICY BOARD COMMITTEES

SWMBH POLICY BOARDS AND COMMITTEES

Substance Use Disorder Oversight Policy Board is established to assist SWMBH develop and sustain a comprehensive array of prevention programs, treatment and other services and a provider network

capable of meeting the needs of persons with substance use disorders. SWMBH has executed an Intergovernmental Contract with 8 county commissions. This contract and related statutes and regulations shall guide the responsibilities of the SUD Oversight Policy Board. The Substance Use Disorder Oversight Policy Board will be constituted as required under MCL 330.1100a et seq. (PA 500 of 2012; Mental Health Code) and shall advise the SWMBH on issues concerning services to persons with substance use disorders. The functions and responsibilities assigned to the Board under law will include:

- A. Approval of that portion of SWMBH budget that includes local funds (PA2) for treatment or prevention of substance use disorders;
- B. Advice and recommendations regarding SWMBH budget for substance use disorder treatment or prevention using other nonlocal funding sources;
- C. Advice and recommendations regarding contracts with substance use disorder treatment or prevention providers;
- D. Other functions and responsibilities requested by SWMBH and accepted by amending Intergovernmental Contract.

Customer Advisory Committee (CAC) is established to advise SWMBH. The CAC is comprised of active or former customers, and may also include family members. Membership will include at least two but not more than three representatives from each county, nominated by Participants and other sources, recommended by the SWMBH EO, and appointed by the SWMBH Board, unless otherwise required by contract or regulation. Representatives will reflect the SWMBH population served and include those living with developmental disabilities, mental illness, serious emotional disturbance, and substance use disorders.

SWMBH Corporate Compliance Committee is established to develop the Compliance Plan for SWMBH Board approval and assist in implementing Program Integrity/Compliance Program of SWMBH. Committee members will include the SWMBH key functional areas such as Compliance, Utilization Management, Quality Management, Information Technologies, Finance, etc. as appointed by the EO. The Corporate Compliance Officer has a dual reporting relationship with the EO and the SWMBH Board. The Operations Committee will appoint a member to the SWMBH Compliance Committee.

SWMBH Standing Committees

Standing Operating Committees of SWMBH are:

- Finance Committee
- Quality Management Committee
- Utilization Management Committee
- Clinical Practices Committee
- Provider Network Management Committee
- Regional Information Technology Committee
- Customer Services Committee
- Regional Compliance Coordinating Committee

The CMHSP CEOs will ensure representatives from participant CMHSPs on all SWMBH Standing Committees. Each Participant CMHSP shall identify their representative to each committee. The EO with CMHSP support and involvement will actively pursue customer representation on standing committees. Committee work plans and goals shall be reviewed by the Operations Committee annually

and in the event of changes to ensure alignment with SWMBH and common CMHSP goals. At its discretion, the Operations Committee may request an in-depth committee report or update.

Finance Committee is established to advise the EO and is comprised of the SWMBH Fiscal Officer and participant CMHSP Fiscal Officer or Finance Director, as appointed by the Participant CEOs/Executive Directors. The Finance Committee will be charged with advising the EO and SWMBH CFO in the development of the annual operating and capital budget; Financial Management Plan, Cost Allocation Plan, and Financial Risk Management Plan, for review by the SWMBH Operating Committee prior to presentation and approval by the SWMBH Board.

Quality Management Committee is established to advise the EO and is comprised of both SWMBH QAPI leader and Participant CMHSP QM staff. The Quality Management Committee will be charged with advising the EO and SWMBH QAPI Director in the development of the Quality Assurance and Program Improvement Program (QAPIP), for review by the SWMBH Operating Committee prior to presentation and approval by the SWMBH Board.

Utilization Management Committee is established to advise the EO and is comprised of both SWMBH Clinical leader and Participant CMHSP UM staff. The UM Committee will be charged with advising the EO and the SWMBH staff in the development of the Utilization Management Program (UM Plan) for review by the SWMBH Operations Committee prior to implementation, and/or presentation to the SWMBH Board.

Clinical Practices Committee is established to advise the EO and is comprised of both SWMBH Clinical leader and Participant CMHSP clinical staff. The CP Committee will be charged with advising the EO and the SWMBH staff in the development of the Clinical Practices Program for review by the SWMBH Operations Committee prior to implementation, and/or presentation to the SWMBH Board.

Provider Network Management Committee is established to advise the EO and is comprised of both SWMBH Provider Network Manager Leader and Participant CMHSP PNM staff, as appointed by the Participant CEOs/Executive Directors.

Regional Information Technology Committee is established to advise the EO and is comprised of both SWMBH CIO and Participant CMHSP IS/IT staff, as appointed by the Participant CEOs/Executive Directors.

Customer Services Committee is established to advise the EO and is comprised of both SWMBH staff and Participant CMHSP CS leader, as appointed by the Participant CEOs/Executive Directors.

Regional Compliance Coordinating Committee consists of both SWMBH Chief Compliance Officer and CMHSP Compliance Officers as appointed by the Participant CEOs/Executive Directors. It is established to insure sharing of Compliance knowledge and best practice among the participants.

Each Committee shall have a Charter, subject to review by the Operations Committee. Periodic Operations Committee reviews of Committee Charters at the direction of the Operations Committee and SWMBH EO.

Responsibilities of SWMBH and Participants Regarding the Participants and Committees

SWMBH EO and the Participant CMHSP CEOs/Executive Directors shall mutually assure communication and collaboration including but not limited to:

- A. Provide all parties, in a timely manner, copies of correspondence of a substantive nature to allow full consideration and deliberation prior to being called on to take action on such items. This includes but is not limited to: 1) policy, 2) contracts, 3) funding, 4) State and federal mandates, 5) items requiring a parties action and 6) legislative initiatives;
- B. Provide all parties with copies of minutes from meetings attended by staff as representatives of SWMBH, and provide timely reports to the Operations Committee, as requested;
- C. It is the intent of the parties to operate an efficient and well managed organization, keeping cost reasonable, thus allowing a maximum flow of funding for services. To this end all parties will share in representing the SWMBH at State level meetings and on committees at the regional, State, federal, and any association levels. Only those authorized to do so by the EO may speak on behalf of SWMBH, and those representing SWMBH are to provide a written summary or minutes of the proceedings. Determination of SWMBH representation, if other than SWMBH staff appointed by the EO, at standing statewide PIHP committees or meetings will be discussed by the Operations Committee;
- D. Provide timely and accurate financial reports, with detail at the level necessary to allow the Participant CEOs/Executive Directors to have a full understanding of fiscal operations and status of SWMBH matters;
- E. Provide data to all parties Boards in a complete and timely manner, and provide additional reasonable detail as requested by the Participants;
- F. Contribute to SWMBH and Participant CMHSPs environmental awareness and SWMBH regional planning activities, including but not limited to strategic planning, Mission development, operational and capital budgeting, growth, infrastructure, products and markets;
- G. Advise the Operations Committee in advance of engaging in any meaningful discussion with other entities that may impact the operations or decision of CMHSPs; and
- H. Establish and sustain a regular schedule for standing committee meetings and arrange for appropriate space and clerical support.

DISPUTE RESOLUTION PROCESS

"The manner for adjudicating a dispute or disagreement among Participants shall be set forth in an Operating Agreement, approved by the Regional Entity Board and incorporated herein by reference."
(SWMBH Bylaws 3.6)

Occasionally disputes may arise that cannot be resolved through amiable discussion. Any unresolved disputes between the Participants or one or more Participant and SWMBH will be resolved as follows:

1. The Participant CMHSP CEOs/Executive Directors will attempt to resolve the dispute through discussion with each other, or the SWMBH EO if the dispute is with SWMBH.
2. If the dispute remains unresolved, the Participant CMHSP CEOs/Executive Directors, or the SWMBH EO if the dispute is with SWMBH, will bring the matter to the Operations Committee no later than its next scheduled meeting, which will discuss the matter and render a decision within fifteen (15) calendar days of the meeting, or within agreed upon timeframe by involved parties.
3. If the dispute continues to be unresolved to the satisfaction of the Participant/s or SWMBH, all parties to the dispute will provide written descriptions of the issue in dispute and propose a solution to the SWMBH Board within fifteen (15) calendar days or within agreed upon timeframe by involved parties. The SWMBH Board will have thirty (30) calendar days or a

mutually agreed upon timeframe to provide a written decision.

4. If the Participant/s or SWMBH remain dissatisfied, the Participant/s or SWMBH may seek mediation, arbitration or legal recourse as provided by PIHP-CMHSP contract and law.
5. Participant sub-contracts will include a Dispute Resolution section congruous with this approach.

OPERATION OF SWMBH

A. Budget

The Finance Committee is charged with advising the EO and SWMBH CFO in the development of the regional annual operating and capital budget; Financial Management Plan, Cost Allocation Plan, and Financial Risk Management Plan, for review by the SWMBH Operating Committee prior to presentation and approval by the SWMBH Board as applicable.

From these plans, annual operating and capital budgets will be developed. The Participants play an integral part in the budget development via its representatives on the SWMBH Finance Committee.

Annual operating and capital budgets will be developed in accordance with the principles outlined in SWMBH Financial Management and Financial Risk Management Plan and Cost Allocation Plans which are incorporated herein by reference and considered a part of this Operating Agreement. The annual operating and capital budgets will be reviewed by the Operations Committee prior to presentation to the SWMBH Board.

The annual operating budget shall plan for adequate funds for projected supports and services to beneficiaries. Budgeting shall consider Participant CMHSPs needs for capital and operating costs, payments of principal and interest on obligations; prudent risk management; reinvestment of Medicaid savings to ensure benefit stabilization; Participant CMHSPs meeting local match obligations for Medicaid; equitable distribution of any surplus funds available after the completion of the Regional Entity's purpose, and operations efficiency and effectiveness across the region.

The SWMBH CFO and Finance Committee may recommend to the EO potential areas where functional consolidation and administrative efficiencies may be achieved. These in turn will be considered by the EO and the Operations Committee. After thorough review, a proposal may be presented to the SWMBH Board for approval if necessary.

Purchase of Services (POS)

Participant CMHSPs singly or in groups may purchase services from SWMBH. Such arrangements shall be documented in writing with mutual agreement as to specification and pricing.

Where there is a POS agreement between SWMBH and one or more Participants, only those Participants who are a party to the agreement will be subject to the terms and conditions of the agreement. Cost associated with any agreements shall be managed between SWMBH and applicable Participants, subject to request for review by the Operations Committee.

Nothing shall prohibit a Participant from withdrawing from an agreement established with SWMBH to provide a service on behalf of the Participant. However, the Participant, once a party to an agreement, will be bound by that agreement and may withdraw only according to the terms of the agreement.

The SWMBH CFO and Finance Committee will establish a financial management system sufficient to monitor revenues and expenditures by funding source (Medicaid, HMP, General Fund, etc.) and the Participants. SWMBH shall maintain accounts and source records in which any and all revenues received and expenses incurred are ascertainable and verifiable and include date of receipt /payment and sources of funds. The SWMBH CFO has the responsibilities set forth in MCL § 330.1204b and will be responsible for receiving, depositing, investing, and disbursing SWMBH's funds in the manner authorized by SWMBH Bylaws, Board policy, and operational policy.

B. Planning

The SWMBH Board, in collaboration with the Operations Committee and the EO, will develop and publish a mission statement and vision statement consistent with the principles of SWMBH.

Per Board directive the EO will facilitate a planning session, involving the SWMBH Board and the Operations Committee to create, update, or modify the Long-Term Plan of SWMBH. The process will allow for broad input and is intended to meet all contractual and accreditation requirements. The SWMBH Board will approve the Long-term Plan prior to its publication.

C. Compliance

All parties recognize that SWMBH is a regional entity, and holds distinct and different legal status and responsibilities than the Participants. SWMBH is the Department designated PIHP and CA Office for the Southwest Michigan service area.

Throughout the implementation of this Operating Agreement, all parties enter into this arrangement in a spirit of good faith and cooperation. All parties recognize that SWMBH may need to, at the discretion and with the advanced approval of the SWMBH EO and his/her designee, conduct random audits and/or reviews of the Participants. Such activity would occur with timely notice to the Participant CEOs/Executive Directors and Participant Compliance Officer to communicate rationale for the review and findings. The Participants acknowledge that SWMBH is responsible for ensuring that covered services and administrative services furnished by and through the Participants are furnished and compensated in accordance with applicable laws and regulations. Accordingly, on behalf of itself and its providers, the Participants acknowledge that SWMBH has the right, responsibility and authority:

1. To detect and deter compliance violations by the Participants and their providers by any lawful means, including monitoring and announced audits; and
2. In conjunction with the Participant CMHSPs Compliance Officer to independently investigate alleged or suspected compliance violations by the Participants, a network provider, or an employee, owner, or governing body members of either.

The Participants acknowledge their obligation to submit all requested financial and quality data and reports within the timelines as found in subcontracts, MDHHS directives or as agreed upon. Should a Participant CMHSPs not submit requested financial and quality data and reports in a complete, valid and timely manner, SWMBH will be empowered to take corrective action, including agreed upon sanctions, in accordance with the terms of the SWMBH/CMHSP Contract.

D. Human Resources

SWMBH will directly employ the EO, CFO, and CIO. The Operations Committee may recommend to the SWMBH EO the use of other hired staff, or the use of a contract to secure other established positions as required.

The SWMBH EO shall appoint, or contract with, an individual or an organization to perform Human Resources functions.

The employee handbook of SWMBH shall be made available upon request to the Operations Committee.

The SWMBH Board has sole responsibility for all hiring and retention decisions regarding the SWMBH EO. The Operations Committee shall assist the SWMBH Board in this process as requested. This may include screening candidates to ensure the SWMBH Board receives only qualified applicants to consider and participation in the interview and evaluation process

E. Policy Development

The SWMBH EO, making full use of the Operations committee and standing committees, shall develop policies, exclusive of SWMBH internal operational policies.

The SWMBH EO shall consult with the Operations Committee before rendering a formal policy interpretation that may materially or negatively affect the Participants where feasible.

F. Contracts

SWMBH shall contract with the Participants as its CMHSP providers.

SWMBH, consistent with regulatory requirements and funds availability may consider with review from Operations Committee providing Participants with pilot or startup funding. Nothing other than federal or state statutory or regulatory prohibition should inhibit or prohibit a Participant CMHSPs from participating in opportunities to provide integrated and accountable care to serve the Medicaid population in its CMHSP catchment area provided that they are consistent with SWMBH policies, financial plan, financial risk management plan and cost allocation plan.

Consistent with the SWMBH mission, vision, and principles, all grant applications submitted on behalf of SWMBH must be reviewed by the Operations Committee prior to being submitted. This may necessitate review outside the regularly scheduled Operations Committee meetings due to funding application grant timelines.

The SWMBH EO shall, in consultation with Operations Committee, determine what functions remain with SWMBH and which can be delegated to the Participants consistent with the Medicaid Managed Care Rules.

The Operating Committee shall be consulted regarding significant contract arrangements that involve SWMBH and Participant CMHSPs. Nothing herein prohibits the participant CMHSPs from entering into opportunities at the local level to provide services.

"2.4.1 The Regional Entity shall have no powers, rights or authority with respect to:

- the Participants' obligations under the Mental Health Code including those related to size,

composition, and authority of the Participants' Board;

- the Participants' autonomous administrative, financial, or clinical operations; or
- the Participants' relationship with other providers unless the Regional Entity's involvement is so limited that it does not prevent the Participant from collaborating with other providers."

(SWMBH Bylaws 2.4)

AMENDMENTS

This Operating Agreement shall be reviewed and an Operations Committee Self-Evaluation shall be performed by the Operations Committee on an annual basis, with a report to the Board on both. Any recommended changes to the Operating Agreement will be forwarded to the SWMBH Board for consideration. All revisions or amendments to the Operating Agreement shall be in writing and formally approved by the SWMBH Board.

June 5th, 2024

To: Brad Casemore, Chief Executive Officer - SWMBH
Mila Todd, Chief Compliance Officer - SWMBH

RE: Inpatient Hospitalization Continued Stays Authorization

As you know, I have been diligently looking to get back inpatient hospitalizations from SWMBH. I know that SWMBH has taken the stance that you are in full authority to delegate or not delegate functions, in this case, inpatient hospitalizations. I believe that you have taken authority that you do not have when it comes to inpatient hospitalizations:

I have thoroughly reviewed as many documents as I can. These documents include the SWMBH Contract, SWMBH Bylaws, SWMBH MOUs, SWMBH Operating Agreement, Constitution of the state of Michigan, DHHS Behavioral Health and Developmental Disabilities Administration—Community Health Programs, and finally, Michigan Department of Community Health Behavioral Health and Developmental Disabilities Administration (Cost Reporting Instructions).

I would like to start with the Administrative Rules:

- R330.2005 Minimum Services to be Provided.
 - Rule 2005. A community mental health board shall ensure that the following minimum types and scopes of mental health services are provided to all age groups **directly by the board**, by contract, or by formal agreement with public or private agencies or individuals contingent on legislative appropriation of matching funds for provision of these services
 - Emergency Intervention Services.
 - Prevention services.
 - Outpatient Services .
 - Aftercare services.
 - Day Program and activity services.
 - Public information services.
 - **Inpatient services.**
 - Community/caregiver services.

As a community mental health, I am responsible for providing Inpatient services. This doesn't say that it can be limited, or granted via the PIHP, it says that I am to provide those services.

Michigan State MCL (Mental Health Code) 330.1116:

Section 116 2 b

(b) Administer the provisions of Chapter 2 so as to promote and maintain an adequate and appropriate system of community mental health services programs throughout the state. In the administration of Chapter 2, it shall be the objective of the department to shift primary responsibility for the direct delivery of public mental health services from the state to a community mental health services program whenever the community mental health services program has demonstrated a willingness and capacity to provide an adequate and appropriate system of mental health services for the citizens of that service area.

Rest assured that we are more than willing and able to provide St. Joseph County citizens with the authorizations and coordination of care required for inpatient hospitalization.

SWMBH MOU, specifically CFR 438.210 & 438.230:

- 210 specifically speaks to coverage and authorization of services. It doesn't state that you must provide the authorization; it does instead state that you:
 - (a)(1) Identify, define, and specify the amount, duration, and scope of each service that the MCO, PIHP, or PAHP is required to offer.
 - **(b) Authorization of services.** For the processing of requests for initial and continuing authorizations of services, each contract must require—
 - **(1)** That the MCO, PIHP, or PAHP and its subcontractors have in place and follow written policies and procedures.
 - **(2)** That the MCO, PIHP, or PAHP—
 - **(i)** Have in effect mechanisms to ensure consistent application of review criteria for authorization decisions.
 - **(ii)** Consult with the requesting provider for medical services when appropriate.\
 - **(iii)** Authorize LTSS based on an enrollee's current needs assessment and consistent with the person-centered service plan.
 - **3)** That any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested be made by an individual who has appropriate expertise in addressing the enrollee's medical, behavioral health, or long-term services and supports needs.

SWMBH has taken undue authority to claim responsibility for this process.

- 230 specifically speaks to your requirement to document any delegation and information needed for a subcontract. Again, this doesn't state that you have the authority to withhold my ability to provide, authorize, and handle all aspects of inpatient care.
- 240 (as referenced in MOU) specifically talks about Quality Assessment and performance improvement projects, which have nothing to do with authorizing services. It does speak to you monitoring our over- and underutilization, which you do yearly for our annual audits. Again, this has nothing to do with you authorizing the services; it does speak to you reviewing what we authorize and whether we follow standards set forth via the PIHP.



SWMBH Operating Agreement

Page 12 of 13 specifically states: The regional entity shall have no powers, rights, or authority with respect to:

- The participant's obligations under the Mental Health code, including those related to size, composition, and authority of the Participants' board;
- the Participants' autonomous administrative, financial, or clinical operations;

SWMBH limiting my ability to authorize, continue to authorize (continued stays), and participate in the discharging of clients as part of the continued stay process, is one of the core responsibilities of a community mental health organization regardless of insurance source, and this is particularly true concerning inpatient authorization, etc. found in Chapter 4 of the mental health code. This is of particular interest as SWMBH does not have the authority to authorize or continue to authorize the use of my GF, especially when it comes to inpatient hospitalizations, and there are no provisions in any of our contracts, MOUs, etc., that delineate that.

SWMBH BYLAWS

- 2.4 Participant Retained Powers: The participant shall retain all powers, rights, and authority afforded community mental health services programs, organized and operated as county mental health authorities, agencies, or organizations under the Mental Health Code.
- SWMBH limiting my ability to authorize, continue to authorize, and participate in the discharging of clients is one of the core responsibilities of a community mental health organization.

Lastly, the Michigan Department of Community Health Behavioral Health and Developmental Disability's Administration Administrative Costs reporting.

- Page 6
 - SWMBH has taken the stance that they have used this document to determine what UM is and what can or cannot be delegated. However, this document does something completely different. It tells the PIHP and the CMHSP how to allocate their funding while performing the services described by the Administrative Costs. This does not in any way limit the CMH agency from performing or not performing any duty, task, or requirement.



