

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION AUTHORIZING THE CHAIRMAN TO SIGN
AN INTERLOCAL AGREEMENT FOR THE PURPOSE OF
PLACEMENT OF SARPY COUNTY RESIDENTS AT
DOUGLAS COUNTY COMMUNITY MENTAL HEALTH CENTER

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2012), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers;

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 (Reissue 2012), the powers of the County as a body are exercised by the County Board;

WHEREAS, Douglas County, a political subdivision established under the laws of the State of Nebraska, operates the Douglas County Community Mental Health Center ("CMHC") which provides behavioral health services to the poor and underserved;

WHEREAS, pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801, *et. seq.* Douglas County and the County wish to enter into an agreement to allow Sarpy County residents access to mental health care and services provided by CMHC;

WHEREAS, signing the attached Interlocal Agreement is in the best interests of the citizens of Sarpy County.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT this Board hereby approves and adopts the attached Interlocal Agreement and any other related documents, the same being approved and adopted by the Board.

BE IT FURTHER RESOLVED that the Chairman of the County Board and the County Clerk are hereby authorized to execute on behalf of Sarpy County, the Interlocal Agreement.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 30th day of July, 2013.

Attest

SEAL




County Board Chairman


County Clerk

Sarpy County Purchasing Department

SARPY COUNTY COURTHOUSE
1210 GOLDEN GATE DRIVE
PAPILLION, NE 68046



Brian Hanson, Purchasing Agent
(402) 593-2349
Debby Peoples, Asst. Purchasing Agent
(402) 593-4164
Beth Garber, Senior Buyer/Contract Administrator
(402) 593-4476
Lois Spethman, Supply Clerk/Purchaser
(402) 593-2102

Memo

To: Sarpy County Board of Commissioners

From: Beth Garber

Re: Interlocal Agreement for Mental Health Care

For several years Sarpy County and Douglas County have had an Interlocal Agreement for Sarpy use of the Douglas County Community Mental Health Center (CMHC). Douglas County is in the process of updating all of their agreements to reflect the actual costs of providing inpatient care. The 2004 agreement was for \$700/day and is proposed to increase to \$920/day. All Region 6 counties will pay the \$920/day rate.

Region VI pays the Douglas County CMHC \$690.47 per patient per day on Sarpy County's behalf. We are responsible for the difference between the amount billed and the amount paid by Region VI. It is estimated that our cost will increase by about \$22,000 per year. Douglas County CMHC has not raised their rate for nine years.

Please contact me with any questions.

July 16, 2013

Beth Garber

Cc: Deb Houghtaling
Mark Wayne
Scott Bovick
Brian Hanson

INTERLOCAL AGREEMENT

Between Douglas County, Nebraska on behalf of Douglas County Community Mental Health Center, a department of Douglas County, Nebraska, and Sarpy County, Nebraska

THIS AGREEMENT is entered into, pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 *et seq.*, (Reissue 2012) by and between Douglas County, Nebraska (hereafter "Douglas County") on behalf of the Douglas County Community Mental Health Center, a department of Douglas County, Nebraska, (hereafter "CMHC") and Sarpy County, Nebraska (hereafter "Sarpy County") for the purpose of placement of Sarpy County residents at CMHC for involuntary inpatient care.

RECITALS

WHEREAS, Douglas County, a political subdivision established under the laws of the State of Nebraska, operates the CMHC to provide behavioral health services to the poor and underserved; and

WHEREAS, Sarpy County, is a political subdivision of the State of Nebraska that desires to utilize the services provided by CMHC; and

WHEREAS, pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801, *et seq.* the parties wish to enter into an agreement to allow Sarpy County residents access to mental health care at CMHC; and

WHEREAS, each party's governing board has authorized the execution of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Sarpy County and Douglas County agree as follows:

1) CMHC AGREES:

- A) CMHC agrees to accept Sarpy County residents for "involuntary inpatient" care at CMHC. For purposes of this agreement, "involuntary inpatient" is defined as persons who are hospitalized by order of the Sarpy County Board of Mental Health (commonly known as a county's "BOMH") or who are in the custody of law enforcement personnel pursuant Neb. Rev. Stat. § 71-919 (commonly known as "EPC"), or who are Sarpy County residents committed by Douglas County BOMH/EPC pursuant to hospitalization at the CMHC.

