RECIPIENT COMPLIANCE AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
TRI-MED FAMILY CARE, INC.

I. PREAMBLE

Tri-Med Family Care, Inc. (TMFC), formerly known as North Georgia Healthcare Center, Inc., a United States Department of Health and Human Services (HHS) award recipient, hereby enters into this Recipient Compliance Agreement (RCA) with the Office of Inspector General (OIG) of HHS to promote compliance with Federal award requirements. Contemporaneously with this RCA, TMFC is entering into a Settlement Agreement with the OIG.

All requirements and remedies set forth in this RCA are in addition to and do not affect (1) TMFC's responsibility to follow all applicable Federal award requirements and Federal health care program requirements or (2) the government's right to impose appropriate remedies for failure to follow applicable Federal award requirements and Federal health care program requirements.

II. EFFECTIVE DATE, TERM, AND DEFINITIONS

A. Effective Date. The "Effective Date" of this RCA shall be the signature date of the final signatory to this RCA.

B. Term. The term of this RCA shall be five years from the Effective Date except that Sections VII and X shall continue for 120 days after OIG's receipt of: (1) TMFC's final Annual Report or (2) any additional documentation relating to the final Annual Report requested by OIG, whichever is later. In addition, if OIG issues a Stipulated Penalties Demand Letter pursuant to Section X.C.1 or a Notice of Material Breach and Intent to Exclude pursuant to Section X.D.2 prior to the expiration of the 120 day period, then Section X shall remain in effect until the Stipulated Penalties Review described in Section X.E.2 or the Exclusion Review described in Section X.E.3 is completed, and TMFC complies with the decision.

C. Definitions.

1. "Certifying Covered Persons" means the following: the Chief Executive Officer, Chief Financial Officer, and Compliance Officer of TMFC.

2. "Covered Persons" means: (a) all officers, board members, and employees of TMFC; and (b) all contractors, subcontractors, agents, and other persons who furnish patient care items or services, who perform billing or coding functions on behalf of TMFC, or are involved in carrying out any duties or services on behalf of TMFC funded in whole or in part by an HHS Federal award.

3. "Disclosure Program" means a program that enables individuals to disclose to the Compliance Officer or some other person who is not in the disclosing individual's chain of command any potential violations of criminal, civil, or administrative law related to Federal award requirements, the Federal health care programs, or any issues or questions associated with TMFC's policies, conduct, practices, or procedures.

4. "Exclusion Lists" means the HHS/OIG List of Excluded Individuals/Entities (LEIE) (available at http://www.oig.hhs.gov), state Medicaid program exclusion lists that are publicly available, and the General Services Administration's System for Award Management (SAM)(available that http://www.sam.gov).

5. "Federal award" and "Federal awarding agency" shall have the meanings as defined in 45 C.F.R. § 75.2.

6. "Federal award requirements" means the requirements imposed by the terms and conditions outlined in TMFC's Federal awards (including grant policy terms and conditions outlined in applicable HHS and HHS Operating Division Grants Policy Statements), requirements imposed by program statutes and regulations and HHS grant administration regulations, and any requirements or limitations in any applicable appropriations acts.

7. "Ineligible Person" means an individual or entity who: (a) is currently excluded from participation in any Federal health care program; (b) is currently debarred, suspended, or otherwise ineligible to participate in Federal procurement or nonprocurement programs; or (c) has been convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a-7(a) (mandatory exclusion) but has not yet been excluded from participation in any Federal health care program.

8. "Overpayment" means any funds that TMFC receives or retains under any Federal award program or Federal health care program to which TMFC is not entitled.

9. "Reportable Event" means: (a) a substantial Overpayment; (b) a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative laws applicable to any Federal award program for which criminal penalties or civil monetary penalties under Section 1128A or 1128B of the Social Security Act (the "Act") or exclusion under Section 1128 of the Act may be authorized; (c) any report submitted pursuant to the mandatory grant disclosure requirements at 45 C.F.R. § 75.113; (d) the imposition of specific award conditions, corrective action plans or other administrative remedies by any HHS awarding agency or operating division; (e) the employment of or contracting with a Covered Person who is an Ineligible Person; or (f) the filing of a bankruptcy petition by TMFC.

10. "Reporting Period" means each one-year period during the term of this RCA, beginning with the one-year period following the Effective Date.

11. "Training Plan" means a written plan that outlines the steps TMFC will take to ensure that Covered Persons receive training on a periodic basis during the term of the RCA regarding TMFC's RCA requirements and compliance program and applicable Federal award requirements, including the requirements of 45 C.F.R. Part 75 and the Health Center

Program Compliance Manual.

12. "Transition Plan" means a plan to address whether and how TMFC's compliance program will continue to include the compliance program requirements set forth in Section III of the RCA, following the end of the RCA's term.

III. RECIPIENT COMPLIANCE AGREEMENT REQUIREMENTS

TMFC shall establish and maintain a Compliance Program that includes the following elements:

A. Compliance Officer, Compliance Committee, Board Oversight, and Management Certifications.

1. *Compliance Officer*. Within 90 days after the Effective Date, TMFC shall appoint a Compliance Officer who is an employee and a member of senior management of TMFC. The Compliance Officer shall report directly to the Chief Executive Officer of TMFC, and shall not be or be subordinate to the General Counsel or Chief Financial Officer or have any responsibilities that involve acting in any capacity as legal counsel or supervising legal counsel functions for TMFC. The Compliance Officer shall be authorized to report to the Board of Directors of TMFC (Board) regarding compliance matters at any time. The Compliance Officer shall be responsible for, without limitation:

a. developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this RCA and with Federal award requirements, including but not limited to, ensuring that:

i. all TMFC expenditures, disbursements, and cash receipts associated with drawdowns from the Payment Management System are for the purposes and objectives set forth in the solicitation, proposal, and award letter, and comply with the terms and conditions of the award;

ii. TMFC's financial management system traces Federal award funds to a level of expenditures adequate to establish that such funds were used (a) in compliance with Federal statutes, regulations, and the terms and conditions of TMFC's Federal awards, and (b) in the manner represented by TMFC in any submission to HHS;

iii. TMFC's drawdowns from Federal awards for salaries and wages are supported by records that documented the distribution of an employee's salary or wages among specific activities or cost objectives if the employee worked on (a) more than one Federal award, (b) a Federal award and a non-Federal award, (c) an indirect cost activity and a

direct cost activity, (d) two or more indirect activities which are allocated using different allocation bases, or (e) an unallowable activity and a direct or indirect cost activity;

iv. TMFC's charges to Federal awards are based upon actual costs incurred by TMFC, not budget estimates;

v. TMFC's charges to Federal awards are supported by adequate documentation justifying the charges; and

vi. TMFC officers, board members, and employees are prohibited from using their positions for a purpose that constituted or presented the appearance of personal or organizational conflict of interest, or personal gain.

b. making at least quarterly reports regarding compliance matters to the Board;

c. monitoring the day-to-day compliance activities engaged in by TMFC; and

d. all reporting requirements of this RCA.

The Compliance Officer shall not have any noncompliance job responsibilities that, in OIG's discretion, may interfere or conflict with the Compliance Officer's ability to perform the duties outlined in this RCA.

TMFC shall report to OIG, in writing, any changes in the identity, duties, or job responsibilities of the Compliance Officer within five business days after such a change.

2. *Compliance Committee*. Within 90 days after the Effective Date, TMFC shall appoint a Compliance Committee that is chaired by the Compliance Officer. The Compliance Committee shall include, at a minimum, the members of senior management necessary to meet the requirements of this RCA. The Compliance Committee shall be responsible for, among other things, reviewing the policies and procedures required by Section III.B below at least annually, reviewing the training required by Section III.C below at least annually, implementation and oversight of the risk assessment and internal review process required by Section III.E below, and the development and implementation of the Transition Plan required by Section III.J below. The Compliance Committee shall meet at least quarterly.