Main Office
677 E. Main Street
Centreville, MI 49032

Three Rivers Office
1020 Millard Street
Three Rivers, MI 49093

Sturgis Office
1555 E. Chicago Rd., Suite A
Sturgis, MI 49091

Phone: 269.467.1000 • Crisis Line: 1.800.622.3967 • www.PivotalStJoe.org





Given the following documentation provided and the Mental Health Code, I suspect we will need to have a further conversation amongst all CMHs minus ISK as they are still "granted" the "authority" from SWMBH to retain this function.

Thank you for your time, and I look forward to hearing from you soon.

Respectfully,

Cameron Bullock, MBA

Pivotal Chief Executive Officer



Main Office
677 E. Main Street
Centreville, MI 49032

Three Rivers Office
1020 Millard Street
Three Rivers, MI 49093

Sturgis Office
1555 E. Chicago Rd., Suite A
Sturgis, MI 49091

Phone: 269.467.1000 • Crisis Line: 1.800.622.3967 • www.PivotalStJoe.org





Exhibit 4

Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI, 49002

P: 800-676-0423

F: 269-883-6670

September 19, 2024

Cameron Bullock

CEO, Pivotal

Via email only

Re: Request for Delegation of Inpatient Continuing Stay Reviews

Dear Cameron:

Pivotal requested that SWMBH delegate inpatient continuing stay reviews to Pivotal. SWMBH is declining to move forward with a pre-delegation assessment, which is required under the Code of Federal Regulations, at this time based on the following:

- MDHHS has indicated that under its Conflict Free Access and Planning (CFAP) implementation plan, PIHPs will be precluded from delegating Utilization Management to Participant CMHSPs. There is an MDHHS-initiated CFAP meeting with PIHPs on November 1, 2024. In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time.
- Pivotal was cited in the FY24 CMH Site Review process for UM Standard 11, related to training staff on the Milliman Care Guidelines (MCG). Deficiencies noted included that staff were not trained on MCG for use in inpatient Pre-Admission Screening determinations. MCG is the MDHHS-required medical necessity criteria for both pre-admission screening as well as continuing stay determinations. Continued monitoring of Pivotal's implementation of its Corrective Action Plan will occur according to the Site Review monitoring process.

Pivotal's request for delegation further asserted that SWMBH has no authority over Pivotal's General Funds, and therefore Pivotal should complete inpatient continuing stay review determinations for Individuals funded under General Fund. It is a correct assertion that SWMBH does not have authority over Pivotal's General Funds. Historically, these reviews have been completed by SWMBH because hospitals are required to assist individuals in submitting applications for Medicaid coverage, and often individuals who received inpatient psychiatric services receive retroactive Medicaid coverage such that the inpatient stay is ultimately paid out of Medicaid funds. At Pivotal's request, SWMBH will cease in performing continuing stay reviews for Pivotal members who do not have Medicaid coverage, effective October 1, 2024 for all new admissions. **Please provide a telephone number for Pivotal UM reviewers that SWMBH may provide to hospitals that contact SWMBH.** It is SWMBH's very strong recommendation that Pivotal:

- Notify inpatient providers of the change in process.
- Ensure continuing stay reviews are being completed in accordance with all Medicaid requirements. In the event an individual receives retroactive Medicaid coverage, all Medicaid requirements must have been met, including use and documentation of MCG criteria for continuing stay medical necessity determinations, in order for Medicaid funds to be used. As you know, it is in the Region's best interest to capture every valid Medicaid cost and encounter, including those for retroactive Medicaid enrollment.

Should you have any questions or concerns, please feel free to contact me. Thank you.

Regards,



Mila C. Todd, Esq., CHC, CHPC
Chief Compliance & Privacy Officer
Director of Provider Network Management

Cc: Brad Casemore, Anne Wickham



Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI, 49002

P: 800-676-0423

F: 269-883-6670

September 19, 2024

Jean M. Goodrich
CEO, Summit Pointe
Via email only

Re: Request for Delegation of Inpatient Continuing Stay Reviews

Dear Jeannie:

On August 25, 2024, Summit Pointe requested that SWMBH delegate inpatient continuing stay reviews to Summit Pointe by October 1, 2024. SWMBH is declining to move forward with a pre-delegation assessment, which is required under the Code of Federal Regulations, at this time based on the following:

- MDHHS has indicated that under its Conflict Free Access and Planning (CFAP) implementation plan, PIHPs will be precluded from delegating Utilization Management to Participant CMHSPs. There is an MDHHS-initiated CFAP meeting with PIHPs on November 1, 2024. In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time.
- Summit Pointe was cited in the FY24 CMH Site Review process for UM Standard 11, related to training staff on the Milliman Care Guidelines (MCG). Deficiencies noted included that staff were not trained on MCG for use in inpatient Pre-Admission Screening determinations. MCG is the MDHHS-required medical necessity criteria for both pre-admission screening as well as continuing stay determinations. Continued monitoring of Summit Pointe's implementation of its Corrective Action Plan will occur according to the Site Review monitoring process.

Should you have any questions or concerns, please feel free to contact me. Thank you.

Regards,

A handwritten signature in cursive script that reads "Mila C. Todd".

Mila C. Todd, Esq., CHC, CHPC
Chief Compliance & Privacy Officer
Director of Provider Network Management

Cc: Brad Casemore, Anne Wickham

Ensing, Bryan R.

From: Bullock, Cameron <CBullock@pivotalstjoe.org>
Sent: Thursday, October 24, 2024 11:30 AM
To: Marchand, Neil J.
Cc: Jeannie Goodrich
Subject: Fw: Pivotal Dispute Resolution Step 1 10-14-24

Exhibit 5

CAUTION: ** Ensure you trust and expect email from "cbullock@pivotalstjoe.org" before clicking links/attachments. ** **CAUTION**

See communication below:

Thank you



Cameron Bullock, MBA

Chief Executive Officer

From: Mila Todd <Mila.Todd@swmbh.org>
Sent: Thursday, October 24, 2024 11:27 AM
To: Bullock, Cameron <CBullock@pivotalstjoe.org>
Cc: Brad Casemore <Brad.Casemore@swmbh.org>; Anne Wickham <Anne.Wickham@swmbh.org>
Subject: RE: Pivotal Dispute Resolution Step 1 10-14-24

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning:

Brad asked I respond while he is away – he is included on this response. SWMBH maintains the position that we will not consider completing a pre-delegation assessment until such time as MDHHS announces CFAP specifications and requirements. I emailed Kristen Jordan on Monday asking when we can expect that information to be released. In previous iterations of MDHHS's CFAP implementation plan, PIHPs were precluded from delegating Utilization Management (albeit "utilization management" was undefined). I am happy to schedule a bilateral meeting with applicable subject matter experts for the purpose of developing strategies to improve existing business processes including communication and coordination, with the ultimate goal of improving member care by reducing lengths of stay and readmissions. We can also use this meeting to discuss the delegation consideration process and timeline. The MDHHS-PIHP Agreement contains a specific requirement that revised Delegation Agreements be sent to MDHHS at least 90 calendar days prior to the proposed effective date of any new delegation for MDHHS review and approval (Standard Contract Terms, Paragraph 11).

Let me know if you'd like me to schedule the meeting referenced above. Thank you.

Regards,
Mila C. Todd, Esq., CHC, CHPC
Chief Compliance & Privacy Officer
Director of Provider Network
www.swmbh.org

From: "Bullock, Cameron" <CBullock@pivotalstjoe.org>
Date: October 22, 2024 at 10:05:48 AM EDT
Cc: Brad Casemore <Brad.Casemore@swmbh.org>
Subject: Re: Pivotal Dispute Resolution Step 1 10-14-24

CAUTION: External Email

Brad,

As CFAP meeting was canceled. What are my next steps to get this back?

I would to have this back no later than 12/1.

I do not believe that waiting for CFAP is going to be a hindering me taking it back, or negatively affect my ability to fo continue stays.

Thank-you

Cameron

Cameron Bullock, MBA
Chief Executive Officer



677 E Main St
Centreville, MI 49032
Cell: 269.503.2814
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From: Michelle Jacobs <Michelle.Jacobs@swmbh.org>
Sent: Monday, October 14, 2024 1:30:14 PM
To: Bullock, Cameron <CBullock@pivotalstjoe.org>
Cc: Brad Casemore <Brad.Casemore@swmbh.org>; Mila Todd <Mila.Todd@swmbh.org>; Anne Wickham <Anne.Wickham@swmbh.org>
Subject: Pivotal Dispute Resolution Step 1 10-14-24

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Cameron,

Attached please find a letter regarding Pivotal Dispute Resolution Step 1 10-14-24.

Thank you,

Michelle Jacobs
Senior Operations Specialist - Office of the CEO;
Rights Advisor
Southwest Michigan Behavioral Health
P: 269-488-6845
www.swmbh.org



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Exhibit 6

Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI 49002

P: 800-676-0423

F: 269-883-6670

October 14, 2024

Cameron Bullock CEO Pivotal

Regarding Pivotal Dispute Resolution Process Step 1 expansion of delegation of inpatient psychiatric services Utilization Management (UM)

Cameron,

This serves as my response subsequent to our October 10, 2024 Dispute Resolution Step 1 meeting on the above-captioned topic. I referred to our September 19, 2024 letter to you throughout the meeting.

1. I clarified and confirmed that our September 19 declination was a temporary pause in initiating our consideration process and was not a blanket "no, never."
2. I reinforced that further MDHHS pronouncements on Conflict Free Access & Planning (aka conflict free case management) will inform SWMBH central care management and CMH local care management utilization management roles, authorities and business processes. At September 19 2024 there was to be a November 1, 2024 MDHHS-PIHP meeting on CFAP. That meeting has been canceled by MDHHS with no known reschedule date. Current lack of MDHHS CFAP specifications remains a basis for our pause in considering your requested expansion of delegated utilization management for inpatient psychiatric services. From our September 19 letter *"In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time."* More information from MDHHS will be known and shared with the region hopefully in the near future. Until that time our pause on considering your request remains. I recognize you disagree with this decision and further that you believe we do not have the authority to determine delegation of utilization management for Medicaid.
3. Regarding MCG Criteria training and proper usage I understand your position that no CAP request should have been issued by SWMBH based on your view that there is no or limited guidance from SWMBH on this. Regardless please continue your efforts to know and plan for adherence to written SWMBH guidance on MCG Criteria and related training. Once your prospective assurances are in place we will no longer consider this a contingency to considering your request.

Serving Barry, Berrien, Branch, Calhoun, Cass, Kalamazoo, St. Joseph and Van Buren Counties



You mentioned that you seek written contractual and/or SWMBH Policy clarity on the MCG Annual Training requirement as you cannot find that guidance. I agree SWMBH needs to put specifications in place if they are lacking.

4. I confirmed that our October 10, 2024 meeting fulfills the Dispute Resolution Step 1 process on this topic thus any future Dispute Resolution moves to Step 2 if on this same topic.

I take seriously your examples of opportunities to improve communications amongst and between Pivotal, SWMBH Central Care Management and hospitals. Anne Wickham the Chief responsible for Call Center and UM stands ready to hear and address opportunities for improvement apart from any Dispute Resolution process.

I mentioned some of our probable future considerations regarding your Ask. Pivotal is free to but not obligated to prepare responses to those and/or other pre-delegation assessment issues anticipating future consideration of your Ask. Please note that process if initiated is an operational matter not a component of this Dispute.

Respectfully,

Bradley P. Casemore



Principal Office: 5250 Lovers Lane, Suite 200, Portage, MI 49002
P: 800-676-0423
F: 269-883-6670

October 8, 2024

Jeannie Goodrich CEO Summit Pointe

RE: Summit Pointe Dispute Resolution Process Step 1 Expansion of Delegation of inpatient psychiatric services Utilization Management (UM)

Jeannie,

This serves as my response subsequent to October 3, 2024 Dispute Resolution Step 1 meeting on the above-captioned topic. I referred to our September 19, 2024 letter to you throughout the meeting.

1. I clarified and confirmed that our September 19 declination was in reference to your request to expand the delegation October 1, 2024 and was not a blanket "no, never."
2. I reinforced that further MDHHS pronouncements on Conflict Free Access & Planning (aka conflict free case management) will inform SWMBH central care management and CMH local care management utilization management roles, authorities and business processes. There is a November 1, 2024 MDHHS-PIHP meeting on CFAP. This current lack of certainty remains a basis for our pause in considering your requested expansion of delegated utilization management for inpatient psychiatric services. From our September 19 letter *"In the interests of avoiding unnecessary administrative activities, SWMBH will not consider any requests for further delegation of Utilization Management activities until at least after this time."* More information will be known and shared with the region after we analyze MDHHS November 1 guidance. I suggested scheduling a bilateral SWMBH-Summit Pointe follow-up meeting regarding your request the week of November 11, 2024. That meeting would not include me and is not part of the Dispute Resolution process. Please let Mila know if you would like to set that meeting.
3. Regarding MCG Criteria training and proper usage please continue your efforts to complete the related Corrective Action Plan. Once that is lifted and the prospective assurances are in place and underway we will no longer consider this a contingency to considering your request. You mentioned that you seek contractual and/or SWMBH Policy clarity on the MCG Annual Training requirement. I concur SWMBH needs to put that in place if it is lacking.
4. I confirmed that our October 3, 2024 meeting fulfills the Dispute Resolution Step 1 process thus any future Dispute Resolution steps move to Step 2 if on this same topic.

Serving Barry, Berrien, Branch, Calhoun, Cass, Kalamazoo, St. Joseph and Van Buren Counties



I mentioned some of our probable future considerations regarding your Ask. Summit Pointe is free to but not obligated to prepare responses to those and/or other pre-delegation assessment issues. Please note that process if initiated is an operational matter not a component of this Dispute.

Respectfully,

A handwritten signature in black ink that reads "Bradley P Casemore".

Bradley P. Casemore

SOUTHWEST MICHIGAN BEHAVIORAL HEALTH PREPAID INPATIENT HEALTH PLAN

Effective October 1, 2018

CMHSP Participant: Memorandum of Understanding

This Memorandum of Understanding (hereinafter referred to as the "MOU") between Southwest Michigan Behavioral Health (SWMBH) acting in its capacity as the Pre-paid Inpatient Health Plan (PIHP) and Community Mental Health and Substance Abuse Services of St. Joseph County (CMHSP Participant) made and entered into by both parties on October 1, 2018, supersedes and replaces any and all previous versions of this MOU, and sets forth Services and Responsibilities agreed to by SWMBH and Community Mental Health and Substance Abuse Services of St. Joseph County.

I. Agreement Purpose:

The purpose of this Agreement is to document the terms and conditions by which SWMBH delegates certain required PIHP administrative functions and responsibilities to the CMHSP Participant consistent with the CMS regulations pertaining to subcontractual relationships and delegation [CFR: 438.230].

Delegation of each administrative responsibility is considered independent and as such, requires acknowledgement by both SWMBH and the CMHSP Participant [CFR: 438.230(c)(1)(ii)].

Delegation of each separate administrative responsibility is solely at the discretion of SWMBH. The SWMBH retains full oversight responsibility for all delegated activities, and all delegated activities must be carried out in observance of applicable federal regulations, terms of contract between MDHHS and SWMBH, SWMBH Sub-Contract Agreement and SWMBH policies and standards.

Southwest Michigan Behavioral Health is obligated to assure prospective development, documentation and distribution to CMHSP participants of new and revised policies and procedures impacting participants' functions. This shall occur, among other means, through review at Committee(s), SWMBH website placement of policies, distribution of provider manuals, Technical Advisory Bulletins, and special alerts. Terms and conditions retroactively imposed by MDHHS or other legitimate authority are exempted from this pledge.

Any SWMBH action related to participant sub-contract penalties, sanctions or termination shall be guided by and subject to the terms and conditions of the participant sub-contract.

The CMHSP Participant shall demonstrate continuous full competency and capacity to fulfill the responsibilities identified below. The CMHSP Participant shall be aware of Medicaid Managed Care Rule requirements, PIHP contractual obligations and SWMBH policies; and shall perform the delegated activities and reporting responsibilities as specified in those requirements. The CMHSP Participant agrees to comply with all applicable Medicaid laws, regulations including sub-regulatory guidance, and contract provisions (438.230(c)(2)).

The CMHSP Participant may not sub-delegate any delegated function without obtaining prior written authorization from SWMBH's Executive Officer. Participating CMHSPs are encouraged to consider functional sharing arrangements for delegated functions. Such sharing arrangements must include SWMBH Executive Officer or his/her designee in the design discussions and methodology development, prior to any implementation.

Pre-Assessment of CMHSP PARTICIPANT's Capacity to Perform Delegation:

SWMBH completed a pre-delegation assessment to evaluate the delegated entity's capacity to perform the delegated activities prior to any delegation.

On-Going/Annual Assessment of Delegation Functions:

It is understood and agreed by both parties that SWMBH maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with the State. To assure adherence with these requirements, SWMBH will monitor and assess that the CMHSP Participant is appropriately carrying out its delegated responsibilities and is complying with required SWMBH (and CMS/MDHHS) policies, standards and contract terms for all delegated functions.

Such on-going monitoring will be obtained through various performance activities of SWMBH sub-committees, contract monitoring and review(s) of the CMHSP Participant's operational practices, local policies and procedures, and internal documentation pertaining to all delegated functions. In addition, remote electronic oversight and monitoring/data analysis may occur.

The CMHSP Participant shall identify to SWMBH a single authoritative managerial point of contact for each delegated function, and update SWMBH promptly if said person(s) change over time. The CMHSP Participant shall make reasonable efforts to make this person and related persons available to SWMBH for training, reporting, and monitoring, on an as-needed basis.

Compliance Expectations:

CMHSP Participant must have and maintain practices that are adequate to fulfill its obligations under each sub-contract. In the event that the CMHSP Participant fails to meet established criteria for performance of a delegated function, corrective action will be required. Persistent non-compliance could lead to revocation of the delegated function (42 CFR 438.230(c)(1)(iii)).

A CMHSP Participant will be given written notice of areas of non-compliance and/or performance below standard of the delegated function(s). The CMHSP Participant will be expected to take immediate action to correct the performance deficiency and to document and submit such improvement efforts to SWMBH for approval and follow-up monitoring. Should the CMHSP Participant fail to comply with the requirements of the Plan of Correction or improve performance within the time-period acceptable as stated in writing by SWMBH, SWMBH may revoke the delegated function(s). Non-compliance and/or sub-standard performance in one delegated functional area does not automatically jeopardize delegation to the CMHSP Participant in another functional area. Similarly, the revocation of one delegated function may not affect another delegated function where the CMHSP Participant is performing satisfactorily.

Written notice from SWMBH to the CMHSP Participant is required prior to revocation of any delegated function. Should a delegation(s) be revoked, the CMHSP Participant still remains under obligation to the terms of its contract with SWMBH and shall continue to observe SWMBH policies and standards as a provider of service.

The CMHSP Participant understands and agrees that (42 CFR 438.230):

- 1) The State, CMS, the HHS Inspector General, the Comptroller General, or their designees have the right to audit, evaluate, and inspect any books, records, contracts, computer or other electronic systems of the CMHSP Participant or of its contractors, that pertain to any aspect of services and activities performed, or determination of amounts payable under SWMBH's

contract with the State.

- 2) The CMHSP Participant will make available, for purposes of an audit, evaluation, or inspection under the above section (1), its premises, physical facilities, equipment, books, records, contracts, computer or other electronic systems relating to its Medicaid enrollees.
- 3) The right to audit under exists through 10 years from the final date of the contract period or from the date of completion of any audit, whichever is later.
- 4) If the State, CMS, or the HHS Inspector General determines that there is a reasonable possibility of fraud or similar risk, the State, CMS, or the HHS Inspector General may inspect, evaluate, and audit the CMHSP Participant at any time.