2) SARPY COUNTY AGREES:

- A) Admission of Sarpy County residents to CMHC is subject to the availability of patient beds at CMHC. CMHC, in its sole discretion, determines bed availability.

- B) Prior to admission all patients must meet CMHC criteria for admission to CMHC inpatient care. Said criteria are attached to this Agreement as Attachment One (1) and are fully incorporated herein by reference. CMHC reserves the right to amend its admission criteria. In the event that CMHC amends its admission criteria, it will provide in writing the amended criteria to Sarpy County. Such amended criteria will supersede and replace the present Attachment One (1).
- C) To pay CMHC the amount of \$920.00 per day per patient admitted to CMHC pursuant to this Agreement minus any reimbursement paid to CMHC by the State of Nebraska pursuant to the agreement between CMHC and Region VI and the current Region VI reimbursement. CMHC will submit a bill to Sarpy County each month for services performed by CMHC pursuant to this Agreement during the previous month. Sarpy County will pay said bill within 30 days of issuance.
- i) CMHC shall reduce the amount to be paid by Sarpy County to CMHC pursuant to section 2(C) of this agreement by the amount of reimbursement received by CMHC under the agreement between CMHC and Region VI. As of the date of execution of this Agreement the amount of reimbursement received by CMHC is \$690.47 per day, per patient. The parties acknowledge that the exact amount of Region VI reimbursement is subject to change.
 - ii) If at any time or for any reason CMHC does not receive reimbursement from Region VI, then Sarpy County shall pay the full \$920.00 per day, per patient until such time as Region VI reimbursement is resumed.
 - iii) CMHC agrees to notify Sarpy County in a timely manner of any change in the amount of reimbursement provided for in the contract between Region VI and CMHC.
- D) All hearings before the Sarpy County Board of Mental Health for patients who are inpatient at CMHC will either be held at CMHC, by telephone conference call, or video conference. It shall be the responsibility of Sarpy County to make all arrangements for said hearings and to pay for any costs associated with those arrangements. CMHC shall provide adequate facilities for all hearings to be held at CMHC pursuant to this Agreement. It is understood and agreed that CMHC care providers giving testimony before the Sarpy County Board of Mental Health pursuant to this Agreement shall not be required to travel to Sarpy County to give said testimony.
- E) CMHC will not provide outpatient follow up care to residents of Sarpy County. Sarpy County agrees to provide CMHC with the name of the person or organization secured to provide follow up care for inpatient Sarpy County residents so that CMHC social workers can arrange for said follow-up care.

3) DURATION

This Agreement shall be effective on the date it is executed through June 30, 2016 and shall automatically renew on July 1st of each year (“Renewal Term”) for up to three (3) Renewal Terms. This Agreement may be terminated upon mutual written consent of the parties or by the terminating party giving at least sixty (60) days written notice to the other party of its intention to terminate this Agreement.

4) AMENDMENT/MERGER

This instrument contains the entire agreement between the parties, and there are no other written or oral promises, contracts, or warrants which may affect it. This agreement supersedes any other previous agreement and is binding on all successors and assigns of the respective parties. No amendments, deletions, or additions shall be made to this Agreement except in writing signed by both parties. Any such amendment shall state the date upon which it takes effect.

5) NONDISCRIMINATION CLAUSE

Pursuant to Neb. Rev. Stat. § 73-102, the parties declare, promise, and warrant that they have and will continue to comply fully with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.A. § 1985, *et seq.*), and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. § 48-1101, *et seq.*, in that there shall be no discrimination against any employee who is employed in the performance of this Agreement, or against any applicant for such employment, because of age, color, national origin, race, religion, creed, disability or sex.