TMFC shall report to OIG, in writing, any changes to the membership of the Compliance Committee within 15 business days after such a change.

3. *Board Oversight.* The Board shall be responsible for the review and oversight of TMFC's compliance with Federal award requirements and the requirements of this RCA. The Board composition must comport with board composition requirements set forth by

TMFC's awards, including but not limited to those set forth in the Health Center Compliance Manual.

The Board shall, at a minimum, be responsible for the following:

a. meeting at least quarterly to review and oversee TMFC's compliance program, including but not limited to the performance of the Compliance Officer and Compliance Committee;

b. submitting to OIG a description of the materials it reviewed and any additional steps taken, such as the engagement of an independent advisor or other third-party resources, in its oversight of the compliance program and in support of making the resolution below during each Reporting Period;

c. for each Reporting Period of the RCA, the Board shall review the Compliance Program Review Report described in section III.D as part of its review and oversight of TMFC's compliance program. Copies of any materials provided to the Board by the Compliance Expert, along with minutes of any meetings between the Compliance Expert and the Board, shall be made available to OIG upon request; and

d. for each Reporting Period of the RCA, adopting a resolution, approved by each member of the Board regarding its review and oversight of TMFC's compliance with Federal award requirements and the requirements of this RCA.

At minimum, the resolution shall include the following language:

"The Board has made a reasonable inquiry into the operations of TMFC's compliance program, including the performance of the Compliance Officer and the Compliance Committee. Based on its inquiry and review, the Board has concluded that, to the best of its knowledge, TMFC has implemented an effective compliance program to meet Federal award requirements and the requirements of the Recipient Compliance Agreement with the Office of Inspector General of the Department of Health and Human Services. Specifically, the Board has concluded that, to the best of its knowledge, TMFC's compliance program includes controls to ensure the following: (1) all TMFC expenditures, disbursements, and cash receipts associated with drawdowns from the Payment Management System are for the purposes and objectives set forth in the solicitation, proposal, and award letter, and comply with the terms and conditions of the award; (2) TMFC's financial management system traces Federal award funds to a level of expenditures adequate to establish that such funds were used (a) in

compliance with Federal statutes, regulations, and the terms and conditions of TMFC's Federal awards, and (b) in the manner represented by TMFC in any submission to HHS; (3) TMFC's drawdowns from Federal awards for salaries and wages are supported by records that documented the distribution of an employee's salary or wages among specific activities or cost objectives if the employee worked on (a) more than one Federal award, (b) a Federal award and a non-Federal award, (c) an indirect cost activity and a direct cost activity, (d) two or more indirect activities which are allocated using different allocation bases, or (e) an unallowable activity and a direct or indirect cost activity; (4) TMFC's charges to Federal awards are based upon actual costs incurred by TMFC, not budget estimates; (5) TMFC's charges to Federal awards are supported by adequate documentation justifying the charges; and (6) TMFC officers, board members, and employees are prohibited from using their positions for a purpose that constituted or presented the appearance of personal or organizational conflict of interest, or personal gain."

If the Board is unable to adopt such a resolution, the Board shall provide a written explanation of the reasons why it is unable to adopt the resolution and the steps the Board is taking to implement an effective compliance program at TMFC.

TMFC shall report to OIG, in writing, any changes in the membership of the Board, within 15 business days after such a change.

4. *Management Certifications.* The Certifying Covered Persons shall monitor compliance within the divisions or departments for which they are responsible and annually certify that the applicable TMFC division or department is in compliance with applicable Federal award requirements and the requirements of this RCA. For each Reporting Period, each Certifying Covered Person shall certify as follows:

> "I have been trained on and understand the compliance requirements and responsibilities as they relate to [insert name of division or department], an area under my supervision. My job responsibilities include ensuring [insert name of division or department]'s compliance with all applicable Federal award requirements, requirements of the Recipient Compliance Agreement with the Office of Inspector General for the Department of Health and Human Services, and TMFC's policies and procedures. To the best of my knowledge, the [insert name of division or department] of TMFC is in compliance with all applicable Federal award requirements and the requirements of the Recipient Compliance Agreement.
>
> In addition, during the Reporting Period, to the best of my knowledge: (1) all TMFC expenditures, disbursements, and cash receipts associated with drawdowns from the Payment Management System were for the purposes and objectives set forth in the solicitation, proposal, and award letter, and comply with the terms and

conditions of the award; (2) TMFC's financial management system traced Federal award funds to a level of expenditures adequate to establish that such funds were used (a) in compliance with Federal statutes, regulations, and the terms and conditions of TMFC's Federal awards, and (b) in the manner represented by TMFC in any submission to HHS; (3) TMFC's charges to Federal awards for salaries and wages were supported by records that documented the distribution of an employee's salary or wages among specific activities or cost objectives if the employee worked on (a) more than one Federal award, (b) a Federal award and a non-Federal award, (c) an indirect cost activity and a direct cost activity, (d) two or more indirect activities which are allocated using different allocation bases, or (e) an unallowable activity and a direct or indirect cost activity; (4) TMFC's charges to Federal awards were based upon actual costs incurred by TMFC, not budget estimates; (5) TMFC's charges to Federal awards were supported by adequate documentation justifying the charges; and (6) TMFC had in place safeguards to prohibit officers, board members, and employees from using their positions for a purpose that constituted or presented the appearance of personal or organizational conflict of interest, or personal gain. These safeguards include [describe safeguards].

I understand that the certifications in (1) through (6) above are not an exclusive list of actions that TMFC must take to comply with Federal award requirements and this Recipient Compliance Agreement. I understand that TMFC must comply with all Federal award requirements and I have taken steps to promote, enforce, and monitor such compliance.

I understand that this certification is being provided to and relied upon by the United States."

If any Certifying Covered Person is unable to provide this certification, the Certifying Covered Person shall provide a written explanation of the reasons why he or she is unable to provide the certification.

Within 90 days after the Effective Date, TMFC shall develop and implement a written process for Certifying Covered Persons to follow for the purpose of completing the certification required by this section (e.g., reports that must be reviewed, assessments that must be completed, sub-certifications that must be obtained, etc. prior to the Certifying Covered Person making the required certification).

B. Written Standards. Within 90 days after the Effective Date, TMFC shall develop and implement written policies and procedures (Policies and Procedures) that address the following: (1) the operation of TMFC's compliance program, including the compliance program requirements outlined in this RCA; (2) TMFC's compliance with Federal award requirements; and (3) safeguards to prohibit officers, board members, and employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. In addition, the Policies and Procedures shall address TMFC's responsibility: (a) to have a financial management system in place capable of tracing Federal award funds to a level of expenditures adequate to establish that such funds were used (i) in

compliance with Federal statutes, regulations, and the terms and conditions of TMFC's Federal awards, and (ii) in the manner represented by TMFC to HHS; (b) to have a financial management system in-place that ensures that charges to Federal awards for salaries and wages are supported by records that document the distribution of an employee's salary or wages among specific activities or cost objectives if the employee worked on (i) more than one Federal award, (ii) a Federal award and a non-Federal award, (iii) an indirect cost activity and a direct cost activity, (iv) two or more indirect activities which are allocated using different allocation bases, or (iv) an unallowable activity and a direct or indirect cost activity; (c) to ensure that charges to Federal awards are supported by adequate documentation justifying the charges; (d) to ensure that all TMFC expenditures, disbursements, and cash receipts associated with drawdowns from the Payment Management System are for the purposes and objectives set forth in the solicitation, proposal, and award letter, and comply with the terms and conditions of the award; and (e) to charge Federal awards for actual costs incurred by TMFC, not budget estimates.