II. Delegated Functions [Mental Health services and outpatient SUD services provided by the CMHSP Participant directly]

I. Utilization Management	
<p>The PIHP shall delegate the following Utilization Management activities to the CMHSP PARTICIPANT:</p> <p><i>Legal References:</i></p> <ul style="list-style-type: none"> ▪ 42 CFR 438.210 ▪ MDHHS Contract: Attachment P.6.7.1.1 	<ol style="list-style-type: none"> 1) Access and Eligibility Determination. The CMHSP Participant shall: <ol style="list-style-type: none"> a) Screen for both clinical eligibility and financial eligibility using MDHHS contractually mandated standardized screening tools; b) Provide for a second opinion from a network provider, or arrange for the enrollee to obtain one outside the network, at no cost to the enrollee; c) For SUD services only, offer choice of provider from SWMBH's Provider Network. 2) Utilization Management Protocols <ol style="list-style-type: none"> a) CMHSP Participant shall adhere to Payor standards for the following: <ol style="list-style-type: none"> i) Medical Necessity criteria and determinations; ii) Level of Care assessments; iii) Service intensity or selection criteria; and iv) Services requiring specialist review. b) CMHSP Participant shall be responsible for implementation and application of the PIHP Utilization Management Policy and Plan. c) CMHSP Participant shall participate in the development, dissemination, and application of Practice Guidelines. 3) Authorization <ol style="list-style-type: none"> a) Initial approval or denial of requested services (42 CFR 428.210; 42 CFR 438.240) <ol style="list-style-type: none"> i) Initial assessment for and authorization of psychiatric inpatient services up to three (3) days (or four (4) days only if necessitated by a holiday); ii) Initial assessment for and authorization of psychiatric partial hospitalization services up to three (3) days (or four (4) days only if necessitated by a holiday); iii) Initial assessment for and authorization of crisis residential services up to three (3) days (or four (4) days only if necessitated by a holiday); iv) Initial and ongoing authorization of non-SUD services to individuals receiving community based services. v) SUD Services: Initial and ongoing authorization of SUD services provided by the CMHSP Participant directly. b) CMHSP Participant shall follow SWMBH policies on prospective (preauthorization), concurrent, and retrospective reviews. When the CMHSP Participant is conducting service authorization, it shall have internal procedures that include: <ol style="list-style-type: none"> i) Review decisions are supervised by qualified medical professionals. ii) Decisions to deny or reduce services are made by health care professionals who have the appropriate clinical expertise to treat the conditions. iii) The reasons for decisions are clearly documented. iv) The reasons for decisions are provided (made available) to the beneficiary. v) Notification of any decision to deny a service authorization request, or to authorize a service in an amount, duration, or scope that is less than requested, is

	<p>sent to the beneficiary in writing. (42 CFR 438.404).</p> <p>vi) Notification is given to the provider, in writing, of any decision to deny a service authorization request, or to authorize a service in an amount, duration, or scope that is less than requested.</p> <p>vii) Notification of a denial includes a description of how to file an appeal.</p> <p>viii) UM decisions are made in a timely manner in accordance with SWMBH policies and applicable laws, rules, and regulations.</p> <p>ix) Decisions on appeals are made in a timely manner in accordance with SWMBH policies (timelines).</p> <p>4) Utilization Review</p> <p>a) CMHSP Participant shall:</p> <ol style="list-style-type: none"> Have procedures to ensure review of individual, provider and programmatic data to ensure Level of Care criteria is being consistently applied; and Participate in regional review of aggregate data and improvement to Level of Care guidelines. <p>5) Coordination of Care</p> <p>a) CMHSP Participant shall have procedures to ensure the following:</p> <ol style="list-style-type: none"> Coordination occurs between the primary care physicians and the CMHSP Participant and/or its sub-network. (42 CFR 438.208) The services of the CMHSP (or sub-network) furnished to a Medicaid beneficiary are coordinated with other MCO (MHPs, ICOs), and PIHPs/CMHSPs. (42 CFR 438.208(b)(2)) Results of beneficiary assessments performed by the CMHSP (or sub-network) are shared with MCOs (i.e. MHPs and their PCPs), and other PIHPs serving the beneficiary in order to prevent duplication of services. (42 CFR 438.208(b)(3))
Reporting Requirements	<ol style="list-style-type: none"> Pre-screen documentation for acute care admissions must be completed according to SWMBH policy. Maintenance and submission of documentation of non-emergent CMHSP Participant utilization management activities when requested. Submission of functional assessment tool scores.

II. Customer Services	
<p>The PIHP shall delegate the following Customer Services activities to the CMHSP PARTICIPANT:</p> <p>Legal References:</p> <ul style="list-style-type: none"> ▪ 42 CFR 438.10 ▪ 42 CFR 438.100 ▪ 42 CFR 438.228 ▪ 42 CFR 438.400 ▪ 42 CFR 438.402 ▪ LEP Policy Guideline 	<p>The CMHSP participant shall possess knowledge of and adhere to related Managed Care Final Rule requirements under sections 438.10 and 438.100, and SWMBH policies regarding Enrollee Rights</p> <ol style="list-style-type: none"> Information Services <ol style="list-style-type: none"> Including but not limited to: <ol style="list-style-type: none"> Development and dissemination of informational brochures, coordination of community and stakeholder input and dissemination of specialized information about PIHP benefit plans, beneficiary (recipient) rights, grievance and appeals and second opinion processes, service providers and treatment and support practices, including development of culturally sensitive and/or alternative communication systems. Orienting new and potential plan members to the services and benefits available, the process for accessing services, due process rights, and how to receive services in language of preference (Limited English Proficiency). Make oral interpretation services available free of charge to each potential enrollee and enrollee. Provide written materials in an easily understood format; taking into consideration the special needs of those who, for example, are visually limited or have limited reading proficiency Accommodations for customers with physical disabilities, hearing and vision

<p>(Executive Order 13166 of August 11, 2002).</p> <ul style="list-style-type: none"> ■ Federal Register Vol 65, August 16, 2002. ■ Americans with Disability Act (ADA) 	<p>impairments, limited-English proficiency, and/or alternative forms of communication.</p> <ul style="list-style-type: none"> vi) Orienting the general community on the availability of eligibility criteria, services offered, and accessibility including who may be excluded from enrollment, subject to mandatory enrollment or free to voluntarily enroll. vii) Outreach activities to identify and establish communication with under-served groups. viii) The CMH participant will answer customer questions; provide requested information, and assist customers in filing complaints, grievances or requesting appeals. Customer Services Representatives of the CMHSP must maintain information concerning benefits, network providers, network policies and procedures, access to services, authorizations, grievance/appeals process, and local transportation options for those customers that are eligible. ix) Enrollee Rights or Customer Services departments will maintain a current participating provider and community resource list available to plan customers upon request. x) The CMHSP participant shall provide the following information to all customers of its CMHSP participant sub-network: Names, locations, telephone numbers of, and non-English languages spoken by current sub-network providers in the customer's service area, including information at least on sub-panel providers and panel specialists when determined needed or requested. xi) The CMH participant will ensure that enrollees are informed of their right to be treated with dignity and respect, to participate in decisions regarding their health care- including the right to refuse treatment, to be free from seclusion or restraint, and that they may request a copy of their medical records as held by the CMHSP. xii) The CMHSP participant must ensure each enrollee is free to exercise their rights and that exercise of those rights does not adversely affect how they are treated. xiii) The CMHSP participant shall make a good faith effort to give written notice of termination of a contracted provider (organizational) within 15 days after receipt or issuance of the termination notice, to each customer who received his or her services from the terminated provider. <p>2) Customer Complaint, Grievance and Appeals Processes</p> <ul style="list-style-type: none"> a) Ensure that staff members are trained in Grievance and Appeal options for customers as well as Notice of Adverse Benefit Determination requirements, if applicable to their job responsibilities; b) Investigation, management, and documentation of informal issues and grievances; c) Investigation, management, and documentation of all formal grievances, appeals, and complaints, including local dispute resolution (Due Process, Recipient Rights); d) Cooperate and support SWMBH with the Fair Hearing investigation and process; e) Maintain logs of customers who have been subject to an "Adverse Benefit Determination"; f) Ensure that Notice of Adverse Benefit Determination forms and provision procedures are in compliance with Payor standards, the Managed Care Final Rule, MDHHS contractual Technical Requirements, and any other applicable rules and regulations; g) Ensure complete, timely, and accurate entries into management information systems/applications; h) Active involvement in regional information management analysis and remediation activities. <p>3) Community Benefit. These activities are focused on the entire service area population, or sub-groups of that population, and should include but are not limited to:</p> <ul style="list-style-type: none"> a) Community collaborative activities designed to promote wellness, healthy communities, and coordinate human services delivery systems of care; b) Community emergency and trauma services; c) Partnerships with community organizations to provide specialty health services education and information; d) Outreach activities and screenings for health conditions such as depression, eating disorders, etc.; e) Participation in community planning groups.
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Reporting Requirements	1. Complete, timely and accurate entry of grievance and appeal data into management information systems/applications.

IV. Provider Network Management	
<p>The PIHP shall delegate the following Provider Network Management components to the CMHSP PARTICIPANT:</p> <p>Legal References:</p> <ul style="list-style-type: none"> ▪ 42 CFR 438.206 ▪ 42 CFR 438.106 ▪ 42 CFR 438.214(d) ▪ 42 CFR 438.12 ▪ 42 CFR 438.207(c)(2) 	<ol style="list-style-type: none"> 1. Network Development (42 CFR 438.206(b)). The CMHSP Participant shall: <ol style="list-style-type: none"> a. Ensure that service availability is in alignment with State-established thresholds b. Maintain and monitor a network of appropriate providers that is supported by written agreements and is sufficient to provide adequate access to all services covered under the contract for all enrollees, including those with limited English proficiency or physical or mental disabilities. c. If the provider network is unable to provide necessary services, covered under the contract, to a particular enrollee, the CMHSP Participant must adequately and timely cover these services out of network for the enrollee, for as long as its provider network is unable to provide them. d. Demonstrate that its network providers are credentialed as required by 438.214, MDHHS contractual requirements, and SWMBH policy. e. Timely access (42 CFR 438.206(c)). The CMHSP Participant must do the following: <ol style="list-style-type: none"> i. Meet and require its network providers to meet State standards for timely access to care and services, taking into account the urgency of the need for services. ii. Ensure that the network providers offer hours of operation that are no less than the hours of operation offered to commercial enrollees or comparable to Medicaid plans/FFS, if the provider serves only Medicaid enrollees. iii. Make services included in the contract available 24 hours a day, 7 days a week, when medically necessary. iv. Establish mechanisms to ensure compliance by network providers. v. Monitor network providers regularly to determine compliance. vi. Take corrective action if there is a failure to comply by a network provider. 2. Contract Management. Should the participant CMHSP sub-contract any covered service to an enrolled network subpanel provider, the CMHSP Participant shall use the SWMBH provider contract boilerplate, if one is available, and the written agreement shall include the Subcontracting requirements outlined in the MDHHS-PIHP Master Contract (Part I, Section 38), and shall ensure the following: <ol style="list-style-type: none"> a. Written subcontract agreements ensure that beneficiaries are not held liable when the PIHP (or CMHSP) does not pay the Provider

	<p>furnishing services under the subcontract (42 CFR 438.106(2)).</p> <p>b. Written subcontract agreements ensure that the beneficiaries are not held liable for payment of covered services furnished under the contract if those payments are in excess of the amount the beneficiary would owe, if the PIHP provided the service directly (42 CFR 438.106(c)).</p> <p>c. Upon termination of provider, written notification will be provided within 15 days to those enrollees receiving services from the provider.</p> <p>3. Network Policy Development.</p> <p>a. The participant CMHSP shall not employ or contract with any provider excluded from participation in federal health care programs under either Section 1128 or Section 1128A of the Social Security Act, and shall have internal procedures on how it can validate its exclusion review practices (42 CFR 438.214(d)).</p>
Reporting Requirements	<ol style="list-style-type: none"> 1. Monthly submission of credentialed providers for final approval by the PIHP as required by MDHHS and PIHP credentialing policies. 2. Sanctioned provider reporting as required by MDHHS and PIHP contractual provisions and policies. 3. Submission of required provider information for entry into provider directory annually with quarterly updates, as needed. 4. Documentation of provider site reviews. 5. Annually, and at any time there has been significant change (as defined by the State) in the CMHSP Participant's or SWMBH's operations that would affect the adequacy of capacity and services, provide documentation in a format as specified by the State and/or SWMBH, to demonstrate that the CMHSP Participant complies with the following requirements: <ol style="list-style-type: none"> a. Offers an appropriate range of specialty services and LTSS that is adequate for the anticipated number of enrollees for the service area; b. Maintains a network of providers that is sufficient in number, mix, and geographic distribution to meet the needs of the anticipated number of enrollees in the service area (42 CFR 428.207(b)(3)).

AMENDMENT OR TERMINATION

This Memorandum will continue to have effect unless amended in writing signed by both parties, or upon the CMHSP Participant giving sixty (60) calendar days advance written notice to SWMBH of CMHSP Participant's desire to relinquish a delegated function(s). SWMBH may revoke a delegated function(s) as provided above.

Signatures continued on next page

IN WITNESS WHEREOF, the authorize representatives of the parties hereto have fully executed this Agreement on the day and year indicated.

WITNESSED BY:

Anna C. Todd

Date 1/2/19

**SOUTHWEST MICHIGAN BEHAVIORAL
HEALTH REGIONAL ENTITY**

BY: Bradley P. Casemore
Bradley P. Casemore

ITS: Executive Officer

**COMMUNITY MENTAL HEALTH AND
SUBSTANCE ABUSE SERVICES OF ST.
JOSEPH COUNTY**

BY: Kristine Kirsch
Kristine Kirsch

Date 21 Dec 2018

ITS: Executive Director

SOUTHWEST MICHIGAN BEHAVIORAL HEALTH PREPAID INPATIENT HEALTH PLAN

Effective October 1, 2018

CMHSP Participant: Memorandum of Understanding

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Pre-Assessment of CMHSP PARTICIPANT's Capacity to Perform Delegation:

SWMBH completed a pre-delegation assessment to evaluate the delegated entity's capacity to perform the delegated activities prior to any delegation.

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The CMHSP Participant understands and agrees that (42 CFR 438.230):

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- 4) If the State, CMS, or the HHS Inspector General determines that there is a reasonable possibility of fraud or similar risk, the State, CMS, or the HHS Inspector General may inspect, evaluate, and audit the CMHSP Participant at any time.

II. Delegated Functions [Includes Mental Health services, and outpatient SUD services provided by CMHSP Participant directly with the exception of SUD services covered by SUD Community Grant funds]

I. Utilization Management	
<p>The PIHP shall delegate the following Utilization Management activities to the CMHSP PARTICIPANT:</p> <p><i>Legal References:</i></p> <ul style="list-style-type: none"> ▪ 42 CFR 438.210 ▪ MDHHS Contract: Attachment P.6.7.1.1 	<ol style="list-style-type: none"> 1) Access and Eligibility Determination. The CMHSP Participant shall: <ol style="list-style-type: none"> a) Screen for both clinical eligibility and financial eligibility using MDHHS contractually mandated standardized screening tools; b) Provide for a second opinion from a network provider, or arrange for the enrollee to obtain one outside the network, at no cost to the enrollee; c) For SUD services only, offer choice of provider from SWMBH's Provider Network. 2) Utilization Management Protocols <ol style="list-style-type: none"> a) CMHSP Participant shall adhere to Payor standards for the following: <ol style="list-style-type: none"> i) Medical Necessity criteria and determinations; ii) Level of Care assessments; iii) Service intensity or selection criteria; and iv) Services requiring specialist review. b) CMHSP Participant shall be responsible for implementation and application of the PIHP Utilization Management Policy and Plan. c) CMHSP Participant shall participate in the development, dissemination, and application of Practice Guidelines. 3) Authorization <ol style="list-style-type: none"> a) Initial approval or denial of requested services (42 CFR 428.210; 42 CFR 438.240) <ol style="list-style-type: none"> i) Initial assessment for and authorization of psychiatric inpatient services up to three (3) days (or four (4) days only if necessitated by a holiday); ii) Initial assessment for and authorization of psychiatric partial hospitalization services up to three (3) days (or four (4) days only if necessitated by a holiday); iii) Initial assessment for and authorization of crisis residential services up to three (3) days (or four (4) days only if necessitated by a holiday); iv) Initial and ongoing authorization of non-SUD services to individuals receiving community based services. v) SUD Services: Initial and ongoing authorization of SUD services provided by the CMHSP Participant directly. b) CMHSP Participant shall follow SWMBH policies on prospective (preauthorization), concurrent, and retrospective reviews. When the CMHSP Participant is conducting service authorization, it shall have internal procedures that include: <ol style="list-style-type: none"> i) Review decisions are supervised by qualified medical professionals. ii) Decisions to deny or reduce services are made by health care professionals who have the appropriate clinical expertise to treat the conditions. iii) The reasons for decisions are clearly documented. iv) The reasons for decisions are provided (made available) to the beneficiary. v) Notification of any decision to deny a service authorization request, or to

	<p>authorize a service in an amount, duration, or scope that is less than requested, is sent to the beneficiary in writing. (42 CFR 438.404).</p> <p>vi) Notification is given to the provider, in writing, of any decision to deny a service authorization request, or to authorize a service in an amount, duration, or scope that is less than requested.</p> <p>vii) Notification of a denial includes a description of how to file an appeal.</p> <p>viii) UM decisions are made in a timely manner in accordance with SWMBH policies and applicable laws, rules, and regulations.</p> <p>ix) Decisions on appeals are made in a timely manner in accordance with SWMBH policies (timelines).</p> <p>4) Utilization Review</p> <p>a) CMHSP Participant shall:</p> <ol style="list-style-type: none"> Have procedures to ensure review of individual, provider and programmatic data to ensure Level of Care criteria is being consistently applied; and Participate in regional review of aggregate data and improvement to Level of Care guidelines. <p>5) Coordination of Care</p> <p>a) CMHSP Participant shall have procedures to ensure the following:</p> <ol style="list-style-type: none"> Coordination occurs between the primary care physicians and the CMHSP Participant and/or its sub-network. (42 CFR 438.208) The services of the CMHSP (or sub-network) furnished to a Medicaid beneficiary are coordinated with other MCO (MHPs, ICOs), and PIHPs/CMHSPs. (42 CFR 438.208(b)(2)) Results of beneficiary assessments performed by the CMHSP (or sub-network) are shared with MCOs (i.e. MHPs and their PCPs), and other PIHPs serving the beneficiary in order to prevent duplication of services. (42 CFR 438.208(b)(3))
Reporting Requirements	<ol style="list-style-type: none"> Pre-screen documentation for acute care admissions must be completed according to SWMBH policy. Maintenance and submission of documentation of non-emergent CMHSP Participant utilization management activities when requested. Submission of functional assessment tool scores.

II. Customer Services	
<p>The PIHP shall delegate the following Customer Services activities to the CMHSP PARTICIPANT:</p> <p>Legal References:</p> <ul style="list-style-type: none"> ▪ 42 CFR 438.10 ▪ 42 CFR 438.100 ▪ 42 CFR 438.228 ▪ 42 CFR 438.400 ▪ 42 CFR 438.402 ▪ LEP Policy 	<p>The CMHSP participant shall possess knowledge of and adhere to related Managed Care Final Rule requirements under sections 438.10 and 438.100, and SWMBH policies regarding Enrollee Rights</p> <p>1) Information Services</p> <p>a) Including but not limited to:</p> <ol style="list-style-type: none"> Development and dissemination of informational brochures, coordination of community and stakeholder input and dissemination of specialized information about PIHP benefit plans, beneficiary (recipient) rights, grievance and appeals and second opinion processes, service providers and treatment and support practices, including development of culturally sensitive and/or alternative communication systems. Orienting new and potential plan members to the services and benefits available, the process for accessing services, due process rights, and how to receive services in language of preference (Limited English Proficiency). Make oral interpretation services available free of charge to each potential enrollee and enrollee. Provide written materials in an easily understood format; taking into consideration the special needs of those who, for example, are visually limited or have limited reading proficiency

<p>Guideline (Executive Order 13166 of August 11, 2002).</p> <ul style="list-style-type: none"> ▪ Federal Register Vol 65, August 16, 2002. ▪ Americans with Disability Act (ADA) 	<ul style="list-style-type: none"> v) Accommodations for customers with physical disabilities, hearing and vision impairments, limited-English proficiency, and/or alternative forms of communication. vi) Orienting the general community on the availability of eligibility criteria, services offered, and accessibility including who may be excluded from enrollment, subject to mandatory enrollment or free to voluntarily enroll. vii) Outreach activities to identify and establish communication with under-served groups. viii) The CMHSP participant will answer customer questions; provide requested information, and assist customers in filing complaints, grievances or requesting appeals. Customer Services Representatives of the CMHSP must maintain information concerning benefits, network providers, network policies and procedures, access to services, authorizations, grievance/appeals process, and local transportation options for those customers that are eligible. ix) Enrollee Rights or Customer Services departments will maintain a current participating provider and community resource list available to plan customers upon request. x) The CMHSP participant shall provide the following information to all customers of its CMHSP participant sub-network: Names, locations, telephone numbers of, and non-English languages spoken by current sub-network providers in the customer's service area, including information at least on sub-panel providers and panel specialists when determined needed or requested. xi) The CMH participant will ensure that enrollees are informed of their right to be treated with dignity and respect, to participate in decisions regarding their health care- including the right to refuse treatment, to be free from seclusion or restraint, and that they may request a copy of their medical records as held by the CMHSP. xii) The CMHSP participant must ensure each enrollee is free to exercise their rights and that exercise of those rights does not adversely affect how they are treated. xiii) The CMHSP participant shall make a good faith effort to give written notice of termination of a contracted provider (organizational) within 15 days after receipt or issuance of the termination notice, to each customer who received his or her services from the terminated provider. <p>2) Customer Complaint, Grievance and Appeals Processes</p> <ul style="list-style-type: none"> a) Ensure that staff members are trained in Grievance and Appeal options for customers as well as Notice of Adverse Benefit Determination requirements, if applicable to their job responsibilities; b) Investigation, management, and documentation of informal issues and grievances; c) Investigation, management, and documentation of all formal grievances, appeals, and complaints, including local dispute resolution (Due Process, Recipient Rights); d) Cooperate and support SWMBH with the Fair Hearing investigation and process; e) Maintain logs of customers who have been subject to an "Adverse Benefit Determination"; f) Ensure that Notice of Adverse Benefit Determination forms and provision procedures are in compliance with Payor standards, the Managed Care Final Rule, MDHHS contractual Technical Requirements, and any other applicable rules and regulations; g) Ensure complete, timely, and accurate entries into management information systems/applications; h) Active involvement in regional information management analysis and remediation activities. <p>3) Community Benefit. These activities are focused on the entire service area population, or sub-groups of that population, and should include but are not limited to:</p> <ul style="list-style-type: none"> a) Community collaborative activities designed to promote wellness, healthy communities, and coordinate human services delivery systems of care; b) Community emergency and trauma services; c) Partnerships with community organizations to provide specialty health services education and information; d) Outreach activities and screenings for health conditions such as depression, eating disorders, etc.; e) Participation in community planning groups.
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Reporting Requirements	1. Complete, timely and accurate entry of grievance and appeal data into management information systems/applications.