6) LICENSING

The parties agree to comply with any and all required licensing provisions of the Nebraska Revised Statutes, rules and regulations set forth by the Nebraska Department of Health and Human Services, and other relevant local, state or federal law.

7) CHOICE OF LAW

This Agreement shall be governed in all respects by the laws of the State of Nebraska and the venue for any litigation with respect hereto shall be in the courts of Douglas County, Nebraska.

8) ASSIGNMENT AND DELEGATION

This Agreement is exclusive to the parties and rights may not be assigned nor duties delegated by the parties except on prior written consent of both parties. Any attempted assignment or delegation without such approval shall be void and shall constitute a material breach of this Agreement.

9) RELEASE AND INDEMNIFY

Sarpy County shall assume all risk of loss, indemnify Douglas County and CMHC against loss, and hold Douglas County and CMHC, its employees, agents, assignees and legal representatives harmless from all liabilities, demands, claims, suits, losses, causes of action (whether successful or not), fines, or judgments and all expenses incident thereto, for injuries to persons including death and for loss of, damage to, or destruction of property, arising out of or in connection with this Agreement and proximately caused by the negligent or intentional acts or omissions of Sarpy County, its officers; employees or agents, and assigns, for any losses caused by failure by Sarpy County to comply with terms and conditions of this Agreement and all

applicable laws, and for any losses caused by other parties which have entered into agreements with Sarpy County.

Douglas County and CMHC shall assume all risk of loss, indemnify Sarpy County against loss, and hold Sarpy County, its employees, agents, assignees and legal representatives harmless from all liabilities, demands, claims, suits, losses, causes of action (whether successful or not), fines, or judgments and all expenses incident thereto, for injuries to persons including death and for loss of, damage to, or destruction of property, arising out of or in connection with this Agreement and proximately caused by the negligent or intentional acts or omissions of Douglas County and/or CMHC, its officers; employees or agents, and assigns, for any losses caused by failure by Douglas County and/or CMHC to comply with terms and conditions of this Agreement and all applicable laws, and for any losses caused by other parties which have entered into agreements with Douglas County and/or CMHC.

10) INSURANCE

The parties agree to provide at their own expense Nebraska workers' compensation coverage and liability insurance to indemnify themselves and protect their interests in the event that they become liable for the payment of a judgment based upon the acts or omissions of its agents and employees in performing this Agreement. Each party shall provide a copy of said insurance policy to the other party upon request.

At least 60 days before the effective date of any material change in or cancellations of, such insurance, written notice shall be mailed by that affected party's insurance carrier to the other party, as provided for in Section 12 of this Agreement. In addition, for purposes of this section only, notice shall also be sent to the Douglas County Clerk and the Chief Administrative Officer (CAO) of Douglas County by certified mail.

The parties do not represent in any way that the insurance specified herein, whether in scope of coverage or limits, is adequate or sufficient to protect the parties or their respective interests. The parties are solely responsible to determine their need for and to procure additional coverage which may be needed in connection with this Agreement. The procuring of insurance as required by this Agreement shall not be construed to limit the parties' liability hereunder or to fulfill the indemnification provisions of this Agreement.

11. HIPAA

The parties acknowledge that CMHC is a covered entity and is governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d *et seq.*, 45 C.F.R. Parts 160 and 164. CMHC may disclose protected health information to designated representatives of Sarpy County to the extent allowable under HIPAA for the purpose of obtaining payment for services rendered under this Agreement. The parties agree that they will keep all protected health information (PHI) confidential and will only use and disclose such information to the extent permitted or required by HIPAA, state law, and any other applicable federal laws.