TMFC shall enforce its Policies and Procedures and make compliance with its Policies and Procedures an element of evaluating the performance of all Covered Persons. The Policies and Procedures shall be made available to all Covered Persons.

The Compliance Committee shall review the Policies and Procedures at least annually and update the Policies and Procedures as necessary. Any new or revised Policies and Procedures shall be made available to all Covered Persons. All Policies and Procedures shall be made available to OIG upon request.

C. Training and Education.

1. *Covered Persons Training.* Within 90 days after the Effective Date, TMFC shall develop a Training Plan that includes the following information: (a) training topics; (b) categories of Covered Persons required to attend each training session; (c) length of the training session(s); (d) schedule for training; and (e) format of the training. The Compliance Committee shall review the Training Plan at least annually and update the Training Plan as necessary.

2. *Board Training*. Within 90 days after the Effective Date, members of the Board shall receive training regarding their responsibilities for corporate governance and review and oversight of the compliance program. The training shall address the specific responsibilities of board members of an entity receiving Federal award funds, including the risks, oversight areas, and approaches to conducting effective oversight of an entity receiving Federal award funds. This training shall include a discussion of the OIG's guidance on board member responsibilities and any requirements or guidance issued by TMFC's funding agencies, including, but not limited to, HRSA's Health Center Program Compliance Manual chapters concerning board authority and composition. Each member of the Board also shall receive the training described in Section III.C.1.

New members of the Board shall receive the training described in this Section III.C.2 within 30 days after becoming a member or within 90 days after the Effective Date, whichever is later. The Compliance Committee shall review the Board training at least annually and update the Board training as necessary.

3. *Additional Training for Certain Covered Persons.* In addition to the training described in Section III.C.1 and III.C.2, within 90 days after the Effective Date, the Chief Executive Officer, all Board Members, the Chief Financial Officer, the Compliance Officer, accounting staff, human resources staff, and any other Covered Persons drawing down funds from the Payment Management System shall receive training on the following topics:

a. TMFC's responsibility to have a financial management system in-place capable of tracing Federal award funds to a level of expenditures adequate to establish that such funds were used (i) according to Federal statutes, regulations, and the terms and conditions of TMFC's Federal awards, and (ii) in the manner represented by TMFC to HHS;

b. TMFC's responsibility to have a financial management system in-place that ensures that charges to Federal awards for salaries and wages are supported by records that document the distribution of an employee's salary or wages among specific activities or cost objectives if the employee worked on (i) more than one Federal award, (ii) a Federal award and a non-Federal award, (iii) an indirect cost activity and a direct cost activity, (iv) two or more indirect activities which are allocated using different allocation bases, or (v) an unallowable activity and a direct or indirect cost activity;

c. TMFC's responsibility to charge Federal awards for actual costs incurred by TMFC, not budget estimates;

d. TMFC's responsibility to ensure that charges to Federal awards are supported by adequate documentation justifying the charges;

e. TMFC's responsibility to ensure that all TMFC expenditures, disbursements, and cash receipts associated with drawdowns from the Payment Management System are for the purposes and objectives set forth in the solicitation, proposal, and award letter, and comply with the terms and conditions of the award; and

f. TMFC's responsibility to have safeguards in-place to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. *Training Records*. TMFC shall make available to OIG, upon request, training materials and records verifying that the training described in Sections III.C.1, III.C.2, and III.C.3 has been provided.

D. Review Procedures.

1. *Engagement of Independent Review Organization and Compliance Expert*. Within 90 days after the Effective Date, TMFC shall engage an entity ("Independent Review Organization" or "IRO") that meets the qualifications and requirements outlined in Appendix A to this RCA, which is incorporated by reference, to perform the reviews described in this Section III.D.

a. *Retention of Records*. The IRO and TMFC shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and draft reports exchanged between the IRO and TMFC related to the reviews performed by the IRO. The Compliance Expert and TMFC shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence and draft reports exchanged between the Compliance Expert and TMFC related to the reviews performed by the Compliance Expert.

b. *Access to Records and Personnel.* TMFC shall ensure that the IRO and the Compliance Expert have access to all records and personnel necessary to complete the reviews listed in this Section III.D and that all records furnished to the IRO and Compliance Expert are accurate and complete.

2. *Federal Financial Report (FFR) Review.* The IRO shall conduct the FFR review and prepare a written FFR Review Report, as outlined in Appendix B to this RCA, which is incorporated by reference.

3. *Compliance Program Review*. The Compliance Expert shall review the effectiveness of TMFC's Compliance Program with respect to Federal awards (Compliance Program Review) and shall prepare a written (Compliance Program Review Report), as outlined in Appendix C to this RCA, which is incorporated by reference.

4. *Independence and Objectivity Certification*. The IRO and the Compliance Expert shall include in their report(s) to TMFC a certification that each has (a) evaluated its professional independence and objectivity with respect to the reviews required under this Section III.D and (b) concluded that it is, in fact, independent and objective, in accordance with the requirements specified in Appendix A to this RCA. The certifications shall include a summary of all current and prior engagements between TMFC and the IRO or the Compliance Expert.

E. Risk Assessment and Internal Review Process. Within 90 days after the Effective Date, TMFC shall develop and implement a centralized annual risk assessment and internal review process to identify and address risks associated with TMFC's administration of Federal awards, including but not limited to the risks associated with TMFC's drawdowns of funds from the HHS Payment Management System. The Compliance Committee shall be responsible for implementation and oversight of the risk assessment and internal review process. The risk assessment and internal review process shall be conducted at least annually and shall require

TMFC to: (1) identify and prioritize risks, (2) develop work plans or audit plans (as appropriate) related to the identified risk areas, (3) implement the work plans and audit plans, (4) develop corrective action plans in response to the results of any internal audits performed, and (5) track the implementation of the work plans and any corrective action plans and assess the effectiveness of such plans.

F. Disclosure Program. Within 90 days after the Effective Date, TMFC shall establish a Disclosure Program. TMFC shall appropriately publicize the existence of the Disclosure Program (e.g., via periodic e-mails to employees or by posting the information in prominent common areas). The Disclosure Program shall include a reporting mechanism for anonymous communications for which appropriate confidentiality shall be maintained. The Disclosure Program shall prohibit retaliation against Covered Persons relating to use of the Disclosure Program and TMFC shall not retaliate against Covered Persons for use of the Disclosure Program. The Compliance Officer (or designee) shall conduct a review of each disclosure received through the Disclosure Program, including gathering all relevant information from the disclosing individual and ensure that appropriate follow-up is conducted.

The Compliance Officer (or designee) shall record all disclosures (whether or not related to a potential violation of criminal, civil, or administrative law related to a Federal award) in a written disclosure log within two business days of receipt of the disclosure. The disclosure log shall include the following information: (1) a summary of each disclosure received (whether anonymous or not), (2) the date the disclosure was received, (3) the individual or department responsible for reviewing the disclosure, (4) the status of the review, (5) any corrective action taken in response to the review, and (6) the date the disclosure was resolved.

G. Ineligible Persons.

1. *Screening Requirements.* TMFC shall:

a. screen all prospective Covered Persons against the Exclusion Lists prior to engaging their services and, as part of the hiring or contracting process, shall require such Covered Persons to disclose whether they are Ineligible Persons;

b. screen all Covered Persons against the Exclusion Lists within 90 days after the Effective Date and on a monthly basis thereafter; and

c. require all Covered Persons to disclose immediately to the Compliance Officer (or designee) if they become an Ineligible Person.

2. *Removal Requirement*. If TMFC has actual notice that a Covered Person has become an Ineligible Person, TMFC shall remove such Covered Person from any position for which the Covered Person's compensation or the items or services furnished, ordered, or prescribed by the Covered Person are paid for in whole or part, directly or indirectly, by any Federal program(s) from which the Covered Person has been excluded, at least until such time as the Covered Person is reinstated into participation in such Federal program(s). Items or services

furnished, ordered, or prescribed by excluded persons are not payable by Federal health care programs and TMFC may be liable for overpayments and/or criminal, civil, and administrative sanctions for employing or contracting with an excluded person regardless of whether TMFC meets the requirements of Section III.G.

