ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU

In the Matter of

Assurance No. 24-013

Investigation by LETITIA JAMES,
Attorney General of the State of New York, of

Westchester County Health Care Corporation
and HealthAlliance, Inc.,

Respondents.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York ("OAG") commenced an investigation of Westchester County Health Care Corporation ("WMC") and HealthAlliance, Inc. ("HealthAlliance") (collectively "WMCHealth") pursuant to New York Executive Law Section 63(12) to determine whether WMCHealth: (i) provided required emergency treatment to individuals who presented to its emergency departments ("EDs") with behavioral health presentations; and (ii) did not operate all inpatient psychiatric beds for which it was certified by New York State. This Assurance of Discontinuance ("Assurance") contains the findings of the OAG's investigation and the relief agreed to by the OAG and WMCHealth, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the "Parties").

RELEVANT STATUTORY FRAMEWORK

Emergency Behavioral Health Services

1. The federal Emergency Medical Treatment and Active Labor Act ("EMTALA") requires that when an individual requests examination or treatment for a medical condition in the

ED of a Medicare-participating hospital (or a request is made on their behalf), the hospital must: (i) screen them to determine if they have an emergency medical condition; (ii) stabilize them if they have an emergency medical condition; and (iii) not transfer or discharge them until stabilized. 42 U.S.C. § 1395dd; 42 C.F.R. § 489.24.

2. The New York Public Health Law requires general hospitals to admit any person who is "in need of immediate hospitalization with all convenient speed." N.Y. Pub. Health Law § 2805-b(1).

3. The New York Public Health Law requires general hospitals to "develop, maintain and disseminate, written policies and procedures, for the identification, assessment and referral of individuals with a documented substance use disorder or who appear to have or be at risk for a substance use disorder[.]" N.Y. Pub. Health Law § 2803-u(2)(a). General hospitals must also "establish and implement training … for all individuals licensed or certified pursuant to title eight of the education law who provide direct patient care regarding the policies and procedures established pursuant to [the statute]." N.Y. Pub. Health Law § 2803-u(2)(b).

4. New York regulations require that hospitals:

   a. honor the rights of each patient to receive considerate and respectful care in a clean and safe environment, and to limit the use of physical restraints. 10 NYCRR § 405.7(b)(3), (5).

   b. develop and maintain written policies and procedures for inpatient and outpatient care of individuals with substance use disorders ("SUDs") or who appear to be at risk of SUDs, including identification, assessment, and referral. 10 NYCRR § 405.9(f). Hospitals must also ensure that each patient has a discharge plan that meets the patient's post-hospital care needs, and hospitals may not discharge a

patient who requires continuing health care services until such services are secured or determined by the hospital to be reasonably available to the patient. 10 NYCRR § 405.9(h).

c. maintain for each patient a medical record that contains a discharge summary with outcome of hospitalization, disposition of case, and provisions for follow-up care. 10 NYCRR § 405.10(b)(2)(vii). Each medical record must be integrated with previous patient care information, include the prehospital care report, and document the name of the patient's primary care provider. 10 NYCRR § 405.10(c)(9).

d. assess and refer to treatment individuals with documented SUDs or who appear to be at risk of SUDs. 10 NYCRR § 405.19(c)(5).

e. create for each ED patient a discharge plan that includes the patient's completed and pending laboratory and other diagnostic test/service results, medications, diagnoses, and follow-up care. 10 NYCRR § 405.19(c)(10)(iii). Emergency care must meet generally accepted standards of practice, and examination, diagnosis, and treatment must be in accordance with hospital triage and transfer policies. 10 NYCRR § 405.19(e)(1), (2).

Changes to Inpatient Psychiatric Bed Capacities

5. The New York Public Health Law prohibits hospitals from reducing operations from a certified bed capacity to a lesser bed capacity unless they have prior written approval of the New York State Department of Health ("DOH"), show satisfactory cause for the requested reduction, and maintain staff for the reduced number of patients (the "Certificate of Need Law"). N.Y. Public Health Law § 2802; 10 NYCRR § 401.3(a), (e).