IV. Provider Network Management	
<p>The PIHP shall delegate the following Provider Network Management components to the CMHSP PARTICIPANT:</p> <p>Legal References:</p> <ul style="list-style-type: none"> ▪ 42 CFR 438.206 ▪ 42 CFR 438.106 ▪ 42 CFR 438.214(d) ▪ 42 CFR 438.12 ▪ 42 CFR 438.207(c)(2) 	<p>1. Network Development (42 CFR 438.206(b)). The CMHSP Participant shall:</p> <ul style="list-style-type: none"> a. Ensure that service availability is in alignment with State-established thresholds b. Maintain and monitor a network of appropriate providers that is supported by written agreements and is sufficient to provide adequate access to all services covered under the contract for all enrollees, including those with limited English proficiency or physical or mental disabilities. c. If the provider network is unable to provide necessary services, covered under the contract, to a particular enrollee, the CMHSP Participant must adequately and timely cover these services out of network for the enrollee, for as long as its provider network is unable to provide them. d. Demonstrate that its network providers are credentialed as required by 438.214, MDHHS contractual requirements, and SWMBH policy. e. Timely access (42 CFR 438.206(c)). The CMHSP Participant must do the following: <ul style="list-style-type: none"> i. Meet and require its network providers to meet State standards for timely access to care and services, taking into account the urgency of the need for services. ii. Ensure that the network providers offer hours of operation that are no less than the hours of operation offered to commercial enrollees or comparable to Medicaid plans/FFS, if the provider serves only Medicaid enrollees. iii. Make services included in the contract available 24 hours a day, 7 days a week, when medically necessary. iv. Establish mechanisms to ensure compliance by network providers. v. Monitor network providers regularly to determine compliance. vi. Take corrective action if there is a failure to comply by a network provider. <p>2. Contract Management. Should the participant CMHSP sub-contract any covered service to an enrolled network subpanel provider, the CMHSP Participant shall use the SWMBH provider contract boilerplate, if one is available, and the written agreement shall include the Subcontracting requirements outlined in the MDHHS-PIHP Master Contract (Part I, Section 38), and shall ensure the following:</p> <ul style="list-style-type: none"> a. Written subcontract agreements ensure that beneficiaries are not held liable when the PIHP (or CMHSP) does not pay the Provider

	<p>furnishing services under the subcontract (42 CFR 438.106(2)).</p> <p>b. Written subcontract agreements ensure that the beneficiaries are not held liable for payment of covered services furnished under the contract if those payments are in excess of the amount the beneficiary would owe, if the PIHP provided the service directly (42 CFR 438.106(c)).</p> <p>c. Upon termination of provider, written notification will be provided within 15 days to those enrollees receiving services from the provider.</p> <p>3. Network Policy Development.</p> <p>a. The participant CMHSP shall not employ or contract with any provider excluded from participation in federal health care programs under either Section 1128 or Section 1128A of the Social Security Act, and shall have internal procedures on how it can validate its exclusion review practices (42 CFR 438.214(d)).</p>
Reporting Requirements	<ol style="list-style-type: none"> 1. Monthly submission of credentialed providers for final approval by the PIHP as required by MDHHS and PIHP credentialing policies. 2. Sanctioned provider reporting as required by MDHHS and PIHP contractual provisions and policies. 3. Submission of required provider information for entry into provider directory annually with quarterly updates, as needed. 4. Documentation of provider site reviews. 5. Annually, and at any time there has been significant change (as defined by the State) in the CMHSP Participant's or SWMBH's operations that would affect the adequacy of capacity and services, provide documentation in a format as specified by the State and/or SWMBH, to demonstrate that the CMHSP Participant complies with the following requirements: <ol style="list-style-type: none"> a. Offers an appropriate range of specialty services and LTSS that is adequate for the anticipated number of enrollees for the service area; b. Maintains a network of providers that is sufficient in number, mix, and geographic distribution to meet the needs of the anticipated number of enrollees in the service area (42 CFR 428.207(b)(3)).

AMENDMENT OR TERMINATION

This Memorandum will continue to have effect unless amended in writing signed by both parties, or upon the CMHSP Participant giving sixty (60) calendar days advance written notice to SWMBH of CMHSP Participant's desire to relinquish a delegated function(s). SWMBH may revoke a delegated function(s) as provided above.

Signatures continued on next page

IN WITNESS WHEREOF, the authorize representatives of the parties hereto have fully executed this Agreement on the day and year indicated.

WITNESSED BY:

Mila C. Zedel

Date 1.4.19

SOUTHWEST MICHIGAN BEHAVIORAL
HEALTH REGIONAL ENTITY

BY: Bradley P. Casemore
Bradley P. Casemore 1-4-19

ITS: Executive Officer

CALHOUN COUNTY COMMUNITY MENTAL
HEALTH AUTHORITY D/B/A SUMMIT POINTE

BY: Jean M. Goodrich
Jean M. Goodrich

Date 1.3.19

ITS: Chief Executive Officer

APPROVED BHS
1.2.19



45 Ottawa Avenue SW
Suite 1100
P.O. Box 306
Grand Rapids, MI 49501-0306



NEIL J. MARCHAND
Attorney at Law

616.831.1764
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November 13, 2024

VIA HAND DELIVERY

Operations Committee
Southwest Michigan Behavioral Health
SWMBH Moses L. Walker Room

Re: Pivotal's and Summit Pointe's Step 2 Appeal regarding
Inpatient Continuing Stay Determinations

Dear SWMBH Operations Committee:

Miller Johnson represents Community Mental Health & Substance Abuse Services of St. Joseph County d/b/a Pivotal ("Pivotal") and Calhoun County Community Mental Health Authority d/b/a Summit Pointe ("Summit Pointe"). We are writing in support of Pivotal's and Summit Pointe's appeal to Southwest Michigan Behavioral Health's ("SWMBH") Operations Committee relating to SWMBH's unauthorized and illegal exercise of authority for inpatient continuing stay determinations. As discussed below, (1) SWMBH does not have the legal right to make inpatient continuing stay determinations; and (2) to the extent SWMBH relies on its October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe for such authority, then SWMBH's interpretation renders that agreement void. Therefore, Pivotal and Summit Pointe request that the Operations Committee immediately direct SWMBH to cease its interference with Pivotal's and Summit Pointe's inpatient continuing stay authority.

I. SWMBH lacks the legal authority to perform inpatient continuing stay reviews.

The issue is whether SWMBH has the legal authority to perform inpatient continuing stay reviews. As discussed below, SWMBH does not.

A. SWMBH's power is derived from the participating community mental health service programs ("CMHSPs").

MCL 330.1204b governs the creation of regional entities and the regional entity's purpose and power. MCL 330.1204b(2) provides, "*Except as otherwise stated in the bylaws*, a regional entity has [. . .] [t]he power, privilege, or authority that the participating community mental health services programs share in common and may exercise separately under this act, whether or not that power, privilege, or authority is specified in the bylaws establishing the regional entity." MCL 1204b(2)(a) (emphasis added).

B. SWMBH's Bylaws and Operating Agreement prohibit SWMBH from exercising any power or authority relating to Pivotal's and Summit Pointe's obligations under the Mental Health Code and their clinical operations.

SWMBH's Bylaws describe SWMBH's powers in Article II. (**Exhibit 1**.) Consistent with the enabling statute, Article 2.2 states, "Except as otherwise stated in these Bylaws, the Regional Entity has all of the following powers provided under MCL 330.1204b(2) [...]." (*Id.*, at 2.) Article 2.4 provides:

The Participants shall retain **all powers, rights and authority afforded community mental health services programs**, organized and operated as county mental health authorities, agencies or organizations **under the Mental Health Code.** *Only the powers and authority specifically delegated* to the Regional Entity under these Bylaws and as further defined under an Operating Agreement, [sic] are transferred to the Regional Entity. (*Id.*, at 3 (emphasis added).)

Further, Article 2.4.1 provides that SWMBH "shall have no powers, rights or authority" relating to "the Participants' obligations under the Mental Health Code" and "the Participants' autonomous administrative, financial, or clinical operations[.]" (*Id.* at 3.) SWMBH's Operating Agreement, which is incorporated by reference into the Bylaws, reiterates SWMBH's lack of authority in these areas. (**Exhibit 2**, at 12-13.)

C. Michigan's Mental Health Code gives CMHSPs the authority to perform all inpatient stay determinations.

MCL 330.1206(1) states that the "purpose of a community mental health services program shall be to provide a comprehensive array of mental health services[.]" including "the provision of inpatient or other protective environment for treatment." MCL 330.1206(1)(a); *see also* Mich. Admin. R 330.2005 (providing that a "community mental health board shall ensure that" inpatient services are provided).

Chapter 4 of the Mental Health Code gives CMHSPs the power to authorize inpatient hospitalization. Specifically, MCL 330.1409(1) provides that the community mental health services program shall establish a preadmission screening unit or contract with an agency that provides the preadmission screening services. The CMHSPs must authorize hospitalization where "the individual is clinically suitable for hospitalization[.]" MCL 330.1409(3); *see also* MCL 330.1410 (stating that an individual who requests or assents to voluntary admission to a hospital or outpatient treatment program may be considered for admission "only after authorization by a community mental health services preadmission screening unit."); MCL 330.1423 (requiring a hospital to hospitalize an individual if *inter alia* an authorization by a preadmission screening unit has been executed). If an individual is denied hospitalization and requests a second opinion, the

“executive director” shall arrange for that second opinion and, with the medical director, “shall make a decision based on all clinical information available” where there is a conflict between the first and second opinions. MCL 330.1409(4). Notably, “executive director” is defined as the “individual appointed under section 226 to direct a community mental health services program or his or her designee.” MCL 330.1100a(32).

The CMHSPs’ authority over inpatient stay determinations extends to whether to *continue* the individual’s inpatient hospitalization. MCL 330.1482 states, “Six months from the date of a 1-year order of involuntary mental health treatment, *the executive director of the community mental health services program responsible for treatment* [. . .] shall assign a physician or licensed psychologist to review the individual’s clinical status as a person requiring treatment.” MCL 330.1482 (emphasis added). Moreover, the CMHSP executive director (1) is responsible for providing the individual and others notice of the periodic review results and information on the individual’s right to petition for discharge, MCL 330.1483; and (2) has standing to object to the periodic review’s conclusions and petition for discharge, MCL 330.1484. *Nothing* in the Mental Health Code gives inpatient stay determination authority to a regional entity.

D. Pivotal and Summit Pointe have the exclusive authority to make inpatient stay, and continuing stay, determinations.

SWMBH derives its power from its participating CMHSPs, not vice versa. And SWMBH’s exercise of inpatient continuing stay authority violates Michigan law, its Bylaws, and its Operating Agreement in three ways. First, under Article 2.4 of SWMBH’s Bylaws, *only* the powers and authority specifically delegated to SWMBH are transferred to SWMBH, and nothing in SWMBH’s Bylaws or Operating Agreement delegates inpatient continuing stay determination authority to SWMBH. Second, Article 2.4 of the Bylaws states that the Participants—in this case, Pivotal and Summit Pointe—retain “all powers, rights and authority afforded community mental health services programs” under the Mental Health Code, and the Mental Health Code gives CMHSPs the authority to perform all inpatient stay determinations, both initial admission and continuing stay. And third, Article 2.4.1 of the Bylaws and SWMBH’s Operating Agreement provide that SWMBH “shall have no powers, rights or authority” with regards to “the Participants’ obligations under the Mental Health Code” or “the Participants’ autonomous administrative, financial, or clinical operations[.]” By making inpatient continuing stay determinations, SWMBH is interfering with Pivotal’s and Summit Pointe’s authority under the Mental Health Code and their exclusive clinical operations.

Despite raising these issues with SWMBH, (Exhibit 3), SWMBH’s response failed to address its lack of legal authority to act or why SWMBH allows Kalamazoo County Community Mental Health Authority d/b/a Kalamazoo Community Mental Health and Substance Abuse Services (and no other CMHSP) to perform their own inpatient continuing stay determinations (Exhibit 4). Instead, SWMBH has made vague references to: (i) the Code of Federal Regulations;

(ii) MDHHS pronouncements on Conflict Free Access & Planning purportedly prohibiting delegation of utilization management; and (iii) Corrective Action Plans relating to Milliman Care Guidelines. However, the portions of the Code of Federal Regulations upon which I understand SWMBH to rely do not support SWMBH's position, as explained in Pivotal's June 5, 2024 correspondence. (**Exhibit 3.**) Moreover, MDHHS and SWMBH have conceded that "utilization management" is not defined, (**Exhibit 5**), and SWMBH admitted that it does not have any written contractual obligations or policy relating to the Milliman Care Guidelines. (**Exhibit 6.**) Finally, SWMBH admitted that it was exceeding its authority as to Pivotal members who do not have Medicaid coverage. (**Exhibit 4.**)

Because SWMBH lacks the legal authority to perform inpatient continuing stay reviews, SWMBH's exercise of decision making authority constitutes an ultra vires activity that is not protected by governmental immunity. *Dextrom v Wexford County*, 287 Mich App 406, 417; 789 NW2d 211 (2010) (explaining that ultra vires activities are activities that are not expressly or impliedly mandated or authorized by law). Moreover, the "immunity" afforded SWMBH under Article 10.2.2 of the Bylaws does not apply because Pivotal's and Summit Pointe's liability, loss, and damages are caused by SWMBH's actions. Pivotal and Summit Pointe reserve all of their rights against SWMBH and its employees and directors.

II. SWMBH's claim that it has the authority to delegate inpatient continuing stay reviews means that SWMBH's October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe is unenforceable as written.

SWMBH has framed the dispute as an "expansion of delegation" of inpatient psychiatric services utilization management. As discussed above, SWMBH's posture is misleading because SWMBH's authority is derived from the participant CMHSPs, the CMHSPs retained all authority afforded them under the Mental Health Code, and SWMBH's Bylaws expressly state that it does not have any authority over a CMHSP's clinical operations.

Nevertheless, my understanding is that SWMBH will cite Section 2 of its October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe to argue that the authorization of inpatient services and partial hospitalization services is limited to the initial authorization for up to three days. (**Exhibit 7.**) As discussed above, the Mental Health Code grants CMHSPs, *and only CMHSPs*, the authority to make initial and continuing inpatient stay determinations. And it is axiomatic that "an agreement that violates the laws of Michigan is unenforceable as written." *Wasenko v Auto Club Group*, — Mich App —; — NW3d — (2023 WL 4671210) (citation omitted). Thus, accepting SWMBH's position means that SWMBH's October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe is unenforceable as written.

MILLER JOHNSON

Operations Committee
November 13, 2024
Page 5

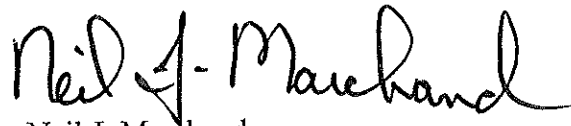
Therefore, to the extent SWMBH relies on the October 1, 2018 Memorandum of Understanding with Pivotal and Summit Pointe, SWMBH's interpretation renders those agreements void.

For the reasons discussed above, Pivotal and Summit Pointe request that the Operations Committee immediately direct SWMBH to cease its interference with Pivotal's and Summit Pointe's inpatient continuing stay authority and allowing Pivotal and Summit Pointe to perform their statutorily authorized clinical operations.

Sincerely,

MILLER JOHNSON

By


Neil J. Marchand

Enclosures



December 3, 2024

TO: SWMBH Board of Directors
FROM: Susan Radwan, Policy Governance Consultant
RE: What does the governing framework suggest about the Board handling of disputes brought forward by Board members?

Below is a summary of policy statements that may be relevant to the Board handling a Dispute Resolution.

SWMBH bylaws state:

“3.6 Dispute Resolution. The manner for adjudicating a dispute or disagreement among Participants shall be set forth in an Operating Agreement, approved by the Regional Entity Board and incorporated herein by reference.”

“4.12 Conflict of Interest Policy. The Regional Entity Board shall adopt and adhere to a conflict of interest policy. All Regional Entity Board members will annually disclose any conflicts of interest while serving on the Regional Entity Board.”

“6.6 Chair. The Chair shall preside at all Regional Entity Board meetings. The Chair shall have the power to perform duties as may be assigned by the Regional Entity Board. The Chair shall perform all duties incident to the office.

6.7 Vice Chair. The Vice Chair shall have the power to perform duties that may be assigned by the Chair or the Regional Entity Board. If the Chair is absent or unable to perform his or her duties, the Vice Chair shall perform the Chair’s duties until the Regional Entity Board directs otherwise. The Vice Chair shall perform all duties incident to the office.

The SWMBH Operating Agreement states:

“Occasionally disputes may arise that cannot be resolved through amiable discussion. Any unresolved disputes between the Participants or one or more Participant and SWMBH will be resolved as follows:

1. The Participant CMHSP CEOs/Executive Directors will attempt to resolve the dispute through discussion with each other, or the SWMBH EO if the dispute is with SWMBH.
2. If the dispute remains unresolved, the Participant CMHSP CEOs/Executive Directors, or the SWMBH EO if the dispute is with SWMBH, will bring the matter to the Operations Committee no later than its next scheduled meeting, which will discuss the matter and render a decision within fifteen (15) calendar days of the meeting, or within agreed upon timeframe by involved parties.
3. If the dispute continues to be unresolved to the satisfaction of the Participant/s or SWMBH, all parties to the dispute will provide written descriptions of the issue in dispute and

- propose a solution to the SWMBH Board within fifteen (15) calendar days or within agreed upon timeframe by involved parties. The SWMBH Board will have thirty (30) calendar days or a mutually agreed upon timeframe to provide a written decision.
4. If the Participant/s or SWMBH remain dissatisfied, the Participant/s or SWMBH may seek mediation, arbitration or legal recourse as provided by PIHP-CMHSP contract and law.
 5. Participant sub-contracts will include a Dispute Resolution section congruous with this approach.”

This practice is drawn from ***Robert’s Rules of Order, Newly Revised:***

When a board member brings forward a dispute on behalf of their CMH, that board member has a conflict of interest. That conflict exists primarily because the loyalty of the individual is no longer to the common good of SWMBH, but rather loyalty dwells with the CMH that appointed that board member to the SWMBH board. In instances like this, the individual should make their case to the board, but then absent themselves from the deliberation in order to avoid undue influence over the decision-making process of the board. This process creates a space for an open discussion and objective decision of the board.

From the ten principles of the Policy Governance model which is the foundational framework of SWMBH’s governance, *Board Holism* is at risk when there is a dispute brought forward by a member of the board. The principle itself states:

“The authority of the board is held and used as a body. The board speaks with one voice in that instructions are expressed by the board as a whole. Individual board members have no authority to instruct staff.”

SWMBH’s Board Policies, potentially relevant to dispute resolution, are as follows:

BEL-008: The EO shall not:

4. Let the Board be unaware of any significant incidental information it requires including anticipated media coverage, threatened or pending lawsuits, and material internal and external changes.
5. Allow the Board to be unaware that, in the Executive Officer’s opinion, the Board is not in compliance with its own policies, particularly in the case of Board behavior that is detrimental to the work relationship between the Board and the Executive Officer.
8. Deal with the Board in a way that favors or privileges certain Board Members over others, except when fulfilling individual requests for information or responding to Officers or Committees duly charged by the Board.

BG -003

Only officially passed motions of the Board are binding on the EO.

1. Decisions or instructions of individual Board Members, Officers, or Committees are not binding on the Executive Officer (EO) except in instances when the Board has specifically authorized such exercise of authority.

BG-005

The Chair shall be a specially empowered member of the Board who shall be responsible for ensuring the integrity of the Board's process and represents the Board to outside parties.

a. The result of the Chair's job is that the Board acts consistently with its own rules and those legitimately imposed upon it from outside the organization.

1. Meeting discussion content will consist of issues that clearly belong to the Board to decide or to monitor according to Board policy.
2. Information that is neither for monitoring Board or enterprise performance nor for Board decisions will be avoided or minimized.
3. Deliberation will be fair, open, and thorough, but also timely and orderly.

b. The authority of the Chair consists in making decisions that fall within topics covered by Board policies on Governance Process and Board-Management Delegation, with the exception of (i) employment or termination of the EO and (ii) areas where the Board specifically delegates portions of this authority to others. The Chair is authorized to use any reasonable interpretation of the provision in these policies.