In addition, Sarpy County agrees to:

- a. Use and disclose PHI only as permitted or required by this Agreement or as otherwise required by law.
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of PHI other than as provided for in this Agreement.
- c. Report to CMHC without unreasonable delay but in no event more than three (3) business days after discovery, any unauthorized use or disclosure of PHI not otherwise provided for by this Agreement of which Sarpy County becomes aware, including any breach of unsecured protected health information and any security incident of which it becomes aware, together with any remedial action taken or proposed to be taken by Sarpy County with respect to such unauthorized use or disclosure.
- d. Cooperate with CMHC to mitigate any harmful effects of such unauthorized use or disclosure. In the case of a breach as determined to exist in the sole discretion of CMHC which was due to a violation of this Agreement by Sarpy County, Sarpy County shall pay for the reasonable costs of investigation and mitigation and the reasonable costs of notification to the affected individuals.
- e. Require any subcontractors and agents that create, receive, maintain, or transmit PHI on behalf of Sarpy County in connection with this Agreement, to agree in writing to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Sarpy County. Such agreement shall include a provision requiring the subcontractor and/or agent to notify Sarpy County of any instances or unauthorized use or disclosure of PHI provided by Sarpy County.
- f. Disclose to Sarpy County's subcontractors, agents or other third parties only the minimum necessary PHI to perform or fulfill their obligations under this Agreement.
- g. Comply with patient rights conferred by HIPAA, to include allowing patients access to their own PHI, making PHI available for amendment and incorporating any amendments to PHI in accordance with HIPAA and accounting for disclosures of PHI as required under HIPAA.
- h. Make Sarpy County's internal practices, books and records relating to the use and disclosure of PHI received from or created or received by Sarpy County on behalf of CMHC available to the Secretary of the Centers for Medicare and Medicaid Services (CMS) for purposes of determining CMHC's compliance with HIPAA. Sarpy County shall immediately notify CMHC upon receipt by Sarpy County of any such request, and shall provide CMHC with copies of any such materials.
- i. Notwithstanding any other provision of this Agreement, and in addition to any other remedies Douglas County may have, Douglas County may immediately terminate this Agreement without penalty or recourse by Sarpy County if it determines, in its sole discretion that Sarpy County has violated a material term of this section. The parties

agree to amend this Agreement as necessary to comply with HIPAA and any regulations that may be promulgated there-under. The parties agree to execute such other agreements as may be required by law. The parties' obligations and rights under this section shall survive termination of this Agreement.

12) AGREEMENT CONTACT PERSON

The parties agree to designate one member of their respective organizations as the contact person whom the other party shall contact in the event any question arises regarding the terms, conditions, or application of this Agreement. The designee for CMHC shall be John Sheehan, Director, CMHC, 4102 Woolworth Ave., Omaha, NE 68105. The designee for Sarpy County shall be Deb Houghtaling, County Clerk, 1210 Golden Gate Drive, Suite #1250, Papillion, NE 68046. Any change of designee by either party during the term of this Agreement shall be in writing and communicated to the other party in a timely fashion.

13) INDEPENDENT CONTRACTOR

It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing a partnership or joint venture between the parties. Any and all acts that either party or their personnel, employees, agents, contractors, or servants, perform pursuant to the terms of this Agreement shall be undertaken as independent contractors and not as employees of the other. The parties shall, except as provided herein, act in their individual capacities and not as agents, employees, partners, joint ventures or associates of the other. An employee or agent of one shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Neither party nor its personnel, employees, agents, contractors, or servants shall be entitled to any benefits of the other. The parties shall not provide any insurance coverage to the other or their employees including, but not limited to, workers' compensation insurance. Each party shall pay all wages, salaries and other amounts due its employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers' compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. Neither party shall have any authority to bind the other by or with any contract or agreement, nor to impose any liability upon the other. All acts and contracts of each shall be in its own name and not in the name of the other, unless otherwise provided herein.