H. Notification of Government Investigation or Legal Proceeding. TMFC shall notify OIG, in writing, of any ongoing investigation or legal proceeding by a governmental entity or its agents involving an allegation that TMFC has committed a crime or has engaged in fraudulent activities within 30 days of TMFC receiving notice of such investigation or legal proceeding. This notification shall include a description of the allegation(s), the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Within 30 days after resolution of the matter, TMFC shall notify OIG, in writing, of the resolution of the investigation or legal proceeding.

I. Reportable Events. TMFC shall notify OIG, in writing, within 30 days after determining that a Reportable Event exists, as follows:

1. *Substantial Overpayment.* The report to OIG shall include:

   a. a complete description of all details relevant to the Reportable Event, including, at a minimum, the types of transactions or other conduct giving rise to the Reportable Event; the period during which the conduct occurred; and the names of individuals and entities believed to be implicated, including an explanation of their roles in the Reportable Event;

   b. the Federal award(s) affected by the Reportable Event;

   c. a description of the steps taken by TMFC to identify and quantify the Overpayment; and

   d. a description of TMFC's actions taken to correct the Reportable Event and prevent it from recurring.

Within 60 days of identification of the substantial Overpayment, or any shorter period required by any applicable Federal award requirement, TMFC shall either (1) repay the Overpayment and provide OIG with a copy of the notification and repayment, or (2) make an appropriate entry in TMFC's accounting system to correct the Overpayment and provide OIG with documentation of that correction.

2. *Probable Violation of Law*. The report to OIG shall include:

   a. a complete description of all details relevant to the Reportable Event, including, at a minimum, the types of claims, transactions or other conduct giving rise to the Reportable Event; the period during which the conduct occurred; and the names of individuals and entities believed to be implicated, including an explanation of

their roles in the Reportable Event;

b. a statement of the Federal criminal, civil or administrative laws that are probably violated by the Reportable Event;

c. the Federal award(s) affected by the Reportable Event;

d. a description of the steps taken by TMFC to identify and quantify any Overpayments; and

e. a description of TMFC's actions taken to correct the Reportable Event and prevent it from recurring.

If the Reportable Event involves an Overpayment, within 60 days of identification of the Overpayment, or any shorter period required by any applicable Federal award requirement, TMFC shall either (1) repay the Overpayment and provide OIG with a copy of the notification and repayment, or (2) make an appropriate entry in TMFC's accounting system to correct the Overpayment and provide OIG with documentation of that correction.

3. *Ineligible Person.* The report to OIG shall include:

a. the identity of the Ineligible Person and the job duties performed by that individual;

b. the dates of the Ineligible Person's employment or contractual relationship;

c. a description of the Exclusion Lists screening that TMFC completed before and/or during the Ineligible Person's employment or contract and any flaw or breakdown in the screening process that led to the hiring or contracting with the Ineligible Person;

d. a description of how the Ineligible Person was identified; and

e. a description of any corrective action implemented to prevent future employment or contracting with an Ineligible Person.

4. *Bankruptcy.* The report to OIG shall include documentation of the bankruptcy filing and a description of any Federal health care program requirements implicated.

J. Transition Plan. Prior to the end of the fourth Reporting Period, TMFC shall develop a Transition Plan that is reviewed and approved by the Board. The Transition Plan shall be implemented following the end of the RCA's term. A copy of TMFC's approved Transition Plan shall be included in TMFC's fourth Annual Report.

IV. SUCCESSOR LIABILITY

If, after the Effective Date, TMFC proposes to (a) sell any or all of its business, business units, or locations (whether through a sale of assets, sale of stock, or other type of transaction) relating to activities intended to carry out Federal awards; (b) purchase or establish a new business, business unit, or location relating to activities intended to carry out Federal awards; (c) reorganize its business, business units, or locations; or (d) merge or transfer its business, business units, or locations with another entity, the RCA shall be binding on the purchaser, reorganized entity, entity with which the merger occurred, transferee of any business, business unit, or location and any new business, business unit, or location (and all Covered Persons at each new business, business unit, or location) shall be subject to the requirements of this RCA, unless otherwise determined and agreed to in writing by OIG. TMFC shall notify OIG, in writing, of such sale or purchase within 30 days following the closing of the transaction and shall notify OIG, in writing, within 30 days of establishing such new business, business unit, or location.

If TMFC wishes to obtain a determination by OIG that a proposed purchaser or proposed acquisition will not be subject to the RCA requirements, TMFC must notify OIG in writing at least 30 days in advance of the proposed sale or purchase. This notification shall include a description of the business, business unit, or location to be sold or purchased, a brief description of the terms of the transaction and, in the case of a proposed sale, the name and contact information of the prospective purchaser.

V. IMPLEMENTATION REPORT AND ANNUAL REPORTS

A. Implementation Report.

Within 120 days after the Effective Date, TMFC shall submit a written report (Implementation Report) to OIG that includes, at a minimum, the following information:

1. the name, business address, business phone number, and position description of the Compliance Officer required by Section III.A.1, and a detailed description of any noncompliance job responsibilities;

2. the names and positions of the members of the Compliance Committee required by Section III.A.2;

3. the names of the Board members who are responsible for satisfying the Board compliance requirements described in Section III.A.3;

4. the names and positions of the Certifying Covered Persons required by Section III.A.4 and a copy of the written process for Certifying Covered Persons to follow in order to complete the certification required by Section III.A.4;

5. a list of the Policies and Procedures required by Section III.B;

6. the Training Plan required by Section III.C.1 and a description of the Board training required by Section III.C.2 (including a summary of the topics covered, the length

of the training, and when the training was provided);

7. the following information regarding the Compliance Expert(s) and IRO(s): (a) identity, address, and phone number; (b) a copy of the engagement letter; (c) information to demonstrate that the Compliance Expert and IRO have the qualifications outlined in Appendix A to this RCA; and (d) certifications from the Compliance Expert and IRO regarding their professional independence and objectivity with respect to TMFC that include a summary of all current and prior engagements between TMFC and the Compliance Expert or IRO;

8. a description of the risk assessment and internal review process required by Section III.E;

9. a description of the Disclosure Program required by Section III.F;

10. a description of the Ineligible Persons screening and removal process required by Section III.G;

11. a description of TMFC's corporate structure, including identification of any parent and sister companies, subsidiaries, and their respective lines of business;

12. a list of all of TMFC's locations (including mailing addresses), the corresponding name under which each location is doing business, and the location's Medicare and state Medicaid program provider number and/or supplier number(s);

13. a list identifying by agency, operating division, and award number all Federal awards awarded to TMFC in the preceding 12 months and all Federal awards from which TMFC has drawn down funds in the preceding 12 months;

14. a list of TMFC's payor mix identifying each government and private insurance payor and the amount paid for the preceding 12 months;

15. a list identifying all sources of revenue and donations that TMFC received during the preceding 12 months;

16. a certification by the Compliance Officer and Chief Executive Officer that:

a. to the best of his or her knowledge, except as otherwise described in the report, TMFC has implemented and is in compliance with all of the requirements of this RCA;

b. he or she has reviewed the report and has made reasonable inquiry regarding its content and believes that the information in the report is accurate and truthful; and

c. he or she understands that the certification is being provided to and relied upon by the United States; and

B. Annual Reports

TMFC shall submit to OIG a written report (Annual Report) for each of the five Reporting Periods that includes, at a minimum, the following information:

1. any change in the identity, position description, or noncompliance job responsibilities of the Compliance Officer; a current list of the Compliance Committee members, a current list of the Board members who are responsible for satisfying the Board compliance requirements, and a current list of the Certifying Covered Persons, along with the identification of any changes made during the Reporting Period to the Compliance Committee, Board, or Certifying Covered Persons;

2. the dates of each meeting of the Compliance Committee (copies of the meeting minutes shall be made available to OIG upon request);

3. the dates of each report made by the Compliance Officer to the Board (written documentation of such reports shall be made available to OIG upon request);

4. the Board resolution required by Section III.A.3 and a description of the materials reviewed by the Board and any additional steps taken, in its oversight of the compliance program and in support of making the resolution;

5. a description of any changes to the written process for Certifying Covered Persons to follow in order to complete the certification required by Section III.A.4.