BG-007

I. PURPOSE:

The Board commits itself to ethical, lawful, and businesslike conduct including proper use of authority and appropriate decorum when acting as Board Members.

II. POLICY:

It shall be the policy of SWMBH Board that SWMBH Board Members represent the interests of Southwest Michigan Behavioral Health. This accountability supersedes any potential conflicts of loyalty to other interests including advocacy or interest groups, membership on other Boards, relationships with others or personal interests of any Board Member.

III. STANDARDS:

1. Members will follow the SWMBH Conflict of Interest Policy
"Conflict of Interest" (Definition): means any actual or proposed direct or indirect financial relationship or ownership interest between the Board Member and any entity with which SWMBH has or proposes to have a contract, affiliation, arrangement or other transaction.
2. Board Members may not attempt to exercise individual authority over the organization except as explicitly set forth in Board policies.
 - a. Members' interaction with the Executive Officer or with staff must recognize the lack of authority vested in individuals except when explicitly Board-authorized.
 - b. Members' interaction with public, press or other entities must recognize the same limitation and the inability of any Board Member to speak for the Board unless provided in policy.
 - c. Members' commenting on the agency and Executive Officer performance must be done collectively and as regards to explicit Board policies.
3. Members will respect the confidentiality appropriate to issues of a sensitive nature including, but not limited, to those related to business or strategy.
6. Members will support the legitimacy and authority of the final determination of the Board on any matter, without regard to the Member's personal position on the issue.

II. POLICY:

The Board will govern lawfully, observing the principles of the Policy Governance model, with an emphasis on (a) outward vision rather than an internal preoccupation, (b) encouragement of diversity in viewpoints, (c) strategic leadership more than administrative detail, (d) clear distinction of Board and Chief Executive roles, (e) collective rather than individual decisions, (f) future rather than past or present focus, and (g) proactivity rather than reactivity.

III. STANDARDS:

Accordingly, the SWMBH Board shall:

1. Cultivate a sense of group responsibility. The Board, not the staff, will be responsible for excellence in governing. The Board will be the initiator of policy, not merely a reactor to staff initiatives. The Board will not use the expertise of individual member to substitute for the judgment of the Board, although the expertise of individual members may be used to enhance the understanding of the Board as a body.

2. Direct, control, and inspire the organization through the careful establishment of broad written policies reflecting the Board's values and perspectives. The Board's major policy focus will be on the intended long-term impacts, not on administrative or programmatic means of attaining those effects.

3. Enforce upon itself whatever discipline is needed to govern with excellence. Discipline will apply to matters such as attendance, preparation for meetings, policy-making principles, respect of roles, and ensuring the continuance of governance capability. Although the Board can change its governance process policies at any time, it will observe those currently in force.

5. Allow no officer, individual, or committee of the Board to hinder or be an excuse for not fulfilling group obligations.

7. Follow the SWMBH Conflict of Interest Policy.

8. When a Member either must recuse themselves or chooses to recuse themselves from voting on a Board decision their prior potential vote count will be removed from the vote tally denominator.

When a Member abstains from voting on a Board decision their potential vote count will not be removed from the vote tally denominator.



**Southwest Michigan Behavioral Health Board Meetings
2025
Air Zoo Aerospace & Science Museum
6151 Portage Rd, Portage, MI 49002**

January 10, 2025 – 9:30am to 11:30am

February 14, 2025 – 9:30am to 11:30am

March 14, 2025 – 9:30am to 11:30pm

April 11, 2025 – 9:30am to 11:30am

*May 9, 2025 – 9:30am to 10:30am at to be determined

*May 9, 2025 – 10:30 to 3:00pm Board Planning Session at to be determined

June 13, 2025 – 9:30am to 11:30am

July 11, 2025 – 9:30am to 11:30am

August 8, 2025 – 9:30am to 11:30am

September 12, 2025 – 9:30am to 11:30am

October 10, 2025 – 9:30am to 11:30am

November 14, 2025 – 9:30am to 11:30am

December 12, 2025 – 9:30 am to 11:30am

***to be determined**

All SWMBH Board Meetings are subject to the Open Meetings Act 1976 PA 267, MCL 15.261-15.275
SWMBH adheres to all applicable laws, rules, and regulations in the operation of its public meetings, including the Michigan Open Meetings Act, MCL 15.261 – 15.275

SWMBH does not limit or restrict the rights of the press or other news media.
Discussions and deliberations at an open meeting must be able to be heard by the general public participating in the meeting. Board members must avoid using email, texting, instant messaging, and other forms of electronic communication to make a decision or deliberate toward a decision and must avoid "round-the-horn" decision-making in a manner not accessible to the public at an open meeting.

Southwest Michigan Behavioral Health Board Policy Review Calendar Year 2025

Policy Number	Policy Name	Board Review	Reviewer
Board Governance (Policy Review)			
BG001	Committee Structure	October	Board
BG002	Management Delegation	July	Board
BG003	Unity of Control	August	Board
BG004	Board Ends and Accomplishments	February	Board
BG005	Chairperson's Role	December	Board
BG006	Annual Board Planning	April	Board
BG007	Code of Conduct	February	Board
BG008	Board Member Job Description	September	Board
BG010	Board Committee Principles	April	Board
BG011	Governing Style	May	Board
Direct Inspection (Reports)			
BEL001	Budgeting	April	Board Finance Committee
BEL002	Financial Conditions	October	Board Finance Committee
BEL003	Asset Protection	December	Board Finance Committee
BEL004	Treatment of Staff	August	Lorraine Lindsey
BEL005	Treatment of Plan Members	September	Tina Leary
BEL006	Investments	April	Board Finance Committee
BEL007	Compensation and Benefits	August	Erik Krogh
BEL008	Communication and Counsel	September	Sherii Sherban
BEL009	Global Executive Constraints	July	Carol Naccarato
BEL010	RE 501 (c) (3) Representation	October	Ed Meny
Board-Staff Relationship (Policy Review)			
EO001	Executive Role & Job Description	September	Board
EO002	Monitoring Executive Officer Performance	November	Board
EO003	Emergency Executive Officer Succession	October	Board
V 10.15.24			
Board Approved			

first?

first?

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first?

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Southwest Michigan

BEHAVIORAL HEALTH

Section: Board Policy- Board Governance/ Management	Policy Number: BG-005	Pages: 2
Subject: Board Chair Role	Required By: Policy Governance	Accountability: SWMBH Board
Application: <input checked="" type="checkbox"/> SWMBH Governance Board <input type="checkbox"/> SWMBH EO		Required Reviewer: SWMBH Board
Effective Date: 12.20.2013	Last Review Date: 12.8.23	Past Review Dates: 11.14.14, 12.11.15, 12.9.16, 12.8.17,12.14.18, 12.13.19,12-11-20, 12.10.21, 12.9.22

I. **PURPOSE:**

To establish the role of the Chair of the SWMBH Board.

II. **POLICY:**

It shall be the policy of the SWMBH Board to abide by its bylaws in the management of its business affairs. The Chair shall preside at all SWMBH Board meetings.

The Chair shall have the power to perform duties as may be assigned by the Regional Entity Board. If the Chair is absent or unable to perform his or her duties, the Vice Chair shall perform the Chair's duties until the Regional Entity Board directs otherwise.

III. **STANDARDS:**

The Chair shall be a specially empowered member of the Board who shall be responsible for ensuring the integrity of the Board's process and represents the Board to outside parties.

- a. The result of the Chair's job is that the Board acts consistently with its own rules and those legitimately imposed upon it from outside the organization.
 1. Meeting discussion content will consist of issues that clearly belong to the Board to decide or to monitor according to Board policy.
 2. Information that is neither for monitoring Board or enterprise performance nor for Board decisions will be avoided or minimized.
 3. Deliberation will be fair, open, and thorough, but also timely and orderly.
- b. The authority of the Chair consists in making decisions that fall within topics covered by Board policies on Governance Process and Board-Management Delegation, with the exception of (i) employment or termination of the EO and (ii) areas where the Board specifically delegates portions of this authority to others. The Chair is authorized to use any reasonable interpretation of the provision in these policies.
- c. The Chair is empowered to preside over all SWMBH Board meetings with all the commonly accepted power of that position, such as agenda review, ruling, and recognizing.

- d. The Chair has no authority to make decisions about policies created by the Board within *Ends* and *Executive Limitations* policy areas. Therefore, the Chair has no authority to supervise or direct the EO.
- e. The Chair may represent the Board to outside parties in announcing Board-stated positions and in stating Chair decisions and interpretations within the area delegated to that role. The Chair may delegate this authority but remains accountable for its use.

* Verbatim from the Bylaws:

4.9 Special Meetings. Special meetings of the Regional Entity Board may be held at the call of the Chair of the Regional Entity Board or, in the Chair's absence, the Secretary, or by a simple majority of the Regional Entity Board members.

6.1 Officers. The Officers of the Regional Entity Board shall be the Chairperson, the Vice Chairperson, and the Secretary. Only Officers of the Regional Entity Board can speak to the press as representatives of the Regional Entity.

6.2 Appointment. Officers will be elected by a majority vote of the Regional Entity Board members, and must be a representative of the Participant's Board.

6.3 Term of Office. The term of office of Officers elected in 2013 shall be through March 30, 2014. Thereafter the term of office of Officers shall be annual April to March with annual April Officer elections. Election of Officers of the Regional Entity Board shall occur annually, or in case of vacancy.

6.5 Removal. The Regional Entity Board will be able to remove any Regional Entity Board Officer by a super majority (75% of attendees) vote of Regional Entity Board members present at a meeting where a quorum is present and shall constitute an authorized action of the Regional Entity Board.

6.6 Chair. The Chair shall preside at all Regional Entity Board meetings. The Chair shall have the power to perform duties as may be assigned by the Regional Entity Board. The Chair shall perform all duties incident to the office.

6.7 Vice Chair. The Vice Chair shall have the power to perform duties that may be assigned by the Chair or the Regional Entity Board. If the Chair is absent or unable to perform his or her duties, the Vice Chair shall perform the Chair's duties until the Regional Entity Board directs otherwise. The Vice Chair shall perform all duties incident to the office.

6.8 Secretary. The Secretary shall: (a) ensure that minutes of Regional Entity Board meetings are recorded; (b) be responsible for providing notice to each Regional Entity Board Member as required by law or these Bylaws; (c) be the custodian of the Regional Entity records; (d) keep a register of the names and addresses of each Officer and Regional Entity Board Member; (e) complete all required administrative filings required by the Regional Entity's legal structure; and (f) perform all duties incident to the office and other duties assigned by the Regional Entity Board.

Southwest Michigan

BEHAVIORAL HEALTH

Section: Board Policy – Executive Limitations		Policy Number: EO-002	Pages: 2
Subject: Monitoring of Executive Officer Performance		Required By: Policy Governance	Accountability: SWMBH Board
Application: <input type="checkbox"/> SWMBH Governance Board <input checked="" type="checkbox"/> SWMBH EO			Required Reviewer: SWMBH Board
Effective Date: 03.14.14	Last Review Date: 11.10.23	Past Review Dates: 07.11.2014, 03.13.15, 05.13.16 11.11.16, 11.10.17, 11.9.18, 10.11.19, 11.13.20, 11.12.21, 11.11.22	

I. PURPOSE:

To ensure Executive Officer performance is monitored and evaluated.

II. POLICY:

Monitoring Executive Officer, EO, performance is synonymous with monitoring organizational performance against Board policies on Ends and on Executive Limitations. Any evaluation of EO performance, formal or informal, may be derived from these monitoring data.

III. STANDARDS:

Accordingly,

1. The purpose of monitoring is to determine the degree to which Board policies are being fulfilled. Information that does not do this will not be considered to be monitoring.
2. A given policy may be monitored in one or more of three ways; with a balance of using all of the three types of monitoring:
 - a. Internal report: Disclosure of compliance information to the Board from the Executive Officer.
 - b. External report: Discovery of compliance information by a disinterested, external auditor, inspector or judge who is selected by and reports directly to the Board. Such reports must assess Executive Officer performance only against policies of the Board, not those of the external party unless the Board has previously indicated that party's opinion to be the standard.
 - c. Direct Board inspection: Discovery of compliance information by a Board Member, a Committee or the Board as a whole. This is a Board inspection of documents, activities or circumstances directed by the Board which allows a "prudent person" test of policy compliance.
3. Upon the choice of the Board, any policy can be monitored by any method at any time. For regular monitoring, however, each Ends and Executive Limitations policy will be classified by the Board according to frequency and method.
 - a. Internal

- b. External
 - c. Direct Inspection
4. Each November the Board will have a formal evaluation of the EO. This evaluation will consider monitoring data as defined here and as it has appeared over the calendar year.
 5. The Executive Committee, (Chair, Vice Chair, and Secretary), will take data and information from the bulleted documents below upon which the annual performance of the EO will be evaluated. The overall evaluation consists of compliance with Executive Limitations Policies, Ends Interpretation and Ends Monitoring reports and supporting documentation, (as per the Board developed schedule), and follow through on Board requests, (what we ask for in subsequent meetings and what we want to see on the agendas). For the performance review the following should be documents given the Executive Committee at least one month prior, (October), to the Board EO evaluation, (November).
 - Minutes of all meetings
 - Ends Monitoring reports for the past year along with the Ends Interpretation for each Ends Monitoring report
 - Any supporting Ends documentation
 - Ends Monitoring Calendar
 - Other policies monitoring calendar

Southwest Michigan

BEHAVIORAL HEALTH

Section: Board Policy- Executive Limitation	Policy Number: BEL-003	Pages: 2
Subject: Asset Protection	Required By: Policy Governance	Accountability: SWMBH Board
Application: <input type="checkbox"/> SWMBH Governance Board <input checked="" type="checkbox"/> SWMBH Executive Officer (EO)		Required Reviewer: SWMBH Board
Effective Date: 02.14.2014	Last Review Date: 12.8.23	Past Review Dates: 11.14.14, 12.11.15, 12.9.16, 12.8.17, 12.14.18, 12.13.19, 12.11.20, 3/11/22, 12/9/22

I. PURPOSE:

To establish a policy for asset protection, and financial risk management.

II. POLICY:

The Executive Officer shall not cause or allow corporate assets to be unprotected, inadequately maintained, or unnecessarily risked.

III. STANDARDS:

Additionally, the Executive Officer shall not;

1. Subject facilities and equipment to improper wear and tear or insufficient maintenance.
2. Fail to protect intellectual property, information and files from loss or significant damage.
3. Fail to insure adequately against theft and casualty and against liability losses to Board Members, Staff, and the Organization itself.
4. Compromise the independence of the Board's audit or other external monitoring or advice, such as by engaging parties already chosen by the Board as consultants or advisers.
5. Endanger the Organization's public image or credibility, particularly in ways that would hinder its accomplishment of mission.
6. Change the organization's name or substantially alter its identity in the community.
7. Allow un-bonded personnel access to material amounts of funds.
8. Unnecessarily expose the Organization, its Board, or Staff to claims of liability.
9. Make any purchases:
 - i. Wherein normally prudent protection has not been given against conflict of interest

- ii. Inconsistent with federal and state regulations related to procurement using SWMBH funds.
 - iii. Of more than \$100,000 without having obtained comparative prices and quality
 - iv. Of more than \$100,000 without a stringent method of assuring the balance of long-term quality and cost.
 - v. Of split orders to avoid these criteria.
10. Receive, process, or disburse under controls that are insufficient to meet the Board-appointed auditor's standards.
11. Invest or hold operating capital and risk reserve funds in instruments that are not compliant with the requirements of Michigan Public Act 20.

**Executive Limitations
Monitoring to Assure Executive Performance
Board date December 13, 2024**

Policy Number: BEL-003
Policy Name: Asset Protection
Assigned Reviewer: Erik Krogh

Period under review: October 2023 – October 2024

Purpose: To establish a policy for asset protection, and financial risk management.

Policy: The Executive Officer shall not cause or allow corporate assets to be unprotected, inadequately maintained, or unnecessarily risked.

Standards: Accordingly, the EO may not.

1. Subject facilities and equipment to improper wear and tear or insufficient maintenance.

EO Response: As evidenced by an offer to walk-through the agency, facilities and equipment are not subjected to improper wear and tear or insufficient maintenance. SWMBH Operations Department performs regular direct and indirect surveillance and manages maintenance needs with housekeeping contractors and landlord as needed.

Fail to protect intellectual property, information and files from loss or significant damage.

EO Response: No loss of or significant damage to intellectual property, information or files has occurred. SWMBH maintains locked doors and locked cabinets for storage of key business files, and electronic filing systems are log-in and password assigned by individual and are auditable. Laptop and other devices are configured to prohibit the capture of network information onto peripheral hard drives/thumb drives. SWMBH maintains an Information Technology policy and Employee Manual requirements related to proper use of intellectual property. Electronic files are backed up regularly and stored off-site. No loss of intellectual property, information or files has occurred as evidenced by the absence of related Incident Report, police or fire reports or related casualty-property insurance claims.

2. Fail to insure adequately against theft and casualty and against liability losses to board members, staff, and the organization itself.

EO Response: SWMBH has a comprehensive Officers and Directors and general liability Policy with Michigan Municipal Risk Management Association (MMRMA). The premium has been paid and the Policy is active.

3. Compromise the independence of the board's audit or other external monitoring or advice, such as by engaging parties already chosen by the board as consultants or advisers.

EO Response: SWMBH has not engaged any parties already chosen by the Board as consultants or advisers.

4. Endanger the organization's public image or credibility, particularly in ways that would hinder its accomplishment of mission.

EO Response: No endangerment of the organization's public image or credibility has occurred as evidenced by no negative press per media scanning and no external or internal complaints related hereto. The SWMBH Business Continuity Plan makes clear that all media requests for comment other than general information regarding behavioral health services must be directed to the EO to ensure appropriate public image is maintained.

5. Change the organization's name or substantially alter its identity in the community.

EO Response: SWMBH has not changed the organization's name or substantially altered the SWMBH identity in the community.

6. Allow un-bonded personnel access to material amounts of funds.

EO Response: SWMBH staff are covered for their business activity under the MMRMA Policy. Management controls include segregation of duties. Bank accounts are reconciled by the finance department at least monthly to minimize risk of mismanagement or diversion of funds.

7. Unnecessarily expose the organization, its board, or staff to claims of liability.

EO Response: SWMBH has not exposed the organization, the Board, or staff to claims of liability as evidenced by the absence of liability claims against the organization, Board, or staff.

8. Make any purchases:

- i. Wherein normally prudent protection has not been given against conflict of interest
- ii. Inconsistent with federal and state regulations related to procurement using SWMBH funds.
- iii. Of more than \$100,000 without having obtained comparative prices and quality
- iv. Of more than \$100,000 without a stringent method of assuring the balance of long-term quality and cost.
- v. Orders should not be split to avoid these criteria.

EO Response: All purchases receive prudent protection against conflict of interest by virtue of multi-party review and approvals using a detailed process. All applicable purchases are subject to review by both Operations and Program Integrity-Compliance for alignment to federal and state regulations related to procurement. No purchase above \$100,000 has occurred during this time under review. Orders have not been split to avoid these criteria. Procurement policy and administrative files are available on-site upon request.

- 9. Receive, process, or disburse funds under controls that are insufficient to meet the board-appointed auditor's standards.

EO Response: SWMBH does not receive, process, or disburse funds under controls that are insufficient. The board-appointed auditor Roslund-Prestage had no findings in this area in its recent audit of SWMBH.

- 10. Invest or hold operating capital and risk reserve funds in instruments that are not compliant with the requirements of Michigan Public Act 20.

EO Response: Operating capital and risk reserve funds are held in instruments compliant with the requirements of Michigan Public Act 20 as well as the Board-approved Investment Policy.

We invite Mr. Krogh to set a call and or meeting with the CEO and/or CFO at his discretion.

Related Documents Provided:

SWMBH Investment Policy and Investment Placements Summary
Michigan Municipal Risk Management Authority Policy



BLANKET FAITHFUL PERFORMANCE BOND CERTIFICATE OF PROTECTION

KNOW ALL MEN BY THESE PRESENTS:

This certificate is issued as a matter of information only and confers no rights upon the certificate holder unless amended below.

This certifies that Southwest Michigan Behavioral Health as a member of this Authority

has Blanket Faithful Performance Bond Protection in the amount of One Million Dollars

(\$ 1,000,000.00).

Blanket Faithful Performance Description of Protection

Fidelity

- (1) The Scope of Loss Fund Protection includes loss caused to the member by conversion to personal use or through the failure of any of the employees, acting alone or in collusion with others, to perform faithfully his duties or to account properly for all monies and property received by virtue of his position or employment during the period of membership in the Authority, the amount of indemnity of each of such employees being the amount indicated on the Limits of Liability.