6. The New York Mental Hygiene Law prohibits hospitals from taking licensed inpatient psychiatric beds offline (i.e., not operating and not admitting patients to certain beds) without obtaining the approval of the Commissioner of the New York State Office of Mental Health ("OMH") (the "Prior Approval Review Law"). N.Y. Mental Hygiene Law § 31.23(b)(1); 14 NYCRR § 551.6. Violations are subject to fines of up to $2,000 per individual bed per day. N.Y. Mental Hygiene Law § 31.16(g). Inability to secure proper staff is not a defense if the lack of staff was foreseeable. N.Y. Mental Hygiene Law § 31.16(g)(2).

7. In March 2020, Executive Order ("E.O.") 202.1 temporarily suspended certain regulations, including the Certificate of Need Law and the Prior Approval Review Law, to allow for additional beds to be used for the treatment of COVID-19 patients. On May 25, 2021, DOH issued DAL 21-02, stating that OMH-licensed beds must be converted back to their certified use within 30 days unless justification was submitted.[1] On June 25, 2021, E.O. 202.1 was rescinded by E.O. 210. In a letter dated January 10, 2023, DOH and OMH jointly instructed hospitals to restore all offline psychiatric beds to their licensed use by February 10, 2023, or to submit a plan to OMH to bring all offline inpatient beds online by April 1, 2023.[2]

[1] https://www.health.ny.gov/professionals/hospital_administrator/letters/2021/docs/dal_21-02.pdf.
[2] https://www.health.ny.gov/professionals/hospital_administrator/letters/2023/docs/2023-01-10_reopening_of_inpatient_psychiatric_beds.pdf.

FINDINGS

The Mental Health Crisis in New York

8. More than three million adult New Yorkers — one in five across the state — live with mental illness.[3] In February 2023, 31 percent of New Yorkers reported symptoms of anxiety or depression.[4] In 2022, almost 500,000 children aged three through 17 had a behavioral health condition.[5]

9. The COVID-19 pandemic dramatically increased the need for behavioral health services.[6] In 2022, 28.7 percent of New Yorkers with anxiety or depression reported an unmet need for treatment.[7] In 2022, 196,000 (40 percent) of New York children aged three through 17 with a behavioral health condition did not receive treatment.[8]

10. Inadequate behavioral health care for people in crisis can result in tragic consequences. 1,765 New Yorkers died by suicide in 2022.[9] Drug overdose deaths in New York increased threefold from 9.7 per 100,000 people in 2011 to 31.4 per 100,000 in 2022.[10]

11. Hospital EDs play a vital role in the system of care for individuals with behavioral health presentations, as they identify and triage behavioral health emergencies, saving lives. In

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[3] Kaiser Family Found. (KFF), *New York: Mental Health & Substance Abuse*, https://www.kff.org/state-category/mental-health/?state=NY (indicating that 3,273,000 (21.1%) adults reported mental illness from 2021-22).
[4] Kaiser Family Found. (KFF), *Mental Health in New York*, https://www.kff.org/statedata/mental-health-and-substance-use-state-fact-sheets/new-york.
[5] Child and Adolescent Health Measurement Initiative, *2022 National Survey of Children's Health*, https://www.childhealthdata.org/browse/survey/results?q=10029&r=34.
[6] *See* N.Y. State Health Found., *Mental Health Impact of the Coronavirus Pandemic in New York State* (2021), https://nyshealthfoundation.org/wp-content/uploads/2021/02/mental-health-impact-coronavirus-pandemic-new-york-state.pdf; NYC Dep't of Health and Mental Hygiene, *Impacts of COVID-19 on Mental Health in New York City* (2021), https://www1.nyc.gov/assets/doh/downloads/pdf/epi/databrief130.pdf.
[7] KFF, *Mental Health in New York*, *supra* note 4.
[8] *2022 National Survey of Children's Health*, *supra* note 5.
[9] KFF, *New York: Mental Health & Substance Abuse*, *supra* note 3.
[10] *Id.*

2019, New York EDs experienced an estimated 231,878 visits for mental health-related conditions and 196,600 visits for alcohol or substance abuse-related concerns.[11]

12. Inpatient psychiatric beds play a critical role in the continuum of care for persons with mental illness, helping them recover and return to the community.