6. the certifications of Certifying Covered Persons required by Section III.A.4.

7. a list of any new or revised Policies and Procedures required by Section III.B developed during the Reporting Period;

8. a description of any changes to the Training Plan required by to Section III.C. and a summary of all training furnished to Covered Persons and Board members during the Reporting Period;

9. a complete copy of all reports prepared pursuant to Section III.D and TMFC's response to the reports, along with corrective action plan(s) related to any issues raised by the report, and documentation of TMFC's refund of the Overpayment;

10. certifications from the IRO and Compliance Expert regarding their professional independence and objectivity with respect to TMFC, including a summary of all current and prior engagements between TMFC and the IRO or Compliance Expert;

11. a description of any changes to the risk assessment and internal review process required by Section III.E, including the reason(s) for such changes;

12. a summary of the following components of the risk assessment and

internal review process during the Reporting Period: (a) risk areas identified, (b) work plans and internal audit plans developed, (c) internal audits performed, (d) corrective action plans developed in response to internal audits, and (e) steps taken to track the implementation of the work plans and corrective action plans. Copies of any work plans, internal audit reports, and corrective action plans shall be made available to OIG upon request;

13. a summary of the disclosures in the disclosure log required by Section III.F that relate to Federal award programs, including at least the following information: (a) a description of the disclosure, (b) the date the disclosure was received, (c) the resolution of the disclosure, and (d) the date the disclosure was resolved. The complete disclosure log shall be made available to OIG upon request;

14. a description of any changes to the Ineligible Persons screening and removal process required by Section III.G, including the reason(s) for such changes;

15. a summary of any ongoing investigation or legal proceeding required to have been reported pursuant to Section III.H that includes a description of the allegation(s), the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding;

16. a summary of all Reportable Events required to have been reported pursuant to Section III during the Reporting Period;

17. (in the fourth Annual Report), a copy of the Transition Plan required by Section III.J;

18. a summary of any audits (including but not limited to A-133/single audits) of TMFC conducted during the applicable Reporting Period by any government entity or contractor and TMFC's response and corrective action plan (including information regarding any refunds) relating to the audit findings;

19. a description of all changes to the most recently provided list of TMFC's locations (including addresses) as required by Section V.A.12;

20. a description of any changes to TMFC's corporate structure, including any parent and sister companies, subsidiaries, and their respective lines of business;

21. a list identifying by agency, operating division, and award number all Federal awards awarded to TMFC in the preceding 12 months and all Federal awards from which TMFC has drawn down funds in the preceding 12 months;

22. a list of TMFC's payor mix identifying each government and private insurance payor and the amount paid for the preceding calendar year;

23. a list identifying all sources of revenue and donations that TMFC received during the preceding calendar year;

24. a certification by the Compliance Officer and Chief Executive Officer that:

a. to the best of his or her knowledge, except as otherwise described in the report, TMFC has implemented and is in compliance with all of the requirements of this RCA;

b. he or she has reviewed the report and has made reasonable inquiry regarding its content and believes that the information in the report is accurate and truthful;

c. during the applicable Reporting Period: (1) all TMFC expenditures, disbursements, and cash receipts associated with drawdowns from the Payment Management System were for the purposes and objectives set forth in the solicitation, proposal, and award letter, and complied with the terms and conditions of the award; (2) TMFC's financial management system traced Federal award funds to a level of expenditures adequate to establish that such funds were used (a) according to Federal statutes, regulations, and the terms and conditions of TMFC's Federal awards, and (b) in the manner represented by TMFC to HHS; (3) TMFC's charges to Federal awards for salaries and wages were supported by records that documented the distribution of an employee's salary or wages among specific activities or cost objectives if the employee worked on (a) more than one Federal award, (b) a Federal award and a non-Federal award, (c) an indirect cost activity and a direct cost activity, (d) two or more indirect activities which are allocated using different allocation bases, or (e) an unallowable activity and a direct or indirect cost activity; (3) TMFC's charges to Federal awards; (4) TMFC's charges to Federal awards were based upon actual costs incurred by TMFC, not budget estimates; (5) TMFC's charges to Federal awards were supported by adequate documentation justifying the charges; and (6) TMFC had in place safeguards to prohibit employees from using their positions for a purpose that constituted or presented the appearance of personal or organizational conflict of interest, or personal gain; and

d. he or she understands that the certifications in paragraph (c) above are not an exclusive list of actions that TMFC must take to comply with Federal award requirements and this Recipient Compliance Agreement and that the certification is being provided to and relied upon by the United States.

The first Annual Report shall be received by OIG no later than 60 days after the end of the first Reporting Period. Subsequent Annual Reports shall be received by OIG no later than the anniversary date of the due date of the first Annual Report.

C. Designation of Information. TMFC shall clearly identify any portions of its submissions that it believes are trade secrets, or information that is commercial or financial and privileged or confidential, and therefore potentially exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. TMFC shall refrain from identifying any information as exempt from disclosure if that information does not meet the criteria for exemption from disclosure under FOIA.

VI. NOTIFICATIONS AND SUBMISSION OF REPORTS

All notifications and reports required under this RCA shall be submitted using the following contact information:

OIG:

Administrative and Civil Remedies Branch
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, S.W.
Washington, DC 20201
Telephone: (202) 619-2078
Email Address: officeofcounsel@oig.hhs.gov

TMFC:

Kirk Nation
Safety, Quality, and Risk Compliance Manager
6120 Alabama Highway
Ringgold, GA 30736
706-935-6442 ext. 116
knation@trimedfamilycare.com

Unless otherwise requested by OIG, all notifications and reports required by this RCA shall be submitted electronically. OIG shall notify TMFC in writing of any changes to the OIG contact information listed above. TMFC shall notify OIG in writing within two business days of any changes to the TMFC contact information listed above.

VII. OIG INSPECTION, AUDIT, AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s) may conduct interviews, examine and/or request copies of or copy TMFC's books, records, and other documents and supporting materials, and conduct on-site reviews of any of TMFC's locations, for the purpose of evaluating: (a) TMFC's compliance with the requirements of this RCA and (b) TMFC's compliance with the requirements of Federal award programs. The documentation described above shall be made available by TMFC to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit, and/or

reproduction. For purposes of this provision, OIG or its duly authorized representative(s) may interview any of TMFC's officers, employees, contractors, and Board members who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG. TMFC shall assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. TMFC's officers, employees, contractors, and Board members may elect to be interviewed with or without a representative of TMFC present.

VIII. DOCUMENT AND RECORD RETENTION

TMFC shall maintain for inspection all documents and records relating to reimbursement from the Federal award programs and to compliance with this RCA for six years (or longer if otherwise required by law) from the Effective Date.

IX. DISCLOSURES

Consistent with HHS's FOIA procedures, set forth in 45 C.F.R. Part 5, OIG shall make a reasonable effort to notify TMFC prior to any release by OIG of information submitted by TMFC pursuant to this RCA and identified upon submission by TMFC as trade secrets, or information that is commercial or financial and privileged or confidential, under the FOIA rules. With respect to such releases, TMFC shall have the rights set forth at 45 C.F.R. § 5.42(a).