Section 2

General Agreement-Loss Under Prior Bond

- (1) If the protection of this provision is substituted for any prior coverage carried by the member which prior bond is terminated, cancelled or allowed to expire as of the time of such substitution, the member agrees that such agreement applies to loss sustained by, or caused to, the member, as the case may be, prior to or during the bond period, provided that such loss is discovered after the beginning of the period of membership and that such loss would have been recoverable by the member under such prior bond except for the fact that the time within which to bring suit, action or proceeding of any kind thereunder had expired, and provided further:
 - (a) The indemnity afforded by this agreement shall be a part of and not in addition to the limit afforded above;
 - (b) Such loss would have been covered under such insuring agreement had such insuring agreement with its agreements, conditions and limitations as of the time of such substitutions been in force when the acts or defaults causing such loss were committed;
 - (c) Recovery under this agreement on account of such loss shall in no event exceed the amount which would have been recoverable under such insuring agreement in the amount for which it is written as of the time of such substitution, had such insuring agreement been in force when such acts or defaults were committed, or the amount which would have been recoverable under such prior bond had such prior bond continued in force until the discovery of such loss if the latter amount be smaller.

Section 3

Definitions

- (1) "Employee" means person while in the employ of the member during the period of membership.

Section 4

Conditions

- (1) In case a loss is alleged to have been caused to the member through acts or defaults by an employee and the member shall be unable to designate the specific employee causing such loss, the member shall nevertheless have the benefit of this provision provided that the evidence submitted reasonably establishes that the loss was in fact caused by an employee through such acts or defaults and provided, further, that regardless of the number of such employees concerned or implicated in such loss, the aggregate liability for any such loss shall not exceed the limit of liability.
- (2) The limit of liability shall not be cumulative from year to year.
- (3) This provision shall be deemed to be cancelled as to any employee:
- (a) Immediately upon discovery by the member of any act on the part of such employee which would constitute a liability under this provision covering such employee; or
 - (b) Upon the death, resignation or removal of such employee; or
 - (c) Upon termination of membership in the Authority.

Should the member indicated below withdraw from the Authority prior to the expiration date shown, the Authority shall notify the certificate holder in writing thirty (30) days in advance of such withdrawal, but failure to mail such notice shall impose no obligation or liability of any kind upon the Authority.

Certificate Holder:

Southwest Michigan Behavioral Health

5250 Lovers Lane, Suite 200

Portage, MI 49002

Member:

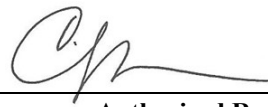
Southwest Michigan Behavioral Health

5250 Lovers Lane, Suite 200

Portage, MI 49002

Expiration Date of Membership Continuous Until Cancelled

Date Issued: October 1, 2024



Authorized Representative

RISK

MICHIGAN MUNICIPAL
RISK MANAGEMENT
A U T H O R I T Y

CERTIFICATE OF COVERAGE

This certificate is issued as a matter of information only and confers no rights upon the certificate holder except to the extent shown below. This certificate does not amend, extend, or alter the coverage contained in the Authority's Joint Powers Agreement and coverage attachments thereto.

This is to certify that a Self-Insured Program has been undertaken by the member listed below through the Authority pursuant to Act 138 P.A. 1982.

The coverage provided by the Authority is as follows:

1. Liability coverage for general liability, automobile (including Michigan No-Fault), law enforcement, and public officials liability; in the sum of \$10,000,000 each occurrence inclusive of loss adjustment and defense costs.
2. Property Coverage including loss to real & personal property, to amounts stipulated in coverage documents and overview for this member.
3. Motor Vehicle Physical Damage Coverage for the vehicles stipulated in the Coverage Document.
4. X Information only.
5. The entity named below is included in the scope of protection as respects claims arising from a COVERED CONTRACT as defined in the MMRMA Liability and Motor Vehicle Physical Damage Coverage Document.
6. X Other (as described here): **COVERAGE ABOVE INCLUDES MEDICAL MALPRACTICE FOR NURSES; PUBLIC AND MENTAL HEALTH OPERATIONS AND FACILITIES; AND PARAMEDICS, EMERGENCY MEDICAL SERVICE TECHNICIANS, POLICE OR FIRE PERSONNEL ONLY FOR IMMEDIATE MEDICAL ASSISTANCE OR TREATMENT IN AN EMERGENCY SITUATION OR WHILE PARTICIPATING IN SCHEDULED TRAINING AS REQUIRED TO PERFORM WITHIN THE SCOPE OF THEIR OFFICIAL DUTIES. COVERAGE EXCLUDES THE RENDERING OR FAILURE TO RENDER PROFESSIONAL SERVICES BY A DENTIST OR PHYSICIAN EXCEPT FOR A CORONER OR MEDICAL EXAMINER OR THEIR DEPUTIES BY THOSE TITLES.**

This certificate is issued in accordance with and is subject to all provisions of the Joint Powers Agreement, Coverage Documents, reinsurance agreements, MMRMA rules, regulation and administrative procedures. Should the member identified below withdraw from the Authority, or its Authority Membership be otherwise terminated, the Authority shall endeavor to notify the certificate holder in writing thirty (30) days in advance thereof, but failure to furnish such notice shall impose no obligation or liability of any kind upon the Authority, or its representatives.

Certificate Holder:
TO WHOM IT MAY CONCERN

Member:
SOUTHWEST MICHIGAN BEHAVIORAL
HEALTH
5250 LOVERS LANE, SUITE 200
PORTAGE, MI 49002

Certificate Expiration Date: October 1, 2025
Date Issued: October 1, 2024

Member Number: # M0001669
Effective Date of Membership: October 1, 2013

Distribution:
Garyl Guidry, Southwest Michigan Behavioral Health
MMRMA Underwriting



Authorized Representative

CERTIFICATE OF NO FAULT SECURITY

7/01

STATE OF MICHIGAN

-NAME AND ADDRESS OF ORGANIZATION

MICHIGAN MUNICIPAL RISK MANAGEMENT AUTHORITY

14001 Merriman, Livonia, Michigan 48154

An authorized Michigan Self-Insurance Association certifies that it has accepted as a member pursuant to Act 138 P.A., 1982 the following Governmental entity.

Southwest MI Behavioral Health

NAME OF MEMBER

Covers all vehicles owned/leased by Member

PENALTY FOR OPERATION WITHOUT INSURANCE

Michigan Law (MCLA 500.3101) requires that the owner or registrant of a motor vehicle registered in this state must have insurance or other approved security for the payment of no-fault benefits on the vehicle at all times. An owner or registrant who drives or permits a vehicle to be driven upon a public highway without proper insurance or other security is guilty of a misdemeanor.

An owner or registrant convicted of such a misdemeanor shall be fined not less than \$200.00 nor more than \$500.00, or imprisoned for not more than 1 year, or both.

A PERSON WHO SUPPLIES FALSE INFORMATION TO THE SECRETARY OF STATE OR WHO ISSUES OR USES AN INVALID CERTIFICATE OF INSURANCE IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR A FINE OF NOT MORE THAN \$1,000, OR BOTH.

Member No. M0001669

Expiration Date Continuous Until Cancelled

MICHIGAN MUNICIPAL RISK MANAGEMENT AUTHORITY

By


EXECUTIVE DIRECTOR

on this 1st October 2024
Day Month Year

WARNING: KEEP THIS CERTIFICATE IN YOUR VEHICLE AT ALL TIMES. If you fail to produce it upon a police officer's request, you will be responsible for a civil infraction.

CERTIFICATE OF NO FAULT SECURITY

7/01

STATE OF MICHIGAN

-NAME AND ADDRESS OF ORGANIZATION

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Member No. M0001669

Expiration Date Continuous Until Cancelled

MICHIGAN MUNICIPAL RISK MANAGEMENT AUTHORITY

By


EXECUTIVE DIRECTOR

on this 1st October 2024
Day Month Year

WARNING: KEEP THIS CERTIFICATE IN YOUR VEHICLE AT ALL TIMES. If you fail to produce it upon a police officer's request, you will be responsible for a civil infraction.

CERTIFICATE OF NO FAULT SECURITY

7/01

STATE OF MICHIGAN

-NAME AND ADDRESS OF ORGANIZATION

MICHIGAN MUNICIPAL RISK MANAGEMENT AUTHORITY

14001 Merriman, Livonia, Michigan 48154

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Michigan Law (MCLA 500.3101) requires that the owner or registrant of a motor vehicle registered in this state must have insurance or other approved security for the payment of no-fault benefits on the vehicle at all times. An owner or registrant who drives or permits a vehicle to be driven upon a public highway without proper insurance or other security is guilty of a misdemeanor.

An owner or registrant convicted of such a misdemeanor shall be fined not less than \$200.00 nor more than \$500.00, or imprisoned for not more than 1 year, or both.

A PERSON WHO SUPPLIES FALSE INFORMATION TO THE SECRETARY OF STATE OR WHO ISSUES OR USES AN INVALID CERTIFICATE OF INSURANCE IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR A FINE OF NOT MORE THAN \$1,000, OR BOTH.

Member No. M0001669

Expiration Date Continuous Until Cancelled

MICHIGAN MUNICIPAL RISK MANAGEMENT AUTHORITY

By



EXECUTIVE DIRECTOR


on this 1st October 2024
Day Month Year

WARNING: KEEP THIS CERTIFICATE IN YOUR VEHICLE AT ALL TIMES. If you fail to produce it upon a police officer's request, you will be responsible for a civil infraction.

	E	F	I	J	K
1	Southwest Michigan Behavioral Health				
2	For the Fiscal YTD Period Ended 9/30/2025			FY25 PIHP	
3	(For Internal Management Purposes Only)				
4		FY25 Budget	FY25 Actual as P01	FY 25 Projection	
6	REVENUE				
16	Contract Revenue	318,934,780	23,792,907	285,514,882	
17	CMHSP Incentive Payments	419,357	109,604	1,315,254	
18	PIHP Incentive Payments	2,483,291	-	-	
19	Interest Income - Working Capital	1,222,315	104,928	1,259,139	
20	Interest Income - ISF Risk Reserve	-	29,578	354,940	
21	Local Funds Contributions	852,520	71,043	852,520	
22	Other Local Income			-	
23					
24	TOTAL REVENUE	323,912,264	24,108,061	289,296,735	
25					
26	EXPENSE				
27	Healthcare Cost				
28	Provider Claims Cost	23,023,897	1,450,493	17,405,917	
29	CMHP Subcontracts, net of 1st & 3rd party	263,904,801	21,812,594	261,751,123	
30	Insurance Provider Assessment Withhold (IPA)	3,746,326	244,846	2,938,147	
31	Medicaid Hospital Rate Adjustments	12,089,192	-	-	
32	MHL Cost in Excess of Medicare FFS Cost				
33		-			
34	Total Healthcare Cost	302,764,215	23,507,932	282,095,187	
35	Medical Loss Ratio (HCC % of Revenue)	94.9%	98.8%	98.8%	
36					
37	Administrative Cost				
38	Purchased Professional Services			-	
39	Administrative and Other Cost	12,805,756	632,735	7,592,815	
40	Interest Expense			-	
41	Depreciation			-	
42	Functional Cost Reclassification			-	
43	Allocated Indirect Pooled Cost			-	
44	Delegated Managed Care Admin	24,714,174	2,166,213	25,994,551	
45	Apportioned Central Mgd Care Admin	(2,665,293)	(112,567)	(1,350,805)	
46					
47	Total Administrative Cost	34,854,637	2,686,380	32,236,561	
48	Admin Cost Ratio (MCA % of Total Cost)	10.3%	10.3%	10.3%	
49					
50	Local Funds Contribution	852,520	71,043	852,520	
52					
53	TOTAL COST after apportionment	338,471,372	26,265,356	315,184,268	
54					
55	NET SURPLUS before settlement	(14,559,107)	(2,157,294)	(25,887,533)	
56	Net Surplus (Deficit) % of Revenue	-4.5%	-8.9%	-8.9%	
57					
58	Prior Year Savings Utilization				
61	ISF Risk Reserve Utilization	1,929,280	1,283,060	-	
62	CCBHC Supplemental Receivable (Payable)	3,813,725	-	-	
63	MDHHS Shared Risk Utilization				
66	NET SURPLUS (DEFICIT)	(8,816,103)	(874,235)	(25,887,533)	
67	HMP & Autism is settled with Medicaid				

	A	B	C	D	E
1	Southwest Michigan Behavioral Health				
2	For the Fiscal YTD Period Ended 9/30/2025			FY25 CCBHC	
3	(For Internal Management Purposes Only)				
4			FY25 Budget	FY25 Actual as P01	FY 25 Projection
5					
6	REVENUE				
16	Contract Revenue		94,989,631	8,398,330	100,779,960
17	CMHSP Incentive Payments		3,422,650	-	-
18					
19	TOTAL REVENUE		98,412,281	8,398,330	100,779,960
20					
21	EXPENSE				
22	Healthcare Cost				
23	CCBHC Subcontracts		82,461,854	5,801,542	69,618,508
24					
25	Total Healthcare Cost		82,461,854	5,801,542	69,618,508
26	Medical Loss Ratio (HCC % of Revenue)		83.8%	69.1%	69.1%
27					
28					
29	Administrative Cost				
30	Apportioned Central Mgd Care Admin		2,665,293	112,567	1,350,805
31					
32	Total Administrative Cost		2,665,293	112,567	1,350,805
33	Admin Cost Ratio (MCA % of Total Cost)		3.1%	1.9%	1.9%
34					
35	TOTAL COST after apportionment		85,127,147	5,914,109	70,969,313
36					
37	NET SURPLUS before settlement		13,285,134	2,484,221	29,810,647
38	Net Surplus (Deficit) % of Revenue		13.5%	29.6%	29.6%
39					
40	CCBHC Supplemental Reciveable (Payable)				
41	Settlement Receivable / (Payable)				
42	CCBHC Non Medicaid Cost (Payable)		(10,261,247)	(855,104)	(10,261,247)
43					
44	NET SURPLUS (DEFICIT)		3,023,886	1,629,117	19,549,400
45					

	A	B	C	D	E	F	G	H	I	J	K	L
1	 Southwest Michigan Behavioral Health MEDICAID Summary Income Statement For the Fiscal YTD Period Ended 10/31/2024											
2												
3												
4		Total Region	SWMBH Central	CMH Participants	Barry CMHA	Berrien CMHA ESTIMATE P01	Pines Behavioral	Summit Pointe	Woodlands Behavioral ESTIMATE P01	Integrated Services of Kalamazoo	Pivotal of St. Joseph ESTIMATE P01	Van Buren MHA ESTIMATE P01
5												
6		Medicaid Specialty Services										
7	Contract Revenue	\$ 20,984,365	\$ 912,417	\$ 20,071,947	\$ 829,090	\$ 3,850,752	\$ 1,014,320	\$ 3,710,365	\$ 1,397,124	\$ 5,679,549	\$ 1,361,819	\$ 2,228,929
8	Budget v Actual	\$ (1,182,327)	\$ (1,400,803)	\$ 218,476	\$ (36,796)	\$ 78,995	\$ (65,988)	\$ 206,312	\$ 78,961	\$ (416,608)	\$ 17,368	\$ 356,232
9	% Variance - Fav / (Unfav)	-5.3%	-60.6%	1.1%	-4.2%	2.1%	-6.1%	5.9%	6.0%	-6.8%	1.3%	19.0%
10												
11	Healthcare Cost	\$ 20,094,464	\$ 492,008	\$ 19,602,456	\$ 615,134	\$ 3,717,917	\$ 554,926	\$ 3,433,381	\$ 1,366,028	\$ 6,122,107	\$ 1,339,049	\$ 2,453,914
12	Budget v Actual	\$ 1,221,136	\$ 690,629	\$ 530,508	\$ 40,499	\$ (15,353)	\$ 416,288	\$ 14,076	\$ 120,242	\$ 430,642	\$ 176,937	\$ (652,824)
13	% Variance - Fav / (Unfav)	5.7%	58.4%	2.6%	6.2%	-0.4%	42.9%	0.4%	8.1%	6.6%	11.7%	-36.2%
14	MLR	95.8%	53.9%	97.7%	74.2%	96.6%	54.7%	92.5%	97.8%	107.8%	98.3%	110.1%
15												
16	Managed Care Administration	\$ 2,290,597	\$ 385,711	\$ 1,904,887	\$ 187,150	\$ 374,739	\$ 37,571	\$ 396,332	\$ 101,647	\$ 443,203	\$ 145,140	\$ 219,104
17	Budget v Actual	\$ 225,343	\$ 275,986	\$ (50,643)	\$ (130,544)	\$ (5,523)	\$ 29,276	\$ (31,220)	\$ 10,197	\$ 131,385	\$ (13,315)	\$ (40,898)
18	% Variance - Fav / (Unfav)	9.0%	41.7%	-2.7%	-230.6%	-1.5%	43.8%	-8.6%	9.1%	22.9%	-10.1%	-23.0%
19	ACR	10.2%	1.7%	8.5%	23.3%	9.2%	6.3%	10.3%	6.9%	6.8%	9.8%	8.2%
20												
21	Total Contract Cost	\$ 22,385,061	\$ 877,719	\$ 21,507,342	\$ 802,284	\$ 4,092,657	\$ 592,498	\$ 3,829,713	\$ 1,467,674	\$ 6,565,310	\$ 1,484,188	\$ 2,673,018
22	Budget v Actual	\$ 1,446,479	\$ 966,615	\$ 479,864	\$ (90,045)	\$ (20,876)	\$ 445,564	\$ (17,144)	\$ 130,438	\$ 562,027	\$ 163,622	\$ (693,722)
23	Variance - Favorable / (Unfavorable)	6.1%	52.4%	2.2%	-12.6%	-0.5%	42.9%	-0.4%	8.2%	7.9%	9.9%	-35.0%
24												
25												
26	Net before Settlement	\$ (1,400,697)	\$ 34,698	\$ (1,435,395)	\$ 26,806	\$ (241,905)	\$ 421,823	\$ (119,348)	\$ (70,551)	\$ (885,762)	\$ (122,370)	\$ (444,089)
27	Budget v Actual	\$ 264,152	\$ (434,189)	\$ 698,341	\$ (126,841)	\$ 58,119	\$ 379,576	\$ 189,169	\$ 209,400	\$ 145,419	\$ 180,990	\$ (337,491)
28	Variance - Favorable / (Unfavorable)	15.9%	-92.6%	32.7%	-82.6%	19.4%	898.5%	61.3%	74.8%	14.1%	59.7%	-316.6%
29	Note: HMP Savings can be applied to Medicaid cost savings or ISF										within +/- 2%	
30	Date: 12/3/2024										>2% favorable	
31											between -2&-4%	
32											>4% unfavorable	

	A	B	C	D	E	F	G	H	I	J	K	L
33	<div></div> <div>Southwest Michigan Behavioral Health</div> <div>HEALTHY MICHIGAN Summary Income Statement</div> <div>For the Fiscal YTD Period Ended 10/31/2024</div>											
34												
35												
36	Total Region	SWMBH Central	CMH Participants	Barry CMHA	Berrien CMHA	Pines Behavioral	Summit Pointe	Woodlands Behavioral	Integrated Services of Kalamazoo	Pivotal of St. Joseph	Van Buren MHA	
37					ESTIMATE P01			ESTIMATE P01		ESTIMATE P01	ESTIMATE P01	
38	Healthy Michigan Plan (HMP)											
39	Contract Revenue	\$ 2,309,448	\$ 508,142	\$ 1,801,306	\$ 65,993	\$ 385,280	\$ 52,506	\$ 401,503	\$ 148,496	\$ 379,485	\$ 151,384	\$ 216,658
40	Budget v Actual	\$ (1,326,083)	\$ (551,019)	\$ (775,064)	\$ (59,236)	\$ (133,268)	\$ (61,259)	\$ (61,445)	\$ (39,375)	\$ (367,432)	\$ (37,394)	\$ (15,655)
41	% Variance - Fav / (Unfav)	-36.5%	-52.0%	-30.1%	-47.3%	-25.7%	-53.8%	-13.3%	-21.0%	-49.2%	-19.8%	-6.7%
42												
43	Healthcare Cost	\$ 2,879,797	\$ 701,694	\$ 2,178,104	\$ 55,116	\$ 378,071	\$ 16,894	\$ 435,019	\$ 293,490	\$ 537,380	\$ 170,528	\$ 291,606
44	Budget v Actual	\$ 157,204	\$ 524,212	\$ (367,008)	\$ 10,482	\$ (103,662)	\$ 43,109	\$ 35,512	\$ (146,059)	\$ (100,938)	\$ (29,266)	\$ (76,186)
45	% Variance - Fav / (Unfav)	5.2%	42.8%	-20.3%	16.0%	-37.8%	71.8%	7.5%	-99.1%	-23.1%	-20.7%	-35.4%
46	MLR	124.7%	138.1%	120.9%	83.5%	98.1%	32.2%	108.3%	197.6%	141.6%	112.6%	134.6%
47												
48	Managed Care Administration	\$ 315,935	\$ 54,609	\$ 261,326	\$ 36,205	\$ 49,581	\$ 4,667	\$ 67,305	\$ 14,634	\$ 38,904	\$ 20,386	\$ 29,644
49	Budget v Actual	\$ (29,126)	\$ 26,929	\$ (56,055)	\$ (30,677)	\$ (7,387)	\$ 4,393	\$ (5,748)	\$ (2,686)	\$ (1,006)	\$ (2,926)	\$ (10,017)
50	% Variance - Fav / (Unfav)	-10.2%	33.0%	-27.3%	-555.0%	-17.5%	48.5%	-9.3%	-22.5%	-2.7%	-16.8%	-51.0%
51	ACR	9.9%	1.7%	8.2%	39.6%	11.6%	21.6%	13.4%	4.7%	6.8%	10.7%	9.2%
52												
53	Total Contract Cost	\$ 3,195,732	\$ 756,303	\$ 2,439,430	\$ 91,321	\$ 427,652	\$ 21,561	\$ 502,323	\$ 308,124	\$ 576,285	\$ 190,913	\$ 321,251
54	Budget v Actual	\$ 3,323,811	\$ 1,307,444	\$ 2,016,367	\$ 71,126	\$ 316,604	\$ 69,062	\$ 532,087	\$ 159,379	\$ 474,341	\$ 158,721	\$ 235,047
55	% Variance - Fav / (Unfav)	3.9%	42.2%	-21.0%	-28.4%	-35.1%	68.8%	5.6%	-93.3%	-21.5%	-20.3%	-36.7%
56												
57												
58	Net before Settlement	\$ (886,285)	\$ (248,161)	\$ (638,124)	\$ (25,328)	\$ (42,372)	\$ 30,945	\$ (100,821)	\$ (159,628)	\$ (196,800)	\$ (39,529)	\$ (104,592)
59	Budget v Actual	\$ (1,198,005)	\$ 121	\$ (1,198,126)	\$ (79,432)	\$ (244,316)	\$ (13,758)	\$ (31,680)	\$ (188,120)	\$ (469,376)	\$ (69,586)	\$ (101,858)
60	% Variance - Fav / (Unfav)	-384.3%	0.0%	-214.0%	-146.8%	-121.0%	-30.8%	-45.8%	-660.2%	-172.2%	-231.5%	-3724.5%
61	Note: HMP Savings can be applied to Medicaid cost savings or ISF											within +/- 2%
62												>2% favorable
63	Date: 12/3/2024											between -2&-4%
												>4% unfavorable