14) DRUG FREE WORKPLACE

Each party certifies that it maintains a drug-free workplace environment to ensure worker safety and workplace integrity. Each party shall provide a copy of its drug-free workplace policy at any time upon request of a party.

15) NEW EMPLOYEE WORK ELIGIBILITY STATUS

Pursuant to Neb. Rev. Stat. § 4-114, each party shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

16) PUBLIC BENEFITS

Pursuant to Neb. Rev. Stat. § 4-110, the parties are exempt from the attestation requirements of Neb. Rev. Stat. §§ 4-108 and 4-111 because the services provided under the Agreement are for the treatment of emergency medical conditions and/or services necessary for the protection of life or safety that (a) deliver in-kind services at the community level and (b) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the recipient.

17) NO THIRD PARTY BENEFICIARIES

This Agreement is executed for the benefit of the named parties only. Nothing in this Agreement or in the negotiation of this Agreement shall have the effect of conferring any rights or expectations on any third party including but not limited to a county's residents or patients. No one other than a party to this Agreement or a party's permitted successor or assign shall have the right to enforce any covenant, term, or condition of this Agreement.

18) WAIVER

The failure of any party to insist on strict performance of any covenants or conditions, or to exercise any option herein conferred on any one or more instances, shall not be construed as a waiver or relinquishment of any such covenant, condition, right, or option, but the same shall remain in full force and effect. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power. In addition, any act by a party it is not obligated to do hereunder shall not be deemed to impose any obligation upon that party to do any similar act in the future or in any way change or alter any of the provisions of this Agreement.

19) SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, that provision shall be severed and the other provisions shall remain in full force and shall in no way be affected, impaired or invalidated, unless to do so would substantially destroy the fundamental purposes of this Agreement or substantially and unfairly alter the respective burdens and benefits of the parties hereunder.

20) INTERLOCAL COOPERATION ACT PROVISIONS

This Agreement does not create a separate legal entity under the Interlocal Cooperation Act. For purposes of that Act, this Agreement shall be administered jointly by the parties, in the event of a conflict, the CMHC Director's decision shall govern. This Agreement does not contemplate acquiring, holding or disposing of joint property nor does it contemplate the levying or collecting of any tax.

21) CONFLICT OF INTEREST CLAUSE

Pursuant to Neb. Rev. Stat. § 23-3113, the parties hereto declare and affirm that no officer, member, or employee of Douglas County or Sarpy County, and no member of Douglas County or Sarpy County's governing body, and no other public official of Douglas County or Sarpy County who exercises any functions or responsibilities in the review or approval of the

undertaking described in this Agreement, or the performing of services pursuant to this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or any corporation, partnership, or association in which he or she is directly or indirectly interested; nor shall any employee of the Douglas County or Sarpy County, nor any member of their respective governing body, has any interest, direct or indirect, in this Agreement or the proceeds thereof.

22) NOTICE

Notice to the parties shall be given in writing to the agents for each party named below.

Douglas County:
Mr. John Sheehan
Director, CMHC

Sarpy County:
Ms. Debra Houghtaling
Clerk of Sarpy County

4102 Woolworth Ave.
Omaha, NE 68105

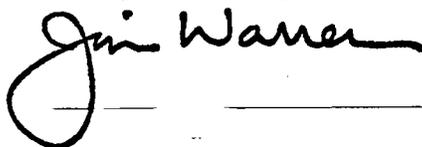
1210 Golden Gate Drive, Suite 1250
Papillion, NE 68046

Signatures:



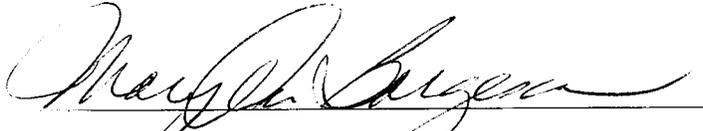
John Sheehan, Director
Douglas County Community Mental Health Center