X. BREACH AND DEFAULT PROVISIONS

A. Stipulated Penalties. OIG may assess:

1. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section III.A;

2. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section III.B;

3. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section III.C;

4. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section III.D;

5. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section III.E;

6. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section III.F;

7. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section III.G;

8. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section III.H;

9. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section III.I;

10. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section III.J;

11. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section IV;

12. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section V;

13. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section VII;

14. A Stipulated Penalty of up to $2,500 for each day TMFC fails to comply with Section VIII; or

15. A Stipulated Penalty of up to $50,000 for each false certification or false statement made to OIG by or on behalf of TMFC under this RCA.

B. Timely Written Requests for Extensions. TMFC may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any notification or report required by this RCA. If OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after TMFC fails to meet the revised deadline set by OIG. If OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until three business days after TMFC receives OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

C. Payment of Stipulated Penalties.

1. *Demand Letter*. If OIG determines that a basis for Stipulated Penalties under Section X.A exists, OIG shall notify TMFC of: (a) TMFC's failure to comply and (b) OIG's demand for payment of Stipulated Penalties. (This notification shall be referred to as the "Demand Letter.")

2. *Response to Demand Letter*. Within 15 business days after the date of the Demand Letter, TMFC shall either: (a) pay the applicable Stipulated Penalties or (b) request a hearing before an HHS administrative law judge (ALJ) to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in Section X.E.

3. *Form of Payment*. Payment of the Stipulated Penalties shall be made by electronic funds transfer to an account specified by OIG in the Demand Letter.

D. Exclusion for Material Breach.

1. *Definition of Material Breach*. A material breach of this RCA means:

a. failure to comply with any of the requirements of this RCA for which OIG has previously issued a demand for Stipulated Penalties under Section X.C, unless such Stipulated Penalty was overturned by an ALJ on appeal pursuant to the procedures described in Section X.E below;

b. failure to comply with Section III.A.1;

c. failure to comply with Section III.D;

d. failure to comply with Section III.I;

e. failure to comply with Section V;

f. failure to respond to a Demand Letter in accordance with Section X.C;

g. a false statement or false certification made to OIG by or on behalf of TMFC under this RCA;

h. failure to pay Stipulated Penalties within 20 days after an ALJ issues a decision ordering TMFC to pay the Stipulated Penalties or within 20 days after the HHS Departmental Appeals Board (DAB) issues a decision upholding the determination of OIG; or

i. failure to come into compliance with a requirement of this RCA for which OIG has demanded Stipulated Penalties, pursuant to the deadlines listed in Section X.E.2.

2. *Notice of Material Breach and Intent to Exclude*. The parties agree that a material breach of this RCA by TMFC constitutes an independent basis for TMFC's exclusion from participation in the Federal health care programs. The length of the exclusion shall be in the OIG's discretion, but not more than five years for each material breach. Upon a preliminary determination by OIG that TMFC has materially breached this RCA, OIG shall notify TMFC of: (a) TMFC's material breach and (b) OIG's intent to exclude TMFC. (This notification shall be referred to as the "Notice of Material Breach and Intent to Exclude.")

3. *Response to Notice*. TMFC shall have 30 days from the date of the Notice of Material Breach and Intent to Exclude to submit any information and documentation for OIG to consider before it makes a final determination regarding exclusion.

4. *Exclusion Letter*. If OIG determines that exclusion is warranted, OIG shall notify TMFC in writing of its determination to exclude TMFC. (This letter shall be referred to as the "Exclusion Letter.") Subject to the Dispute Resolution provisions in Section X.E, below, the exclusion shall go into effect 30 days after the date of the Exclusion Letter. The effect of the exclusion shall be that no Federal health care program payment may be made for any items or services furnished, ordered, or prescribed by TMFC, including administrative and management services, except as stated in regulations found at 42 C.F.R. §1001.1901(c). The exclusion shall have national effect. Reinstatement to program participation is not automatic. At the end of the period of exclusion, TMFC may apply for reinstatement by submitting a written request for reinstatement in accordance with the provisions at 42 C.F.R. §§ 1001.3001-.3004.

E. Dispute Resolution.

1. *Review Rights*. Upon OIG's issuing a Demand Letter or Exclusion Letter to TMFC, and as an agreed-upon remedy for the resolution of disputes arising under this RCA, TMFC shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005. Specifically, OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an HHS ALJ and, in the event of an appeal, the DAB, in a manner consistent with the provisions in 42 C.F.R. § 1005.2-1005.21, but only to the extent this RCA does not provide otherwise. Notwithstanding the language in 42 C.F.R. § 1005: (a) the request for a hearing involving Stipulated Penalties shall be made within 15 business days after the date of the Demand Letter and the request for a hearing involving exclusion shall be made within 25 days after the date of the Exclusion Letter and (b) no discovery shall be available to the parties. The procedures relating to the filing of a request for a hearing can be found at http://www.hhs.gov/dab/divisions/civil/procedures/divisionprocedures.html

2. *Stipulated Penalties Review*. Notwithstanding any provision of Title 42 of the United States Code or Title 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this RCA shall be: (a) whether TMFC was in full and timely compliance with the requirements of this RCA for which OIG demands payment and (b) the period of noncompliance. TMFC shall have the burden of proving its full and timely compliance. If the ALJ upholds the OIG's determination that TMFC has breached this RCA and orders TMFC to pay Stipulated Penalties, TMFC must (a) come into compliance with the requirement(s) that resulted in the OIG imposing Stipulated Penalties and (b) pay the Stipulated Penalties within 20 days after the ALJ issues a decision, unless TMFC properly and timely requests review of the ALJ decision by the DAB. If the ALJ decision is properly and timely appealed to the DAB and the DAB upholds the determination of OIG, TMFC must (a) come into compliance with the requirement(s) that resulted in the OIG imposing Stipulated Penalties and (b) pay the Stipulated Penalties within 20 days after the DAB issues its decision.

3. *Exclusion Review*. Notwithstanding any provision of Title 42 of the United States Code or Title 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this RCA shall be whether TMFC was in material breach of this RCA. If the ALJ sustains the OIG's determination of material breach, the exclusion shall take effect 20 days after the ALJ issues the decision. If the DAB finds in favor of OIG after an ALJ decision adverse to OIG, the exclusion shall take effect 20 days after the DAB decision.

TMFC shall waive its right to any notice of such an exclusion if a decision upholding the exclusion is rendered by the ALJ or DAB. If the DAB finds in favor of TMFC, TMFC shall be reinstated effective on the date of the original exclusion.

4. *Finality of Decision*. The review by an ALJ or DAB provided for above shall not be considered to be an appeal right arising under any statutes or regulations. The parties to this RCA agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this RCA and TMFC agrees not to seek additional review of the DAB's decision (or the ALJ's decision if not appealed) in any judicial forum.

5. *Referral for Suspension or Debarment*. Material Breach may result in OIG referring TMFC to the HHS Suspension and Debarment Official.

XI. EFFECTIVE AND BINDING AGREEMENT

TMFC and OIG agree as follows:

A. This RCA constitutes the complete agreement between the parties and may not be amended except by written consent of the parties to this RCA.

B. The undersigned TMFC signatories represent and warrant that they are authorized to execute this RCA. The undersigned OIG signatories represent that they are signing this RCA in their official capacities and that they are authorized to execute this RCA.

C. This RCA may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same RCA. Electronically transmitted copies of signatures shall constitute acceptable, binding signatures for purposes of this RCA.

ON BEHALF OF TRI-MED FAMILY CARE, INC.

/Suzanne Chovanec/ 1/30/2024
Suzanne Chovanec DATE
Chief Executive Officer
Tri-Med Family Care, Inc.

