

**SAMPLE AFFILIATION AGREEMENT
BETWEEN
AGENCY 1 (FQHC) AND AGENCY 2 (CMHC)**

THIS AGREEMENT (“Agreement”) is made and entered into as of _____, 2006 by and between **Agency 1**, hereinafter referred to “AGENCY 1”, and **Agency 2**, hereinafter referred to as “Agency 2.”

WHEREAS, AGENCY 1 is an (State Name) not-for-profit corporation and a federally qualified health center (“FQHC”) that receives federal grant funds pursuant to Section 330 of the Public Health Service Act, 42 U.S.C. 254b, administered by the Health Resources and Services Administration (“HRSA”) within the United States Department of Health and Human Services (“DHHS”) and provides comprehensive primary care, preventive care, and related services (including essential ancillary and enabling services) to residents of its community, regardless of the individual’s or the family’s ability to pay; and

WHEREAS, Agency 2 is an (State Name) not-for-profit behavioral healthcare organization that receives funding in whole or in part by DHHS and provides comprehensive mental health services to adolescents and adults, including medication management, regardless of the individual’s or the family’s ability to pay ;and

WHEREAS, AGENCY 1 and Agency 2 recognize the need for and desire to aid in the development of an integrated health care system whereby primary care and outpatient mental health treatment are provided seamlessly through identification and coordination of care between practitioners; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and intending to be legally bound hereto, the parties hereby agree as follows:

I. SCOPE

A. AGENCY 1 RESPONSIBILITIES:

AGENCY 1 agrees to undertake the following responsibilities with respect to the Affiliation Agreement:

1. Provide access to primary care and psychiatry services including determining the scope, location, and scheduling of services at the sites listed on Exhibit A, attached hereto and made a part hereof.
2. Be responsible for the appropriate expenses attributed to the AGENCY 1 operations as set forth in Exhibit B, and approved within its HRSA-approved scope of project and with respect to which AGENCY 1 is the licensed and billing provider.

3. Through its Board of Directors and management team, establish and maintain operational and clinical policies. Maintain all necessary administrative functions, including, but not limited to: scheduling and registration of patients receiving preventive and primary care services to include psychiatric services, medical records, billing for services performed(including Medicaid, Medicare, and other third party payors), and design of appropriate forms. All patients receiving preventive and primary care services will be registered as patients of AGENCY 1.

4. With Agency 2, engage in joint planning to foster improved access to care, continually improve quality of clinical care, and enhance provider-staff relationships. The planning should also result in agreement regarding strategic priorities for subsequent years.

5. Shall furnish preventive and primary care services under the clinical direction and evaluation of AGENCY 1's Medical Director (and overall direction of AGENCY 1's Chief Executive Officer) and in accordance with the health care, personnel, quality assurance, grievance and other policies adopted by the AGENCY 1 Board. These policies include, but are not limited to, policies regarding the scope, location, and scheduled hours of services provided by AGENCY 1, and the productivity and quality standards that are expected to be met.

6. Assist AGENCY 1 clients in obtaining 340B pharmacies rates for their prescription drugs.

7. AGENCY 1 will orient and train AGENCY 1 staff on any issue(s) deemed relevant to affiliation

B. AGENCY 2 RESPONSIBILITIES

Agency 2 agrees to undertake the following responsibilities with respect to the Affiliation Agreement:

1. Provide space in the clinical areas for telephone and other communication equipment, and provide repair and maintenance, janitorial, housekeeping, and trash and medical waste removal services, per any applicable executed lease agreement between AGENCY 1 and AGENCY 2.

2. Agency 2 will educate and orientate all Agency 2 staff on purposes and goals of the affiliation with AGENCY 1.

3. Agency 2 will train and direct service staff on relevant processes and procedures to access primary healthcare services on behalf of Agency 2 patients referred to AGENCY 1.