13. WMC is a public benefit corporation and is the active corporate parent of HealthAlliance, which is a not-for-profit corporation; both are New York-based health care providers. Both WMC and HealthAlliance are part of the WMCHealth system, which includes nine hospitals in an eight-county service area in the Hudson Valley and Catskills region (the "WMCHealth System"). In 2023, the WMCHealth System had total operating revenues of approximately $2.8 billion, and an operating loss of approximately $95 million.

14. All of the WMCHealth System's hospitals (the "WMCHealth Hospitals") operate EDs. During the COVID-19 pandemic, WMCHealth closed the ED at HealthAlliance-Mary's Avenue in Kingston and operated a stand-alone ED on the HealthAlliance Broadway campus in Kingston.

15. Four WMCHealth Hospitals have inpatient psychiatric units: Westchester Medical Center in Valhalla ("WMC-Valhalla") and WMC-MidHudson Regional Hospital in Poughkeepsie ("WMC-MidHudson"); Bon Secours Community Hospital in Port Jervis ("WMC-Bon Secours") (which is part of the WMCHealth System); and HealthAlliance-Mary's Avenue (which is operated by HealthAlliance, and of which WMCHealth is the active parent member). At the beginning of the COVID-19 pandemic, these hospitals had a total of 205 licensed inpatient psychiatric beds. In March 2020, New York Governor Andrew Cuomo and DOH designated HealthAlliance-Mary's Avenue as a dedicated COVID-19 hospital. In April

[11] N.Y.S. Dep't of Health, *NYS Health Connector*, https://nyshc.health.ny.gov/web/nyapd/emergency-department-visits-in-new-york.

2020, DOH gave WMCHealth permission to temporarily close inpatient psychiatric beds at HealthAlliance-Mary's Avenue. No COVID-19 patients were ever treated at HealthAlliance-Mary's Avenue, which were subject to referrals from DOH. In 2020, WMCHealth opened fifteen additional inpatient psychiatric beds at WMC-MidHudson. These beds remain in use.

WMCHealth's Treatment of ED Patients with Behavioral Health Presentations

16. WMC-Valhalla was cited by the Centers for Medicare & Medicaid Services ("CMS") for deficiencies in its ED under EMTALA and related laws in 2017 and 2019. In May 2017, CMS cited the hospital for failing to accept an appropriate transfer patient with a psychiatric and SUD condition who was en route to the facility via ambulance. In May 2019, CMS found deficiencies in the seven patient records it reviewed. CMS found that six out of the seven records were noncompliant with federal EMTALA regulations governing hospital emergency services because: (i) staff failed to perform reassessments of patients' behavior who presented with a history of suicidal behavior; (ii) nursing staff failed to monitor patients placed on one-to-one constant observation for behavioral issues; and (iii) staff did not ensure that patients were stable before transferring them to a juvenile detention center. CMS also found that six of the seven records showed that WMC-Valhalla failed to complete suicide screens before patients were transferred to a juvenile detention center. While these findings could result in CMS terminating WMC-Valhalla from the Medicare program, on September 11, 2019, CMS accepted WMC-Valhalla's plan of correction, noting that it would need to verify that all of the actions indicated in the plan of correction were implemented, and in October 2019, CMS conducted its verification visit and concluded that the plan of correction had been properly implemented.