/Richard Rose/ 01/30/2024
Richard Rose, Esq. DATE
Miller Martin
Counsel for Tri-Med Family Care, Inc.

ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

/Lisa Re/ 2024.02.07
Lisa M. Re DATE
Assistant Inspector General for Legal Affairs
Office of Inspector General
U.S. Department of Health and Human Services

/Michael Torrisi/ 1/30/2024
Michael R. Torrisi DATE
Senior Counsel
Office of Inspector General
U.S. Department of Health and Human Services

/Katie R. Fink/ 1/30/2024
Katie R. Fink DATE
Senior Counsel
Office of Inspector General
U.S. Department of Health and Human Services

APPENDIX A

INDEPENDENT REVIEW ORGANIZATION AND COMPLIANCE EXPERT

This Appendix contains the requirements relating to the Independent Review Organization (IRO) and the Compliance Expert required by Section III.D of the RCA.

A. Engagement.

1. TMFC shall engage an IRO and a Compliance Expert that possess the qualifications set forth in Paragraph B, below, to perform the responsibilities in Paragraph C, below. The IRO and Compliance Expert shall conduct their required reviews in a professionally independent and objective fashion, as set forth in Paragraph E. Within 30 days after OIG receives the information identified in Section V.A.7 of the RCA or any additional information submitted by TMFC in response to a request by OIG, whichever is later, OIG will notify TMFC if the IRO or Compliance Expert is unacceptable. Absent notification from OIG that the IRO or Compliance Expert is unacceptable, TMFC may continue to engage the IRO and Compliance Expert.

2. If TMFC engages a new IRO or Compliance Expert during the term of the RCA, that IRO or Compliance Expert must also meet the requirements of this Appendix. If a new IRO or Compliance Expert is engaged, TMFC shall submit the information identified in Section V.A.7 of the RCA to OIG within 30 days of engagement of the IRO or Compliance Expert. Within 30 days after OIG receives this information or any additional information submitted by TMFC at the request of OIG, whichever is later, OIG will notify TMFC if the IRO or Compliance Expert is unacceptable. Absent notification from OIG that the IRO or Compliance Expert is unacceptable, TMFC may continue to engage the IRO and Compliance Expert.

B. Qualifications.

1. The IRO shall assign individuals to conduct the FFR Review who have expertise in Federal award requirements applicable to the FFRs being reviewed and have sufficient staff and resources to conduct the review required by the RCA on a timely basis.

2. The Compliance Expert shall have expertise in compliance with the Federal award requirements applicable to TMFC's Federal awards, including the requirements of 45 C.F.R. Part 75 and the Health Center Program Compliance Manual and shall have the resources to conduct the review required by the RCA on a timely basis.

C. Responsibilities.

1. The IRO shall: (a) perform each FFR Review in accordance with the specific requirements of the RCA; (b) follow all Federal award requirements in making assessments in the FFR Review; (c) request clarification from the appropriate authority (e.g., the Health Resources and Services Administration or the Substance Abuse and Mental Health Services

Administration), if in doubt of the application of a Federal award requirement, policy, or regulation; (d) respond to all OIG inquires in a prompt, objective, and factual manner; and (e) prepare timely, clear, well-written reports that include all the information required by Appendix B to the RCA.

2. The Compliance Expert shall: (a) perform the Compliance Program Review in accordance with the specific requirements of the RCA; and (b) prepare timely, clear, well-written reports that include all the information required by Appendix C to the RCA.

D. TMFC Responsibilities.

TMFC shall ensure that the IRO and Compliance Expert have access to all records and personnel necessary to complete the reviews listed in III.D of this RCA and that all records furnished to the IRO and Compliance Expert are accurate and complete.

E. Independence and Objectivity.

1. The IRO must perform the FFR Review in a professionally independent and objective fashion, as defined in the most recent Government Auditing Standards issued by the U.S. Government Accountability Office.

2. The Compliance Expert must perform the Compliance Program Review in a professionally independent and objective fashion, as defined in the most recent Government Auditing Standards issued by the U.S. Government Accountability Office.

F. Removal/Termination.

1. *TMFC and IRO or Compliance Expert*. If TMFC terminates its IRO or Compliance Expert or if the IRO or Compliance Expert withdraws from the engagement during the term of the RCA, TMFC must submit a notice explaining (a) its reasons for termination of the IRO or Compliance Expert or (b) the IRO's or Compliance Expert's reasons for its withdrawal to OIG, no later than 30 days after termination or withdrawal. TMFC must engage a new IRO or Compliance Expert in accordance with Paragraph A of this Appendix and within 60 days of termination or withdrawal of the IRO or Compliance Expert.

2. *OIG Removal of IRO or Compliance Expert*. In the event OIG has reason to believe the IRO or Compliance Expert does not possess the qualifications described in Paragraph B, is not independent and objective as set forth in Paragraph E, or has failed to carry out its responsibilities as described in Paragraph C, OIG shall notify TMFC in writing regarding OIG's basis for determining that the IRO or Compliance Expert has not met the requirements of this Appendix. TMFC shall have 30 days from the date of OIG's written notice to provide information regarding the IRO's or Compliance Expert's qualifications, independence, or performance of its responsibilities in order to resolve the concerns identified by OIG. If, following OIG's review of any information provided by TMFC regarding the IRO or Compliance Expert, OIG determines that the IRO or Compliance Expert has not met the requirements of this Appendix, OIG shall notify TMFC in writing that TMFC shall be required

to engage a new IRO or Compliance Expert in accordance with Paragraph A of this Appendix. TMFC must engage a new IRO or Compliance Expert within 60 days of its receipt of OIG's written notice. The final determination as to whether or not to require TMFC to engage a new IRO or Compliance Expert shall be made at the sole discretion of OIG.

APPENDIX B

FEDERAL FINANCIAL REPORT REVIEW

A. FFR Review. The IRO shall perform the Federal Financial Report (FFR) Review for each of the five Reporting Periods.

1. *Definitions*.

a. "Overpayment" means the amount of money TMFC has received or retained in excess of the amount allowable, allocable, and reasonable under Federal award requirements, as determined by the IRO in connection with the FFR Review performed under this Appendix B.

b. "FFR" means the Federal Financial Report (SF-425).

c. "Population" means all annual FFRs submitted during the Reporting Period to HHS.

2. *FFR Review Sample.* TMFC shall provide the IRO with: (1) a list of all Federal awards from which TMFC received funding during the Reporting Period; (2) all annual FFRs submitted during the Reporting Period for TMFC's Federal awards; and (3) a listing of all expenditures that served as the basis for the information reported on each HHS FFR. For each Federal award FFR, the IRO shall confirm that the cash receipts amount identified on each FFR is correct. The IRO shall then, for each HHS award:

a. Select and review a random sample of 10 payroll and 10 non-payroll expenditures over $500 related to TMFC's Health Center Cluster grant H8028958 (or successor Health Center Cluster grant). The IRO shall review the expenditures based on supporting documentation available at TMFC's office or under TMFC's control (including but not limited to accounting ledgers and journals, timesheets, bank records, invoices, and contractual arrangements) in light of Federal award requirements to determine whether the charges were allowable, allocable, and reasonable under Federal award requirements and were appropriately documented.

b. Select and review a random sample of five payroll and five non-payroll expenditures over $500 related to each of TMFC's other HHS awards. The IRO shall review the expenditures based on supporting documentation available at TMFC's office or under TMFC's control (including but not limited to accounting ledgers and journals, timesheets, bank records, invoices, and contractual arrangements) in light of Federal award requirements to determine whether the charges were allowable, allocable, and reasonable under Federal award requirements and were appropriately documented.

c. For each expenditure in the FFR Review Sample that results in an

Overpayment, the IRO shall review the system(s) and process(es) that caused the expenditure to be charged to an HHS award and identify any problems or weaknesses that may have resulted in the identified Overpayments. The IRO shall provide its observations and recommendations on suggested improvements to the system(s) and the process(es) that generated the charge. TMFC shall respond to the IRO's recommendations on suggested improvements to the system(s) and the process(es) that generated the charge and incorporate the IRO's recommendations into the annual risk assessment and internal review process.