4. Agency 2 will orient and train AGENCY 1 staff on any requested issue(s) deemed relevant to affiliation.

5. Agency 2 will maintain full responsibility for all clinical and service delivery of outpatient psychiatric services within Agency 2 facilities delivered by their employees or contract providers.
6. Agency 2 will employ and supervise ancillary staff that will support psychiatric and, where feasible, primary care outpatient services in Agency 2 facilities.
7. Identify all Agency 2 patients without a primary care provider who, should they so choose, want to receive the primary care services offered by AGENCY 1.
8. Enhance AGENCY 1 service capacity by providing substance abuse and mental health screenings and regular ongoing therapy services at mutually agreed upon AGENCY 1 sites.

II. JOINT RESPONSIBILITIES AND ACKNOWLEDGEMENTS

1. All providers employed by either of the parties shall retain sole and absolute discretion to refer patients to any provider(s) they believe will best meet the patient's health needs and to advise patients of the patient's right to request referral to any provider(s) the patient chooses.
2. AGENCY 1 and Agency 2 will mutually pursue funding sources to further agreed upon integration opportunities.
3. AGENCY 1 and Agency 2 will explore all opportunities to provide one another needed services at a location most conducive to eliminate barriers and increase integration. Co-location will occur when feasible.
4. Create communication plans/instructions whereby Agency 2 and AGENCY 1 employees are formally oriented to the other party's services and goals of the affiliation.
5. Agency 2 and AGENCY 1 will identify financial barriers, and will mutually collaborate and work to eliminate them.
6. Each party agrees that there shall be no employee discrimination on the basis of age, race, religion, creed, sex, national origin, handicap, veteran's status, sexual orientation, or health insurance.
7. This Agreement is structured to comply with the federal anti-kickback statute and the safe harbor regulations promulgated thereunder. Should any subsequently promulgated federal or state statute or regulation be inconsistent with this Agreement, the parties agree that they will immediately and in good faith renegotiate this Agreement, and failing successful renegotiation within one-hundred eighty (180) days, any party may immediately terminate this Agreement upon prior written notice to the other party or parties.
8. Each party may contract or otherwise affiliate with other parties, as long as any such contracts neither conflict with this Agreement nor cause a party's dereliction of its

obligations hereunder, including to serve all patients regardless of income or health insurance, as necessary to appropriately collaborate with other local providers (as required for AGENCY 1 by Section 330 (j)(3)(B) of the Public Health Service Act), to enhance patient freedom of choice, accessibility, availability, quality and comprehensive care. Each party hereto can negotiate, enter into, or reject any contracts offered by any third party health care payors to furnish health care services to its enrollees.

9. If there is a professional liability claim that involves services provided under the auspices of this Agreement, then each party will cooperate in any investigation into such matter by providing access to records, documents and witnesses (all in accordance with applicable laws).

III. TERM AND TERMINATION

1. This Agreement is effective _____, 200, and shall continue until _____, and shall be automatically renewed from year to year under the same terms and conditions, unless terminated earlier in accordance with Section IV.

2. Any party hereto may terminate their participation in this Agreement without cause by giving written notice to the other party at least sixty (60) days prior to the termination date.

3. This Agreement may terminate immediately, upon written notice to all other parties stating the effective date of termination, under any of the following conditions:

- a. Either Agency 2 or AGENCY 1's loss of license;
- b. Any party's loss of professional liability insurance or FTCA coverage;
- d. The loss of AGENCY 1's status as a federally qualified health center (FQHC);
- e. The closing or sale of Agency 2;
- f. The conviction of a crime or exclusion from Medicare or Medicaid or debarment by the federal or state government of any party performing services under this Agreement;
- g. A petition in bankruptcy or assignment for the benefit of creditors by any party.

4. Any party may terminate its participation in the Agreement in the event of a breach by any other party of a material term of said Agreement. With the exception of the grounds for immediate termination set forth in Section III.3. above, the party claiming a breach of the Agreement must give written notice to the breaching party of the breach, and the breaching party will have ninety (90) days to cure said breach. If the breach is not cured within the ninety (90) days to the reasonable satisfaction of the non-breaching party, the non-breaching party may give notice of its intent to terminate its participation within sixty days of the original notice, provided that if the breach is incapable of cure within the thirty day period and the breaching party is diligently and continuously making efforts to remedy the breach, then the Agreement shall not terminate. (The cure period shall be shortened if a shorter period is necessary to protect patient health or safety or if

required by the Illinois Department of Public Health, Joint Commission on Accreditation of Healthcare Organizations, or any other entity by which AGENCY 1, University, and St. Elizabeth's Hospital must be licensed or accredited in order to conduct its regular business.)