17. The OAG's review of a sample of medical records of 15 ED visits involving ten patients who presented to WMCHealth EDs with behavioral health presentations from May 2018

through May 2022 shows that WMCHealth has failed to: (i) screen and stabilize ED patients with behavioral health presentations, in accordance with EMTALA policies; (ii) protect vulnerable ED patients with behavioral health presentations from elopement risk when there is a presence of elopement safety risk, in violation of its elopement safety risk policies; (iii) implement required SUD protocols, in violation of its SUD policies; (iv) provide clinically appropriate non-emergency medical transportation to patients with SUD that it transfers between hospitals, e.g., from the HealthAlliance-Broadway ED to the WMC-MidHudson ED; (v) appropriately treat agitated children who have behavioral health presentations and ensure that there is sufficiently detailed documentation of the implementation of de-escalation techniques before using medication to treat agitation; (vi) ensure there were attempts to obtain information clinically relevant to ED treatment from collateral sources such as community providers and family members; and (vii) maintain complete medical records, including documentation of searches for needed inpatient beds and reasons for discharge.

18. In July 2018, the WMC-Valhalla ED discharged an adolescent girl without adequately screening or stabilizing her. The patient had been brought to the ED from a juvenile detention center, where, according to the medical record, staff reported she "bang[ed] her head against a wall today because she wanted to kill herself." The patient had attempted suicide twice in the past year and had stopped taking her medications. A WMC-Valhalla psychiatrist determined that the patient had active suicidal ideation and "require[d] inpatient admission for safety, stabilization and medication management." The medical record states that the patient was being evaluated for transfer to another hospital that operates a forensic unit, which WMCHealth does not, or, "[i]f no inpatient adolescent beds are available [at the forensic unit], patient is to return to [the juvenile detention center's] medical unit" for one-on-one observation and safety.

After observation and a reevaluation in the ED, a physician's assistant supervised by an ED physician concluded that the patient was stable and could be discharged back to the juvenile detention facility under one-to-one observation for suicidal ideation. However, CMS found that the WMC-Valhalla ED: "(a) failed to perform reassessments of [this and other] patients' behavior who presented with [a] history of suicide attempts, suicidal ideations or self-injurious thoughts, (b) the nursing staff failed to perform monitoring for patients placed on 1-to-1 constant observation for behavioral issues and (c) staff did not ensure that [this and] other patients were stable before they were transferred to a juvenile detention center," which "may have placed [this and other] patients at risk of harm." CMS also found that WMC-Valhalla "failed to complete suicide screens before discharging [this and other] patients to a juvenile detention center."

19. In November 2020, within a span of approximately 36 hours, first the HealthAlliance-Broadway ED and then the WMC-MidHudson ED evaluated and then discharged a woman in her 50s with suicidal ideation, depression, and alcohol abuse without adequately screening or stabilizing her. The police had brought the patient to the HealthAlliance-Broadway ED for a mental health evaluation after they found her inside the bedroom of her house while it was on fire and she refused to leave, and after they removed her from the room, she stated (according to her medical record), "I wish I were dead." The patient declined to provide HealthAlliance-Broadway ED staff with contact information for collateral sources, and staff did not attempt to contact the police who brought her to the hospital. The medical record does not show that ED staff followed SUD screening, treatment, and referral protocols or expressly evaluated her risk of withdrawal. The medical record indicates that a clerk called a hotline regarding a placement plan, but the record does not specify if the clerk actually spoke with the hotline and does not contain any details about the call. After the patient had been in the ED for

approximately ten hours, HealthAlliance-Broadway ED staff called a taxi to take the patient to a warming shelter and discharged her. The discharge instructions, which the patient did not sign, state that the patient could call a number if she needed further resources.