3. *Other Requirements.*

a. Supplemental Materials. The IRO shall request all documentation required for the FFR Review and TMFC shall furnish such documentation to the IRO prior to the IRO initiating its FFR Review. If the IRO accepts any supplemental documentation from TMFC after the IRO has completed its initial review of the FFR Review Sample (Supplemental Materials), the IRO shall include the following in the FFR Review Report: (i) a description of the Supplemental Materials, (ii) the date the Supplemental Materials were accepted, (iii) the IRO's reasons for accepting the Supplemental Materials, and (iv) and the relative weight the IRO gave to the Supplemental Materials in its review.

b. Charged Expenditure without Supporting Documentation. Any charged expenditure for which TMFC cannot produce documentation shall be considered unallowable and the total reimbursement received by TMFC related to such expenditure shall be deemed an Overpayment. Replacement sampling for expenditures without documentation is not permitted.

c. Use of First Sample Drawn. The first set of expenditures selected shall be used for the FFR Review Sample (i.e., it is not permissible to generate more than one list of random samples and then select one for use).

4. *Repayment of Identified Overpayments.* Within 60 days (or any shorter period required by any appliable Federal award requirement) of the IRO identifying an overpayment, TMFC shall either (a) repay the Overpayment or (b) make an appropriate entry in TMFC's accounting system to correct the Overpayment. Documentation of TMFC's refund of the Overpayment, or of its accounting entry correction, shall be submitted to OIG with the Annual Report. OIG, in its sole discretion, may refer the findings of the FFR Review Sample (and any related work papers) received from TMFC to the appropriate HHS operating division for appropriate action.

B. FFR Review Report. The IRO shall prepare a FFR Review Report for each FFR Review performed that includes the following information:

1. *FFR Review Methodology.*

   a. FFR Review Population. A description of the Population subject to the FFR Review.

   b. FFR Review Objective. A statement of the objective intended to be achieved by the FFR Review.

   c. Source of Data. A description of (1) the process used to identify expenditures in the Population and (2) the specific documentation relied upon by the IRO when performing the FFR Review (e.g., accounting ledgers, timesheets, bank records, TMFC policies, and other policies, regulations, or directives).

   d. Review Protocol. A narrative description of how the FFR Review was conducted and what was evaluated.

   e. Supplemental Materials. A description of any Supplemental Materials as required by A.3.a., above.

2. *Statistical Sampling Documentation.*

   a. A copy of the printout of the random numbers generated by the "Random Numbers" function of the statistical sampling software used by the IRO.

   b. A description or identification of the statistical sampling software package used by the IRO.

3. *FFR Review Findings.*

   a. Narrative Results.

      i. A spreadsheet listing of all Federal awards from which TMFC received funding during the Reporting Period and whether the cash receipts identified on the FFR for each HHS award is correct. If the cash receipts amount is incorrect on any FFR, provide of description of the discrepancy.

      ii. A description of the system TMFC utilizes to identify allowable, allocable, and reasonable costs to charge to its HHS Federal awards and make appropriate drawdowns from Payment Management Services (PMS).

      iii. A description of controls in place at TMFC to ensure that all costs charged to its HHS awards are allowable, allocable, and reasonable under 45 C.F.R. 75.

iv. A narrative explanation of the IRO's findings and supporting rationale (including reasons for errors, patterns noted, etc.) regarding the FFR Review, including the results of the FFR Review Sample.

b. Quantitative Results.

i. Total number and percentage of instances in which the IRO determined that the expenditures charged by TMFC resulted in an Overpayment to TMFC.

ii. Total number and percentage of instances in which the IRO determined that a charged expenditure was not appropriately documented and in which such documentation errors resulted in an Overpayment to TMFC.

iii. Total number and percentage of instances in which the IRO determined that a charged expenditure was based upon unallowable, unallocable, or unreasonable costs and resulted in an Overpayment to TMFC.

iv. Total dollar amount of all Overpayments in the FFR Review Sample.

v. Total dollar amount of all charged expenditures included in the FFR Review Sample.

vi. Error Rate in the FFR Review Sample. The Error Rate shall be calculated by dividing the Overpayment in the FFR Review Sample by the total dollar amount of all charged expenditures included in the FFR Review Sample.

vii. A spreadsheet of the FFR Review results that includes the following information for each reviewed expenditure: Federal award charged, amount charged to Federal award, correct allowed amount (as determined by the IRO), dollar difference between charged amount and the correct allowed amount, and reason for any difference between the amount drawn down through PMS and the correct allowed amount.

c. Recommendations. The IRO's report shall include any recommendations for improvements to TMFC's accounting and financial management systems or to TMFC's controls for ensuring that all amounts drawn down from PMS are allowable, allocable, and reasonable under Federal award requirements.

4. *Credentials*. The names and credentials of the individuals who performed the FFR Review.

APPENDIX C
COMPLIANCE PROGRAM REVIEW

A. Compliance Program Review. The Compliance Expert shall perform the Compliance Program Review for each Reporting Period of the RCA. The Compliance Expert shall review TMFC's systems, processes, policies, and procedures with respect to the following:

1. ensuring that TMFC's financial management system traces Federal award funds to a level of expenditures adequate to establish that such funds were used (i) according to Federal statutes, regulations, and the terms and conditions of TMFC's Federal awards, and (ii) in the manner represented by TMFC to HHS;

2. ensuring that TMFC's charges to Federal awards for salaries and wages are supported by records that document the distribution of an employee's salary or wages among specific activities or cost objectives if the employee worked on (a) more than one Federal award, (b) a Federal award and a non-Federal award, (c) an indirect cost activity and a direct cost activity, (d) two or more indirect activities which are allocated using different allocation bases, or (e) an unallowable activity and a direct or indirect cost activity;

3. ensuring that TMFC's charges to Federal awards are based upon actual costs incurred by TMFC, not budget estimates;

4. charging Federal awards only for costs that are supported by adequate documentation justifying the charges;

5. ensuring that all TMFC expenditures, disbursements, and cash receipts associated with drawdowns from the Payment Management System are for the purposes and objectives set forth in the solicitation, proposal, and award letter, and comply with the terms and conditions of the award; and

6. ensuring that TMFC has in place safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

B. Compliance Program Review Report. The Compliance Expert shall prepare a written report based upon each Compliance Program Review performed that includes the following:

1. A description of the documentation (including policies) reviewed and any personnel interviewed;

2. A detailed description of TMFC's systems, processes, policies, and procedures relating to items A.1-6 above;

3. Whether every TMFC site or affiliate was included and integrated into TMFC's Compliance Program;

4. A summary of the Compliance Expert's findings and recommendations regarding whether TMFC's risk assessment and internal review process identifies and addresses relevant and appropriate risks and results in appropriate tracking and monitoring of corrective action plans;

5. A summary of the Compliance Expert's findings and recommendations regarding any weaknesses in TMFC's systems, processes, policies, and procedures relating to items A.1-6 above and any recommendations for improvement in such systems, processes, policies, or procedures; and

6. The name(s) and credential(s) of the individual(s) who performed the Compliance Program Review.

7. *Independence and Objectivity Certification*. The Compliance Expert shall include in their report(s) to TMFC a certification that they have (a) evaluated their professional independence and objectivity with respect to the reviews required under this Section III.D and (b) concluded that it is, in fact, independent and objective, in accordance with the requirements specified in Appendix A to this RCA. The certifications shall include a summary of all current and prior engagements between TMFC and the Compliance Expert.