2 AUG 13
Date



Sarpy County Board of Commissioners

7-30-13
Date



Douglas County Board of Commissioners

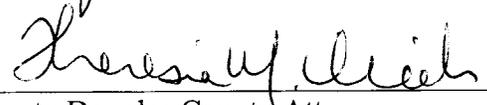
8-13-2013
Date

Approved as to Form:



Sarpy County Deputy County Attorney

7/31/13
Date



Deputy Douglas County Attorney

August 13, 2013
Date

Admission – Guidelines

POLICY:

All staff use the following set of admission guidelines regarding admission to the Acute Psychiatric Inpatient units developed by the Community Mental Health Center Medical Staff and approved by the Douglas County Board of Trustees. Patients with an emergency medical condition (EMC) requiring psychiatric care are accepted for transfer to the Community Mental Health Center for treatment, if the capability and capacity to treat the individual is available.

PURPOSE:

1. To provide guidelines for determining the appropriateness of potential admissions.
2. To provide consistency among admitting physicians.

PROCEDURE:

The following is used as a guideline when assessing individuals for possible admission:

Guidelines 1 through 8 must be met as well as one guideline from 9 through 12.

1. Patient must be medically cleared and accepted by a Douglas County Community Mental Health Center physician.
2. Patient is 19 years of age or older.
3. Patient cannot have a primary diagnosis of substance abuse or dependence.
4. Patient cannot require medical and/or nursing care or support that would interfere with general adult psychiatric inpatient unit functioning and safety (e.g., IV's, NG tube feedings, walkers, wheelchairs, oxygen, patients with significant permanent cognitive impairment which requires intensive assistance with ADL's, such as a moderately demented patient).
5. Patient cannot suffer from severe or profound mental retardation.
6. Patient cannot have a Blood Alcohol Level of 100 mg/dl (.10) or above. Exceptions are determined on an individual basis by the accepting physician.
7. Patients with mental illness that can be cared for safely in an outpatient and/or residential treatment program are not candidates for admission to the Douglas County Community Mental Health Center Inpatient Program.
8. EPC's require a patient to be evaluated by a mental health professional* within 36 hours. The Douglas County Community Mental Health Center requires 24 hours of the original 36 hours to be left on an EPC at the time of admission to the CMHC.
9. Patient poses a substantial risk of harm to self or others due to a mental illness.
10. Patient has an acute mental illness and significantly impaired thought content/processes, such as serious psychotic symptoms requiring intensive inpatient psychiatric and nursing evaluation and treatment to provide for patient and others' safety.
11. Patient has an acute mental illness causing a high risk for de-compensation in psychological and social functioning and is unable to be cared for safely in a less restrictive environment than inpatient psychiatric care.
12. Patient has an acute mental illness and basic human needs are unable to be provided for in a less restrictive environment than inpatient psychiatric care.

*Mental Health Professional means a person licensed to practice medicine and surgery or psychology in this state under the Uniform Licensing Law or an advanced practice registered nurse licensed under the Advanced Practice Registered Nurse Act who has proof of current certification in a psychiatric or mental health specialty.

NOTE

All potential admissions are determined on a case by case basis by the accepting physician. The Douglas County Community Mental Health Center is not a General Medical Hospital and has minimal general medical backup and no emergency department. Patients in potential need of acute/intensive medical care or at risk for severe withdrawal from alcohol and certain drugs cannot be safely cared for at the Douglas County Community Mental Health Center. Per CMS guidelines, as a hospital which provides a specialized service, the Douglas County Community Mental Health Center accepts appropriate transfers of individuals with an emergency medical condition (EMC) that requires psychiatric care if the capability and capacity to treat the individual is available.

Admission Guidelines page 2 of 2

Revisions approved by the Board of Trustees: 7/07, 1/08
Reviewed/Revised: 12/07, 1/10, 1/11, 1/13
CMHC: Acute Services