20. The following day, the patient drank a substantial amount of alcohol, called an ambulance, and was brought to WMC-MidHudson where she sought detoxification treatment. The WMC-MidHudson checklist incorrectly notes that she did not present with a behavioral health complaint, even though the medical record indicates that she told ED staff that she burned her house down the day before, "wishe[d] she was dead," and presented with behavioral health and intoxication symptoms. The WMC-MidHudson ED physician, who had no means of reviewing the patient's medical record from HealthAlliance-Broadway from the day before, even though both were part of the WMCHealth System, diagnosed her with suicidal intent, depression, and alcohol abuse and monitored her. The medical record does not indicate an assessment of withdrawal risk using the Clinical Institute Withdrawal Assessment of Alcohol Scale-Ar ("CIWA-Ar") as required by WMCHealth's policy. During the nine hours the patient was in the ED, staff took the patient's blood alcohol level once and monitored her. The physician failed to adequately document the cancellation of a psychiatric consultation that had been ordered for the patient. WMC-MidHudson staff told the patient they had no detox beds available and instructed her to return in the morning. At 1:35 a.m., when the patient told ED staff she had nowhere to go, they discharged her and instructed her to walk to a stabilization center that was "down the hill a walk away."

21. In May 2021, WMC-Valhalla discharged an acutely agitated boy with intermittent explosive disorder and aggression, without adequately stabilizing him, despite determining that he needed inpatient treatment. This encounter was the patient's fourth visit to the ED for

agitation in just over a month, and his second visit in 24 hours. During each visit, clinical staff within the ED discussed inpatient psychiatric admission for the child but ultimately discharged him. Upon his arrival in the ED, WMC-Valhalla staff determined that he required medication to treat his acute agitation. As reflected in check boxes in the electronic health record ("EHR"), staff recorded in a template that non-pharmacological de-escalation techniques were attempted, but staff did not provide specific notes on such techniques. Staff then administered to the 95-pound patient antipsychotic medications (50 mg of Thorazine and 25 mg of Benadryl) via intramuscular ("IM") injection. The patient was not prescribed either of the medications when he arrived at the ED, but the record indicates that they were ordered "to improve patient's level of function, to treat the patient's agitation, and to allow the patient to participate in the patient's care." As with all IM injections, such injections can be painful when administered, especially to small children. A psychiatrist noted in the medical record that the patient should be admitted to inpatient psychiatric care. The medical record contains conflicting documentation regarding the patient's status over the course of the next day, indicating that the patient's behavior changed over time: the medical record notes that he was "[c]alm and cooperatively happily wearing his face shield" at one point, but also that he "got upset" and was "acutely agitated" during a later re-assessment, necessitating medication again "to treat the patient's agitation." As reflected in check boxes in the EHR, staff recorded in a template that non-pharmacological de-escalation techniques were attempted, but staff did not provide specific notes on such techniques, and staff then administered Benadryl. After WMC-Valhalla located an inpatient bed at another hospital but the patient was not accepted for transfer, WMC-Valhalla physicians assessed that the patient was "calm and cooperative," cleared him for discharge "from a Behavioral Health perspective," and discharged him home at the request of his mother, who was "comfortable with taking [the]

patient home." There is no evidence in the medical record that ED staff attempted to speak with the patient's community treatment providers.

22. During the spring of 2021, an adult woman whom the police had brought to the hospital for a mental health evaluation eloped from the WMC-MidHudson ED before she could be adequately screened or stabilized. ED staff knew that the patient's therapist had called the police out of concern for the patient's safety, precipitating her visit to the ED. The medical record notes for this visit indicate that the patient presented with psychiatric symptoms; however, the ED triage note incorrectly states that the patient was not presenting for a behavioral health complaint, did not arrive with a police escort, and was not an elopement safety risk. After evaluation, the patient was placed on continuous observation status but was able to elope because there was no security guard at the ED door. Hospital security spoke to the patient in the parking lot, but she refused to return. ED staff failed to notify the police that she had eloped, as required by WMCHealth's elopement policy.