	E	F	H	J	K	M	N	P	Q	R	S	
1	Southwest Michigan Behavioral Health			Mos in Period								
2	For the Fiscal YTD Period Ended 10/31/2024			P01FYTD24		1						
3	(For Internal Management Purposes Only)											
4	INCOME STATEMENT			TOTAL	Medicaid Contract	Healthy Michigan Contract	Opioid Health Home Contract	CCBHC	MH Block Grant Contracts	SA Block Grant Contract	SA PA2 Funds Contract	SWMBH Central
5												
6	REVENUE											
18	Contract Revenue	32,191,237	20,874,760	2,309,448	(14,579)	8,398,330	22,010	419,229	182,040			
19	DHHS Incentive Payments	109,604	109,604	-	-	-	-	-	-	-	-	-
21	Interest Income - Working Capital	104,928	-	-	-	-	-	-	-	-	-	104,928
22	Interest Income - ISF Risk Reserve	29,578	-	-	-	-	-	-	-	-	-	29,578
23	Local Funds Contributions	71,043	-	-	-	-	-	-	-	-	-	71,043
24	Other Local Income	-	-	-	-	-	-	-	-	-	-	-
25												
26	TOTAL REVENUE	32,506,391	20,984,365	2,309,448	(14,579)	8,398,330	22,010	419,229	182,040	205,550		
27												
28	EXPENSE											
29	Healthcare Cost											
30	Provider Claims Cost	1,450,493	312,477	636,379	101,823	-	2,023	366,658	31,133	-	-	-
31	CMHP Subcontracts, net of 1st & 3rd party	27,614,136	19,602,456	2,178,104	-	5,801,542	-	32,034	-	-	-	-
32	Insurance Provider Assessment Withhold (IPA)	244,846	179,531	65,315	-	-	-	-	-	-	-	-
33	Medicaid Hospital Rate Adjustments	-	-	-	-	-	-	-	-	-	-	-
34	MHL Cost in Excess of Medicare FFS Cost	-	-	-	-	-	-	-	-	-	-	-
35												
36	Total Healthcare Cost	29,309,475	20,094,464	2,879,797	101,823	5,801,542	2,023	398,692	31,133	-	-	-
37	Medical Loss Ratio (HCC % of Revenue)	90.7%	95.8%	124.7%	-698.4%	69.1%		95.1%	17.1%			
38												
40	Purchased Professional Services	20,018	-	-	-	-	-	-	-	-	-	20,018
41	Administrative and Other Cost	612,716	-	-	-	-	19,987	11,872	-	-	-	580,857
43	Depreciation	-	-	-	-	-	-	-	-	-	-	-
44	Functional Cost Reclassification	-	-	-	-	-	-	-	-	-	-	-
45	Allocated Indirect Pooled Cost	0	-	-	-	-	-	-	-	-	-	-
46	Delegated Managed Care Admin	2,166,213	1,904,887	261,326	-	-	-	-	-	-	-	-
47	Apportioned Central Mgd Care Admin	(0)	385,711	54,609	1,976	112,567	427	8,664	-	-	-	(563,954)
48												
49	Total Administrative Cost	2,798,947	2,290,597	315,935	1,976	112,567	20,414	20,536.43	-	36,921	-	-
50	Admin Cost Ratio (MCA % of Total Cost)	8.7%	10.2%	9.9%	1.9%	1.9%		4.9%	0.0%	1.8%	-	-
51												
52	Local Funds Contribution	71,043	-	-	-	-	-	-	-	-	-	71,043
54												
55	TOTAL COST after apportionment	32,179,465	22,385,061	3,195,732	103,799	5,914,109	22,437	419,229	31,133	107,965		
56												
57	NET SURPLUS before settlement	326,926	(1,400,697)	(886,285)	(118,378)	2,484,221	(427)	-	150,906	97,585	-	-
58	Net Surplus (Deficit) % of Revenue	1.0%	-6.7%	-38.4%	812.0%	29.6%	-1.9%	0.0%	82.9%	47.5%	-	-
60	Prior Year Savings	-	-	-	-	-	-	-	-	-	-	-
61	Change in PA2 Fund Balance	(150,906)	-	-	-	-	-	-	(150,906)	-	-	-
62												
63	ISF Risk Reserve Abatement (Funding)	(29,578)	-	-	-	-	-	-	-	-	-	(29,578)
64	ISF Risk Reserve Deficit (Funding)	1,283,060	1,283,060	-	-	-	-	-	-	-	-	-
65	CCBHC Supplemental Reciveable (Payable)	(143,929)	-	-	-	(143,929)	-	-	-	-	-	-
66	Settlement Receivable / (Payable)	0	(1,004,662)	886,285	118,378	-	-	-	-	-	-	-
67	NET SURPLUS (DEFICIT)	1,285,572	(1,122,299)	-	-	2,340,292	(427)	-	-	68,007	-	-
68	HMP & Autism is settled with Medicaid											
69												
70	SUMMARY OF NET SURPLUS (DEFICIT)											
71	Prior Year Unspent Savings	-	-	-	-	-	-	-	-	-	-	-
72	Current Year Savings	-	-	-	-	-	-	-	-	-	-	-
73	Current Year Public Act 2 Fund Balance	-	-	-	-	-	-	-	-	-	-	-
74	Local and Other Funds Surplus/(Deficit)	1,285,572	(1,122,299)	-	-	2,340,292	(427)	-	-	-	-	68,007
75												
76	NET SURPLUS (DEFICIT)	1,285,572	(1,122,299)	-	-	2,340,292	(427)	-	-	68,007	-	-

	F	G	H	I	J	K	L	M	N	O	P	Q	R
1	Southwest Michigan Behavioral Health		<i>Mos in Period</i>		1								
2	For the Fiscal YTD Period Ended 10/31/2024												
3	(For Internal Management Purposes Only)												
			ok		ESTIMATE P01		ESTIMATE P01		ESTIMATE P01		ESTIMATE P01		
4	INCOME STATEMENT		Total SWMBH	SWMBH Central	CMH Participants	Barry CMHA	Berrien CMHA	Pines Behavioral	Summit Pointe	Woodlands Behavioral	Integrated Services of Kalamazoo	St Joseph CMHA	Van Buren MHA
5													
6	Medicaid Specialty Services			HCC%		47.4%	72.7%	59.5%	63.4%	82.9%	83.2%	81.7%	83.3%
7	Subcontract Revenue		20,874,760	802,813	20,071,947	829,090	3,850,752	1,014,320	3,710,365	1,397,124	5,679,549	1,361,819	2,228,929
8	Incentive Payment Revenue		109,604	109,604	-	-	-	-	-	-	-	-	-
9	Contract Revenue		20,984,365	912,417	20,071,947	829,090	3,850,752	1,014,320	3,710,365	1,397,124	5,679,549	1,361,819	2,228,929
10													
11	External Provider Cost		18,246,317	312,477	17,933,840	534,147	3,665,829	540,251	3,189,081	1,086,440	5,929,673	1,282,725	1,705,694
12	Internal Program Cost		1,661,646	-	1,661,646	80,987	41,796	14,675	244,300	279,587	192,242	56,323	751,734
13	SSI Reimb. 1st/3rd Party Cost Offset		6,970	-	6,970	-	10,292	-	-	-	192	-	(3,514)
14	Insurance Provider Assessment Withhold (IPA)		179,531	179,531	-	-	-	-	-	-	-	-	-
15	Total Healthcare Cost		20,094,464	492,008	19,602,456	615,134	3,717,917	554,926	3,433,381	1,366,028	6,122,107	1,339,049	2,453,914
16	Medical Loss Ratio (HCC % of Revenue)		95.8%	53.9%	97.7%	74.2%	96.6%	54.7%	92.5%	97.8%	107.8%	98.3%	110.1%
17	Managed Care Administration		2,290,597	385,711	1,904,887	187,150	374,739	37,571	396,332	101,647	443,203	145,140	219,104
18	Admin Cost Ratio (MCA % of Total Cost)		10.2%	1.7%	8.5%	23.3%	9.2%	6.3%	10.3%	6.9%	6.8%	9.8%	8.2%
19	Contract Cost		22,385,061	877,719	21,507,342	802,284	4,092,657	592,498	3,829,713	1,467,674	6,565,310	1,484,188	2,673,018
20	Net before Settlement		(1,400,697)	34,698	(1,435,395)	26,806	(241,905)	421,823	(119,348)	(70,551)	(885,762)	(122,370)	(444,089)
21													
22	Prior Year Savings		-	-	-	-	-	-	-	-	-	-	-
23	Internal Service Fund Risk Reserve		-	-	-	-	-	-	-	-	-	-	-
24	Contract Settlement / Redistribution		(1,004,662)	(2,440,057)	1,435,395	(26,806)	241,905	(421,823)	119,348	70,551	885,762	122,370	444,089
25	Net after Settlement		(2,405,359)	(2,405,359)	-	-	-	-	-	-	-	-	-
26													
27	Eligibles and PMPM												
28	Average Eligibles		149,609	149,609	149,609	7,737	28,341	8,853	29,224	8,637	39,972	11,916	14,929
29	Revenue PMPM		\$ 140.26	\$ 6.10	\$ 134.16	\$ 107.16	\$ 135.87	\$ 114.57	\$ 126.96	\$ 161.76	\$ 142.09	\$ 114.28	\$ 149.30
30	Expense PMPM		\$ 149.62	\$ 5.87	\$ 143.76	\$ 103.69	\$ 144.41	\$ 66.93	\$ 131.05	\$ 169.93	\$ 164.25	\$ 124.55	\$ 179.05
31	Margin PMPM		\$ (9.36)	\$ 0.23	\$ (9.59)	\$ 3.46	\$ (8.54)	\$ 47.65	\$ (4.08)	\$ (8.17)	\$ (22.16)	\$ (10.27)	\$ (29.75)
32													
33	Medicaid Specialty Services												
34	Budget v Actual												
35													
36	Eligible Lives (Average Eligibles)												
37	Actual		149,609	149,609	149,609	7,737	28,341	8,853	29,224	8,637	39,972	11,916	14,929
38	Budget		163,202	163,202	163,202	8,863	30,720	9,623	31,859	9,485	43,130	13,220	16,302
39	Variance - Favorable / (Unfavorable)		(13,593)	(13,593)	(13,593)	(1,126)	(2,379)	(770)	(2,635)	(848)	(3,158)	(1,304)	(1,373)
40	% Variance - Fav / (Unfav)		-8.3%	-8.3%	-8.3%	-12.7%	-7.7%	-8.0%	-8.3%	-8.9%	-7.3%	-9.9%	-8.4%
41													
42	Contract Revenue before settlement												
43	Actual		20,984,365	912,417	20,071,947	829,090	3,850,752	1,014,320	3,710,365	1,397,124	5,679,549	1,361,819	2,228,929
44	Budget		22,166,692	2,313,221	19,853,471	865,886	3,771,757	1,080,308	3,504,053	1,318,163	6,096,157	1,344,451	1,872,697
45	Variance - Favorable / (Unfavorable)		(1,182,327)	(1,400,803)	218,476	(36,796)	78,995	(65,988)	206,312	78,961	(416,608)	17,368	356,232
46	% Variance - Fav / (Unfav)		-5.3%	-60.6%	1.1%	-4.2%	2.1%	-6.1%	5.9%	6.0%	-6.8%	1.3%	19.0%
47													
48	Healthcare Cost												
49	Actual		20,094,464	492,008	19,602,456	615,134	3,717,917	554,926	3,433,381	1,366,028	6,122,107	1,339,049	2,453,914
50	Budget		21,315,600	1,182,637	20,132,963	655,633	3,702,565	971,214	3,447,457	1,486,269	6,552,749	1,515,985	1,801,090
51	Variance - Favorable / (Unfavorable)		1,221,136	690,629	530,508	40,499	(15,353)	416,288	14,076	120,242	430,642	176,937	(652,824)
52	% Variance - Fav / (Unfav)		5.7%	58.4%	2.6%	6.2%	-0.4%	42.9%	0.4%	8.1%	6.6%	11.7%	-36.2%
53													
54	Managed Care Administration												
55	Actual		2,290,597	385,711	1,904,887	187,150	374,739	37,571	396,332	101,647	443,203	145,140	219,104
56	Budget		2,515,940	661,697	1,854,243	56,606	369,217	66,847	365,112	111,843	574,588	131,825	178,206
57	Variance - Favorable / (Unfavorable)		225,343	275,986	(50,643)	(130,544)	(5,523)	29,276	(31,220)	10,197	131,385	(13,315)	(40,898)
58	% Variance - Fav / (Unfav)		9.0%	41.7%	-2.7%	-230.6%	-1.5%	43.8%	-8.6%	9.1%	22.9%	-10.1%	-23.0%
59													
60	Total Contract Cost												
61	Actual		22,385,061	877,719	21,507,342	802,284	4,092,657	592,498	3,829,713	1,467,674	6,565,310	1,484,188	2,673,018
62	Budget		23,831,540	1,844,334	21,987,207	712,239	4,071,781	1,038,061	3,812,570	1,598,113	7,127,338	1,647,810	1,979,296
63	Variance - Favorable / (Unfavorable)		1,446,479	966,615	479,864	(90,045)	(20,876)	445,564	(17,144)	130,438	562,027	163,622	(693,722)
64	% Variance - Fav / (Unfav)		6.1%	52.4%	2.2%	-12.6%	-0.5%	42.9%	-0.4%	8.2%	7.9%	9.9%	-35.0%
65													
66	Net before Settlement												
67	Actual		(1,400,697)	34,698	(1,435,395)	26,806	(241,905)	421,823	(119,348)	(70,551)	(885,762)	(122,370)	(444,089)
68	Budget		(1,664,848)	468,887	(2,133,736)	153,647	(300,024)	42,247	(308,517)	(279,950)	(1,031,181)	(303,359)	(106,599)
69	Variance - Favorable / (Unfavorable)		264,152	(434,189)	698,341	(126,841)	58,119	379,576	189,169	209,400	145,419	180,990	(337,491)
70	% Variance - Fav / (Unfav)		15.9%	-92.6%	32.7%	-82.6%	19.4%	898.5%	61.3%	74.8%	14.1%	59.7%	-316.6%
71													

	F	G	H	I	J	K	L	M	N	O	P	Q	R	
1	Southwest Michigan Behavioral Health				Mos in Period									
2	For the Fiscal YTD Period Ended 10/31/2024				1									
3	(For Internal Management Purposes Only)													
3	ok				ESTIMATE P01				ESTIMATE P01		ESTIMATE P01		ESTIMATE P01	
4	INCOME STATEMENT		Total SWMBH	SWMBH Central	CMH Participants	Barry CMHA	Berrien CMHA	Pines Behavioral	Summit Pointe	Woodlands Behavioral	Integrated Services of Kalamazoo	St Joseph CMHA	Van Buren MHA	
5														
76	Healthy Michigan Plan		HCC%		5.6%		5.7%	1.8%	8.0%	10.3%	12.5%	10.7%	8.9%	
77	Contract Revenue		2,309,448	508,142	1,801,306	65,993	385,280	52,506	401,503	148,496	379,485	151,384	216,658	
78														
79	External Provider Cost		2,389,701	636,379	1,753,322	54,074	340,601	12,554	415,914	88,940	536,007	163,824	141,409	
80	Internal Program Cost		424,781	-	424,781	1,042	37,470	4,340	19,105	204,550	1,373	6,703	150,197	
81	SSI Reimb, 1st/3rd Party Cost Offset		-	-	-	-	-	-	-	-	-	-	-	
82	Insurance Provider Assessment Withhold (IPA)		65,315	65,315	-	-	-	-	-	-	-	-	-	
83	Total Healthcare Cost		2,879,797	701,694	2,178,104	55,116	378,071	16,894	435,019	293,490	537,380	170,528	291,606	
84	Medical Loss Ratio (HCC % of Revenue)		124.7%	138.1%	120.9%	83.5%	98.1%	32.2%	108.3%	197.6%	141.6%	112.6%	134.6%	
85														
86	Managed Care Administration		315,935	54,609	261,326	36,205	49,581	4,667	67,305	14,634	38,904	20,386	29,644	
87	Admin Cost Ratio (MCA % of Total Cost)		9.9%	1.7%	8.2%	39.6%	11.6%	21.6%	13.4%	4.7%	6.8%	10.7%	9.2%	
88														
89	Contract Cost		3,195,732	756,303	2,439,430	91,321	427,652	21,561	502,323	308,124	576,285	190,913	321,251	
90	Net before Settlement		(886,285)	(248,161)	(638,124)	(25,328)	(42,372)	30,945	(100,821)	(159,628)	(196,800)	(39,529)	(104,592)	
91														
92	Prior Year Savings		-	-	-	-	-	-	-	-	-	-	-	
93	Internal Service Fund Risk Reserve		-	-	-	-	-	-	-	-	-	-	-	
94	Contract Settlement / Redistribution		886,285	248,161	638,124	25,328	42,372	(30,945)	100,821	159,628	196,800	39,529	104,592	
95	Net after Settlement		(0)	(0)	-	-	-	-	-	-	-	-	-	
96														
97	Eligibles and PMPM													
98	Average Eligibles		54,429	54,429	54,429	2,571	11,316	2,662	10,313	3,222	15,484	4,166	4,695	
99	Revenue PMPM		\$ 42.43	\$ 9.34	\$ 33.09	\$ 25.67	\$ 34.05	\$ 19.72	\$ 38.93	\$ 46.09	\$ 24.51	\$ 36.34	\$ 46.15	
100	Expense PMPM		58.71	13.90	44.82	35.52	37.79	8.10	48.71	95.63	37.22	45.83	68.42	
101	Margin PMPM		\$ (16.28)	\$ (4.56)	\$ (11.72)	\$ (9.85)	\$ (3.74)	\$ 11.62	\$ (9.78)	\$ (49.54)	\$ (12.71)	\$ (9.49)	\$ (22.28)	
102														
103	Healthy Michigan Plan													
104	Budget v Actual													
105														
106	Eligible Lives (Average Eligibles)													
107	Actual		54,429	54,429	54,429	2,571	11,316	2,662	10,313	3,222	15,484	4,166	4,695	
108	Budget		66,175	66,175	66,175	3,411	13,229	3,209	12,205	3,854	18,971	5,038	6,258	
109	Variance - Favorable / (Unfavorable)		(11,746)	(11,746)	(11,746)	(840)	(1,913)	(547)	(1,892)	(632)	(3,487)	(872)	(1,563)	
110	% Variance - Fav / (Unfav)		-17.7%	-17.7%	-17.7%	-24.6%	-14.5%	-17.0%	-15.5%	-16.4%	-18.4%	-17.3%	-25.0%	
111														
112	Contract Revenue before settlement													
113	Actual		2,309,448	508,142	1,801,306	65,993	385,280	52,506	401,503	148,496	379,485	151,384	216,658	
114	Budget		3,635,531	1,059,161	2,576,370	125,230	518,547	113,765	462,947	187,871	746,917	188,778	232,313	
115	Variance - Favorable / (Unfavorable)		(1,326,083)	(551,019)	(775,064)	(59,236)	(133,268)	(61,259)	(61,445)	(39,375)	(367,432)	(37,394)	(15,655)	
116	% Variance - Fav / (Unfav)		-36.5%	-52.0%	-30.1%	-47.3%	-25.7%	-53.8%	-13.3%	-21.0%	-49.2%	-19.8%	-6.7%	
117														
118	Healthcare Cost													
119	Actual		2,879,797	701,694	2,178,104	55,116	378,071	16,894	435,019	293,490	537,380	170,528	291,606	
120	Budget		3,037,002	1,225,906	1,811,096	65,598	274,409	60,003	470,531	147,431	436,442	141,262	215,420	
121	Variance - Favorable / (Unfavorable)		157,204	524,212	(367,008)	10,482	(103,662)	43,109	35,512	(146,059)	(100,938)	(29,266)	(76,186)	
122	% Variance - Fav / (Unfav)		5.2%	42.8%	-20.3%	16.0%	-37.8%	71.8%	7.5%	-99.1%	-23.1%	-20.7%	-35.4%	
123														
124	Managed Care Administration													
125	Actual		315,935	54,609	261,326	36,205	49,581	4,667	67,305	14,634	38,904	20,386	29,644	
126	Budget		286,809	81,538	205,271	5,528	42,195	9,059	61,557	11,948	37,898	17,459	19,627	
127	Variance - Favorable / (Unfavorable)		(29,126)	26,929	(56,055)	(30,677)	(7,387)	4,393	(5,748)	(2,686)	(1,006)	(2,926)	(10,017)	
128	% Variance - Fav / (Unfav)		-10.2%	33.0%	-27.3%	-555.0%	-17.5%	48.5%	-9.3%	-22.5%	-2.7%	-16.8%	-51.0%	
129														
130	Total Contract Cost													
131	Actual		3,195,732	756,303	2,439,430	91,321	427,652	21,561	502,323	308,124	576,285	190,913	321,251	
132	Budget		3,323,811	1,307,444	2,016,367	71,126	316,604	69,062	532,087	159,379	474,341	158,721	235,047	
133	Variance - Favorable / (Unfavorable)		128,078	551,141	(423,063)	(20,195)	(111,048)	47,502	29,764	(148,746)	(101,944)	(32,192)	(86,203)	
134	% Variance - Fav / (Unfav)		3.9%	42.2%	-21.0%	-28.4%	-35.1%	68.8%	5.6%	-93.3%	-21.5%	-20.3%	-36.7%	
135														
136	Net before Settlement													
137	Actual		(886,285)	(248,161)	(638,124)	(25,328)	(42,372)	30,945	(100,821)	(159,628)	(196,800)	(39,529)	(104,592)	
138	Budget		311,720	(248,282)	560,002	54,104	201,944	44,703	(69,140)	282,576	272,576	30,057	(2,735)	
139	Variance - Favorable / (Unfavorable)		(1,198,005)	121	(1,198,126)	(79,432)	(244,316)	(13,758)	(31,680)	(188,120)	(469,376)	(69,586)	(101,858)	
140			-384.3%	0.0%	-214.0%	-146.8%	-121.0%	-30.8%	-45.8%	-660.2%	-172.2%	-231.5%	-3724.5%	