5. The terms and conditions of this Agreement may be amended only by written instrument executed by all parties.

IV. DISPUTE RESOLUTION

Any dispute arising under this Agreement first shall be resolved by informal discussions among the parties, subject to good cause exceptions, including, without limitation, disputes determined by any party to require immediate relief (*i.e.*, circumstances under which an extended resolution procedure might endanger patients' health and safety). Any dispute not resolved by informal discussions among the parties within a reasonable time following such discussions' commencement (not to exceed thirty (30) days), may be resolved through any and all available legal means and methods.

V. INSURANCE

1. **AGENCY 1 Obligations.** AGENCY 1 and AGENCY 1 health care personnel who are employed by AGENCY 1 have been deemed covered under the Federal Tort Claims Act ("FTCA") for professional liability actions, claims, or proceedings arising out of any and all negligent acts or omissions committed in the course of providing health care services by AGENCY 1 personnel at AGENCY 1 site(s) and within AGENCY 1's Section 330 grant scope of project. AGENCY 1 shall maintain such FTCA coverage and provide evidence of such coverage (deeming letter from HRSA) upon request. AGENCY 1 will give Agency 2 thirty (30) days written notice of any material change in its FTCA deeming status.

AGENCY 1 shall also secure and maintain, or cause to be secured and maintained, at all times during this Agreement's term, workers' compensation and comprehensive general insurance for itself and, as appropriate, for its officers, directors, employees, contractors, and agents, consistent with prevailing standards. AGENCY 1 will give thirty (30) days advance written notice of any termination, suspension, expiration or relinquishment of such insurance.

2. **Agency 2 Obligations.** Agency 2 shall secure and maintain, or cause to be secured and maintained, at all times during this Agreement's term, workers' compensation and comprehensive general liability insurance and/or self-insurance for itself and, as appropriate, for its officers, directors, employees, contractors, and agents, consistent with prevailing standards. Agency 2 shall furnish evidence of such insurance to AGENCY 1, upon request. Agency 2 will give AGENCY 1 30 days advance written notice of any termination, suspension, expiration or relinquishment of such insurance.

Agency 2 shall ensure that it and its employed and/or contracted, licensed and/or other health care practitioners, secure and maintain, or cause to be secured and

maintained, at all times during this Agreement's term, policies of professional liability (malpractice, errors and omissions) insurance and/or self-insurance of at least \$1,000,000 per incident and \$3,000,000 aggregate against professional liabilities for itself and for its employed and/or contracted health care personnel. Agency 2 shall furnish evidence of such insurance to AGENCY 1, upon request. Agency 2 will give AGENCY 1 30 days advance written notice of any termination, suspension, expiration or relinquishment of such insurance.

VI. CONFIDENTIALITY

1. The parties (and their employees, agents, and contractors) shall maintain the confidentiality of all patient and/or individual party information in accordance with all applicable state and federal laws and regulations regarding the confidentiality of such information. The parties (and their employees, agents, and contractors) shall not divulge such confidential information to any third parties without the patient's or party's prior written consent, except, as to patients, unless required by law or as necessary to treat such patient.

2. Because AGENCY 1 has access to protected substance abuse information, it is also considered a Qualified Service Organization ("QSO") pursuant to 42 C.F.R. Part 2, and therefore AGENCY 1 must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information as follows:
 - a. In receiving, storing, processing or otherwise dealing with any protected substance abuse information from Agency 2, AGENCY 1 is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.
 - b. If necessary, AGENCY 1 will resist in judicial proceedings any efforts to obtain access to protected substance abuse patient information unless access is expressly permitted under 42 C.F.R. Part 2.
 - c. AGENCY 1 acknowledges that any unauthorized disclosure of information under this article is a federal criminal offense.