	F	G	H	I	J	K	L	M	N	O	P	Q	R
1	Southwest Michigan Behavioral Health												
2	For the Fiscal YTD Period Ended 10/31/2024												
3	(For Internal Management Purposes Only)												
			ok			ESTIMATE P01			ESTIMATE P01		ESTIMATE P01	ESTIMATE P01	ESTIMATE P01
4	INCOME STATEMENT	Total SWMBH	SWMBH Central	CMH Participants	Barry CMHA	Berrien CMHA	Pines Behavioral	Summit Pointe	Woodlands Behavioral	Integrated Services of Kalamazoo	St Joseph CMHA	Van Buren MHA	
5													
160													
161	Certified Community Behavioral Health Clin		HCC%		0.0%	0.0%	0.0%	0.0%	0.0%	27.8%	21.6%	0.0%	
162	Contract Revenue	8,398,330	544,217	7,854,113	496,256	1,298,987	560,313	1,499,665	-	3,119,142	879,751	-	
163													
164	External Provider Cost	526,762	-	526,762	-	-	-	-	-	526,762	-	-	
165	Internal Program Cost	5,286,339	-	5,286,339	439,229	757,415	256,192	1,148,204	-	2,203,297	482,001	-	
166	CCBHC General Fund Pass-through	-	-	-	-	-	-	-	-	-	-	-	
167	SSI Reimb, 1st/3rd Party Cost Offset	(11,559)	-	(11,559)	-	-	-	-	-	-	(11,559)	-	
168	Total Healthcare Cost	5,801,542	-	5,801,542	439,229	757,415	256,192	1,148,204	-	2,730,059	470,442	-	
170	Medical Loss Ratio (HCC % of Revenue)	69.1%	0.0%	73.9%	88.5%	58.3%	45.7%	76.6%	0.0%	87.5%	53.5%	0.0%	
171													
172	Managed Care Administration	112,567	112,567	-	-	-	-	-	-	-	-	-	
173	Admin Cost Ratio (MCA % of Total Cost)	1.9%	1.9%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
174													
175	Contract Cost	5,914,109	112,567	5,801,542	439,229	757,415	256,192	1,148,204	-	2,730,059	470,442	-	
176	Net before Settlement	2,484,221	431,650	2,052,570	57,027	541,572	304,120	351,460	-	389,082	409,309	-	
177	PPS-1 Supplemental Payment Difference	-	(143,929)	143,929	(44,302)	(170,645)	(8,388)	414,173	-	(294,198)	247,289	-	
178	Contract Settlement / Redistribution	2,340,292	431,650	1,908,641	101,329	712,217	312,508	(62,713)	-	683,281	162,019	-	
179	Net after Settlement	2,340,292	431,650	1,908,641	101,329	712,217	312,508	(62,713)	-	683,281	162,019	-	
180													
181													
200	SWMBH CMHP Subcontracts												
201	Subcontract Revenue	31,582,538	1,855,172	29,727,366	1,391,339	5,535,019	1,627,139	5,611,533	1,545,620	9,178,175	2,392,954	2,445,587	
202	Incentive Payment Revenue	109,604	109,604	-	-	-	-	-	-	-	-	-	
203	Contract Revenue	31,692,142	1,964,776	29,727,366	1,391,339	5,535,019	1,627,139	5,611,533	1,545,620	9,178,175	2,392,954	2,445,587	
204													
205	External Provider Cost	21,162,781	948,856	20,213,924	588,221	4,006,430	552,805	3,604,995	1,175,380	6,992,442	1,446,549	1,847,103	
206	Internal Program Cost	7,372,767	-	7,372,767	521,258	836,682	275,208	1,411,609	484,138	2,396,913	545,028	901,931	
207	CCBHC General Fund Pass-through	-	-	-	-	-	-	-	-	-	-	-	
208	SSI Reimb, 1st/3rd Party Cost Offset	(4,589)	-	6,970	-	10,292	-	-	-	192	(11,559)	(3,514)	
209	Insurance Provider Assessment Withhold (IPA)	244,846	244,846	-	-	-	-	-	-	-	-	-	
211	Total Healthcare Cost	28,775,804	1,193,702	27,593,661	1,109,479	4,853,403	828,013	5,016,604	1,659,518	9,389,547	1,980,018	2,745,520	
212	Medical Loss Ratio (HCC % of Revenue)	90.8%	60.8%	92.8%	79.7%	87.7%	50.9%	89.4%	107.4%	102.3%	82.7%	112.3%	
213													
214	Managed Care Administration	2,719,100	552,887	2,166,213	223,355	424,321	42,238	463,636	116,281	482,108	165,526	248,748	
215	Admin Cost Ratio (MCA % of Total Cost)	8.6%	1.8%	6.9%	16.8%	8.0%	4.9%	8.5%	6.5%	4.9%	7.7%	8.3%	
216													
217	Contract Cost	31,494,903	1,746,589	29,759,873	1,332,834	5,277,724	870,251	5,480,241	1,775,799	9,871,654	2,145,544	2,994,269	
218	Net before Settlement	197,239	218,188	(32,507)	58,505	257,295	756,889	131,292	(230,178)	(693,479)	247,410	(548,682)	
219													
220	Prior Year Savings	-	-	-	-	-	-	-	-	-	-	-	
221	Internal Service Fund Risk Reserve	-	-	-	-	-	-	-	-	-	-	-	
222	Contract Settlement	2,221,914	(2,047,967)	1,929,590	42,824	454,923	(444,380)	(194,005)	230,178	1,376,760	(85,391)	548,682	
223	Net after Settlement	2,419,153	(1,829,780)	1,897,082	101,329	712,217	312,508	(62,713)	-	683,281	162,019	-	
224													

SWMBH SERVICES ADMINISTRATIVE CONTRACTS

(October 2023-September 2024)

AUNALYTICS

Deliverables/Services	<ul style="list-style-type: none">• Provides Data Center & Storage Services• Web Hosting• Cloud Computing Services• Network Infrastructure• VOIP• Wireless Communications• Hardware and Software Needs (with Helpdesk Support)• Related Project Management
	FY24 Expenditure: \$340,261 (FY23 Expenditure: \$377,216)

BAUCKHAM, SPARKS, THALL, SEEBER & KAUFMAN P.C.

Deliverables/Services	<ul style="list-style-type: none">• Medicaid fair hearing counsel: Act as legal representation on behalf of SWMBH and participant CMHSP's for the Fair Hearing process• Perform tasks related to Fair Hearing preparation process: Record review, witness preparation and interviews• Hearing Summary preparation• Legal consultation related to Fair Hearing process
	FY24 Expenditure: \$3,993 (FY23 Expenditure: \$0)

BLUE FIRE MEDIA, INC

Deliverables/Services	<ul style="list-style-type: none">• Supports the SWMBH public website
	FY24 Expenditure: \$1,640 (FY23 Expenditure: \$1,850)

CAPITOLINE CONSULTING

Deliverables/Services	<ul style="list-style-type: none">• Consultation service on federal policy, regulations & funding opportunities• Secure materials and prepare briefs summarizing attended events
	FY24 Expenditure: \$12,000 (FY23 Expenditure: \$12,000)

CONTRACT PHYSICIANS

Deliverables/Services	<ul style="list-style-type: none">• Program policy issue consultation• Service guideline consultation and review• Medical policy review and approval• SWMBH credentialing panel participant• Consultation provided to Member Services and Contractor Network Management as necessary• On-call Medical decisions with Utilization Management during non-business hours
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	<ul style="list-style-type: none"> BH Human Resource Management Committee consultant
	FY24 Expenditure: \$90,258 (FY23 Expenditure: \$103,015)
DOERSCHLER & ASSOCIATES	
Deliverables/Services	<ul style="list-style-type: none"> Fiduciary Advisors for retirement plans
	FY24 Expenditure: \$23,011 (FY23 Expenditure: \$28,682)
HEALTH MANAGEMENT ASSOCIATES	
Deliverables/Services	<ul style="list-style-type: none"> Technical assistance on emerging regulatory initiatives regarding population health management, duals, opioid health homes and data analytics
	FY24 Expenditure: \$11,163 (FY23 Expenditure: \$19,003)
LEADING EDGE MENTORING	
Deliverables/Services	<ul style="list-style-type: none"> Performs a preliminary assessment of SWMBH Board and management implementation.
	FY24 Expenditure: \$10,023 (FY23 Expenditure: \$12,693)
MORC, INC	
Deliverables/Services	<ul style="list-style-type: none"> Support intensity scale assessment training
	FY24 Expenditure: \$5,400 (FY23 Expenditure: \$6,420)
PHD CONSULTANTS/LIGHTHOUSE BEHAVIORAL HEALTH	
Deliverables/Services	<ul style="list-style-type: none"> Mental Health Parity project Clinical consultation and project management
	FY24 Expenditure: \$4,375 (FY23 Expenditure: \$10,000)
PREST AND ASSOCIATES	
Deliverables/Services	<ul style="list-style-type: none"> Health Plan professional independent review and consulting service Utilization reviews concerning medical necessity and/or medical appropriateness of treatment
	FY24 Expenditure: \$4,415 (FY23 Expenditure: \$1,463)
GRYPHON	
Deliverables/Services	<ul style="list-style-type: none"> After hours phone answering service for SUD phone lines
	FY24 Expenditure: \$158,950 (FY23 Expenditure: \$168,603)
QUEST ANALYTICS, LLC	
Deliverables/Services	<ul style="list-style-type: none"> Annual Software licensing cost To Provide Network Adequacy analysis
	FY24 Expenditure: \$8,545 (FY23 Expenditure: \$8,545)
RELIAS POPULATION HEALTH	
Deliverables/Services	<ul style="list-style-type: none"> Licensed proprietary healthcare data analytics solution Analyze data in order to determine opportunities for improving care and decreasing costs for SWMBH and CMHSPs

	<ul style="list-style-type: none"> • Install and manage population health and case level user application
	FY24 Expenditure: \$175,137 (FY23 Expenditure: \$175,137)
ROSE ST ADVISORS/HRM INNOVATIONS, INC	
Deliverables/Services	<p>Provides support, direction and consultation in the area of Human Resources ensuring federal and state regulations and standards are met. Tasks include, but not limited to:</p> <ul style="list-style-type: none"> • Cultural Insights Surveys • Strategic leadership planning • Human Resource Consulting • Recruiting
	FY24 Expenditure: \$58,500 (FY23 Expenditure: \$70,583)
ROSLUND PRESTAGE & COMPANY, P.C	
Deliverables/Services	<ul style="list-style-type: none"> • Financial, Compliance, and Single audit
	FY24 Expenditure: \$115,025(FY23 Expenditure: \$121,119)
STREAMLINE HEALTHCARE SOLUTIONS	
Deliverables/Services	<ul style="list-style-type: none"> • Streamline Care Management System is a desktop application used to manage and pay external providers
	FY24 Expenditure: \$136,160 (FY23 Expenditure: \$152,319)
TBD SOLUTIONS LLC	
	<ul style="list-style-type: none"> • Level of Care Data Analytics and Guidelines project • Strategic Planning Support • Internal Functional assessment of UM Call Center and Provider Network
	FY24 Expenditure: \$69,713 (FY23 Expenditure: \$58,225)
VARNUM LLP	
Deliverables/Services	<ul style="list-style-type: none"> • General Counsel. Retirement plans and labor law legal consultation
	FY24 Expenditure: \$83,608 (FY23 Expenditure: \$89,641)
VOICES FOR HEALTH	
Deliverables/Services	<ul style="list-style-type: none"> • Translation and Interpretation services
	FY24 Expenditure: \$5,876 (FY23 Expenditure: \$32,287)

Contract Services

FY 2024 Actual: \$1,318,052

FY 2023 Actual: \$1,448,880

Delta \$: -130,747

Delta %: -9.02



FY 24 Customer Service Annual Report

December 2024

Customer Service

Customer Service department duties include but not limited to:

- Welcome and orient members to services and benefits available, and the provider network
- Development and distribution of all written member materials and communications
- Member rights and responsibilities
- Processing grievance, appeals, and second opinions
- Track and report patterns of problems for the organization
- Member community resources and education
- Community events

SWMBH delegates Customer Service and Grievance and Appeals to the CMHSPs. This is outlined in the Memorandum of

Understanding

SWMBH Customer Service has additional duties that include:

- Auditing and monitoring of delegated functions
- Updating and maintaining the member handbook
- State Fair hearing processing and handling



SWMBH and 8 affiliate CMH providers managed and/or provided oversight of **320** Medicaid Grievances and Appeals

MA/HMP Grievances reported: **154**
MA/HMP Local Appeals reported: **160**
MA/HMP Fair Hearings reported: **6**

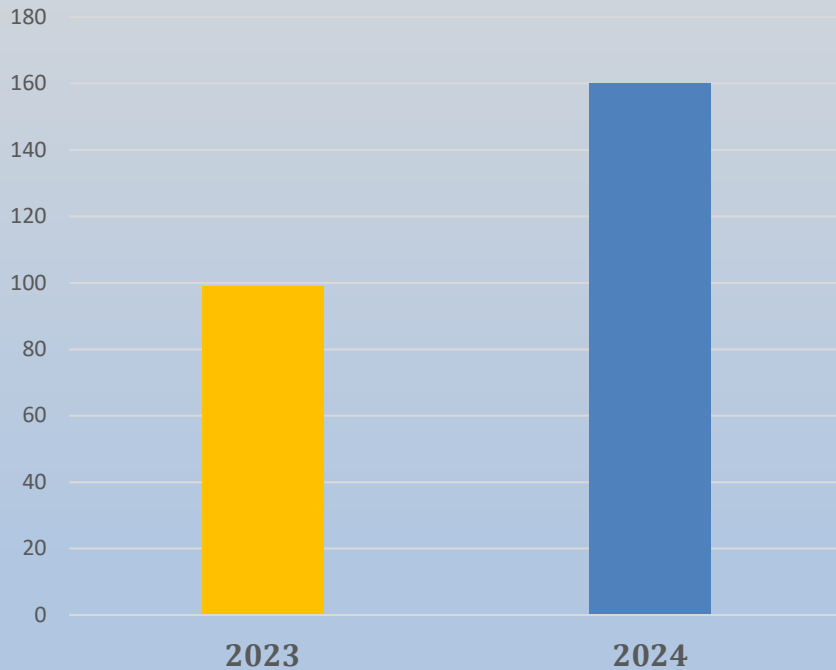
Grievance Trends
Fiscal Years 2023 and 2024



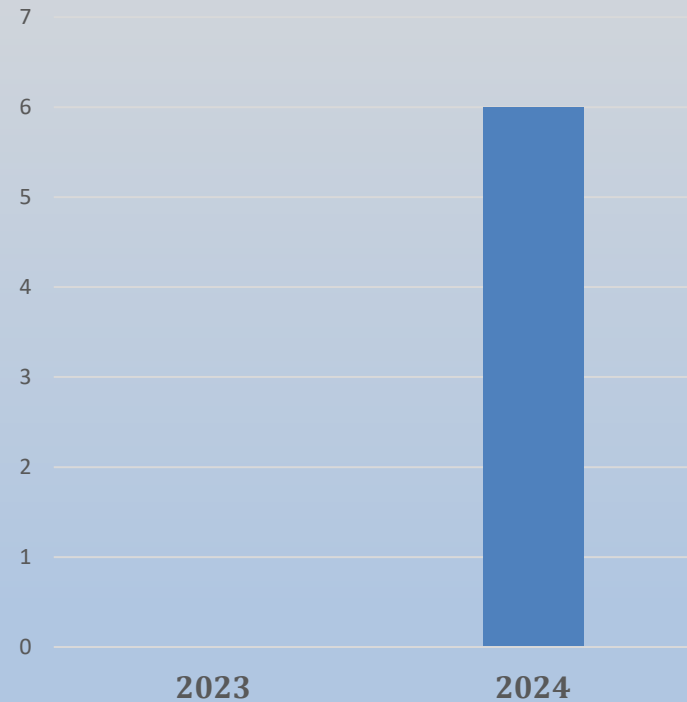
Appeal Trends

Fiscal Years 2023 and 2024

LOCAL LEVEL APPEALS



FAIR HEARING APPEALS





Questions?



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F: 269-883-6670

The SWMBH Board is excited to announce that on Friday, October 11, 2024, a revised set of Board Ends was adopted which directs SWMBH towards the benefits to be produced, for whom and at what cost. These Ends reflect the organization's vision and reason for being and we thank you for participating in the ownership activities that enabled us to ensure your Board values are expressed as well. In response to requests made during the ownership linkage meetings, please let Michelle Jacobs know if you would like Brad Casemore to return to your board in early spring to further discuss the next step, the CEO developing Ends Interpretations and measures of Ends achievement, as well as the revised SWMBH Board Ends.

Global End: As a benefits manager of state and federal funds, SWMBH exists to assure that member agencies and providers create sustainable programs and provide specialty services so that persons in the SWMBH region have access to appropriate resources and experience improvements in their health status and quality of life, optimizing self-sufficiency, recovery, and family preservation. Quality services are provided while minimizing costs through efficient stewardship of human, financial, and technology resources available and use of shared knowledge.

1. Member CMH boards, EOs, and staff value the partnership with SWMBH, and experience the relationship as collaborative, transparent, responsive, and reciprocal.
2. Member CMHs are aware of environmental disruptors and trends and benefit from SWMBH's regional and statewide regulatory and public relations advocacy impacting the Mental Health Community.
3. Member CMHs have the resources needed to address their communities' individualized needs, successfully access appropriate resources and successfully meet contractual obligations (*including managed care functions*).
4. Member CMHs and other providers assure and monitor ready access to appropriate programs and services for their consumers and contribute accurate data so SWMBH can create aggregated, comprehensive, and comparative regional results which supports access to maximum funding available.
5. The SWMBH regional partners align with best practice, learning from each other, collaborating, sharing resources, and benefitting from lessons learned.

Sincerely,

Sherii Sherban
SWMBH Board Chair