3. Except as necessary in this Agreement's performance, or as authorized in writing by a party or by law, the parties (and their employees, agents, and contractors) shall not disclose to any person, institution, entity, company, or any other party, any proprietary business information directly or indirectly related to a party that another party (or its employees, agents, and contractors) receives under this Agreement, or about which it otherwise is aware. The parties (and their employees, agents, and contractors) also agree not to disclose, except to each other, another party's proprietary information, professional secrets or other information obtained under this Agreement ("Confidential Information"), unless a party receives prior written authorization to do so from another party, or as authorized by law. Nothing contained herein shall be construed to prohibit any DHHS, or other appropriate government official from obtaining, reviewing, and auditing any information, record, data, and data elements to which he/she or his/her agency lawfully is entitled. Each party shall ensure that its employees or agents cease using any other party's Confidential Information and return any Confidential Information in its/his/her/their possession to the appropriate party immediately upon termination of its/his/her/their participation hereunder. Each party hereto acknowledges and agrees

that upon this section's breach by another party, neither it nor its successor will have any adequate remedy at law and, therefore, each party, and/or its successor, is entitled to injunctive relief in addition to any other available remedies. This section shall survive this Agreement's termination.

4. The parties shall comply with all requirements established by HIPAA regarding safeguarding and protecting individually identifiable health information from unauthorized disclosure, including any patient's individually identifiable health information. The parties agree to amend this Agreement as required to comply with HIPAA, and to protect any individually identifiable health information that any party (or its employees, agents and contractors) accesses performing under this Agreement.

5. The parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

VII. RECORDKEEPING AND REPORTING

1. Should the United States Secretary of the Department of Health and Human Services or the Comptroller General of the United States or their respective representatives determine that this Agreement is a contract described in Section 1861 (v)(1)(1) of the Social Security Act, until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, each party shall make available, upon written request, to the other parties, the United States Secretary of Health and Human Services, or, upon request, to the Comptroller General of the United States, or to any of their duly authorized representatives, this Agreement and the party's books, documents and records that are necessary to certify the nature and extent of costs paid pursuant to this Agreement.

VIII. MISCELLANEOUS PROVISIONS

1. All notices, given pursuant to this Agreement shall be in writing and personally delivered or sent by certified mail, postage fully paid to:

AGENCY 1

Chief Operating Officer
(Address)

AGENCY 2

Chief Executive Officer
(Address)

All notices shall be deemed delivered upon such personal delivery or forty-eight (48) hours after deposit in the United States mail.

2. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and of their respective transferees, successors, and assigns, provided that neither this Agreement, nor any rights hereunder, may be assigned without the written consent of the non-assigning parties, which consent shall not be unreasonably withheld, except that any party may assign its interest or delegate the performance of its obligations to an affiliate of that party without the consent of the other parties.

3. Except as specifically provided herein, each party's obligations under this Agreement shall inure solely to the other parties' benefit and no person or entity shall be deemed a third party beneficiary of this Agreement.

4. This Agreement shall be governed and construed in accordance with federal law and the laws of the state of Illinois notwithstanding any conflicts rules to the contrary, including, but not limited to all laws, rules, policies, and other terms applicable to AGENCY 1 Section 330 grant. Should such laws be amended as to modify this Agreement, such amendment shall be incorporated herein and be immediately effective between the parties. Any action brought in connection with this Agreement shall be brought in () state courts and all parties hereto accept the exclusive personal jurisdiction of the () courts.

5. Each party hereby certifies that it has not been debarred, suspended or otherwise excluded from Medicaid, Medicare and/or any other applicable federally funded health care program.

6. None of the parties hereto shall use the name of any of the other parties in any promotional or advertising material unless consent shall first be obtained from the party whose name is to be used. All parties agree to abide by the marketing guidelines of each other's organization.

7. The waiver by any party of a breach or violation of this Agreement shall not be deemed a waiver of any subsequent breach of this Agreement.

8. The invalidity or unenforceability of any terms or provisions of this Agreement will be deemed severable so that if any provision is deemed illegal or unenforceable in any respect, such determination shall affect only the specific provision and not the remaining terms or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

AGENCY 2

AGENCY 1

Chief Operating Office

Chief Executive Officer

Date

Date