23. Two days later, an adult male patient with paranoid delusions, whom hospital staff had determined needed to be admitted to an inpatient psychiatric bed, eloped from the WMC-MidHudson ED before he could be adequately screened or stabilized. The patient passed away shortly thereafter. Despite the fact that a WMC-MidHudson ED psychiatrist ordered constant supervision for the patient and noted that the patient had recently left a treatment facility against medical advice, the triage record incorrectly states that he did not present for a behavioral health condition and did not pose an elopement safety risk. As a result, staff did not implement full elopement precautions. The EHR system employed by WMC-MidHudson at the time did not include any stand-alone triage question to assess the risk of harm to a patient or others if such patient elopes, making the need for elopement precautions less evident to staff. Staff spoke to the

patient's brother after the patient eloped. The brother informed staff that he was concerned about the patient because the patient did not live in the area and did not have his belongings.

24. In January 2022, an acutely agitated teenage girl who had been brought to the WMC-Valhalla ED by ambulance from a residential treatment center "for evaluation of self-cutting behavior" was discharged shortly after being physically restrained and administered with antipsychotic medications at two different times by IM injection. According to the medical record, because the patient posed a "significant risk to the physical and psychological health, and safety of the individual and staff," she was physically restrained using four-point restraints 14 minutes after arriving in the ED. As reflected in check boxes in the EHR, staff recorded in a template that non-pharmacological de-escalation techniques were attempted prior to administering restraints, but staff did not provide specificity on such techniques. A box indicating "assistance of family members" was checked as a technique that was used, but the record indicates that the patient's family was not present and does not indicate that any attempt was made to contact them. Twelve minutes later, the record notes that because the patient was "acutely agitated," staff administered 2 mg Ativan, 50 mg Benadryl, and 5 mg Haldol by IM injection, despite the patient's documented allergy to the latter. As reflected in check boxes in the EHR, staff recorded in a template that non-pharmacological de-escalation techniques were attempted prior to administering the medications, but staff did not provide specificity on such techniques. Two and a half hours later, staff indicated the patient remained "acutely agitated" and, as reflected in check boxes in an EHR template, attempted non-pharmacological de-escalation techniques, without providing any detail about the techniques. The staff then administered by IM injection 25 mg Thorazine (an antipsychotic medication) and 50 mg Benadryl (a sedating antihistamine). Twenty minutes later, after staff noted in the medical record

that the patient was "not currently an acute threat of harm to self or others," the patient was discharged back to the residential treatment center.

WMCHealth's Temporary Closure of Inpatient Psychiatric Beds

25. In March 2020, as requested by Governor Cuomo and DOH, WMCHealth temporarily closed all 40 inpatient psychiatric beds at HealthAlliance-Mary's Avenue so that Health Alliance-Mary's Avenue would have additional capacity to treat COVID-19 patients, although no COVID-19 patients were referred to the facility by DOH. HealthAlliance did not restore these beds in June 2021, as required under the Certificate of Need Law and Prior Approval Review Law, but in June and August 2022, respectively, HealthAlliance filed Prior Approval Review and Certificate of Need applications to perform renovations to restore 20 psychiatric beds and to remove the remaining 20 beds at HealthAlliance-Mary's Avenue. In October 2022, OMH issued approval of the Prior Approval Review application and in June 2023, DOH issued "Early Start of Construction" approval for the psychiatric bed renovation work. In November 2023, DOH issued contingent approval for the latter.

26. HealthAlliance began renovations for non-psychiatric services in August 2020 at HealthAlliance-Mary's Avenue and announced in December 2022 that renovations at the hospital were completed and that it had resumed operations as a "full-service" hospital, except for inpatient psychiatric services.

27. Prior to December 17, 2024, the 40 licensed beds at Health Alliance-Mary's Avenue were non-operational. On December 17, 2024, WMCHealth began operating a 20-bed inpatient psychiatric unit at Health Alliance-Mary's Avenue (composed of 15 dedicated beds plus five "surge" beds, consistent with the operating certificate). WMCHealth has also received approval to begin renovations at WMC-MidHudson to construct a permanent 20-bed psychiatric

unit, to increase the capacity of inpatient psychiatric beds at WMC-MidHudson from 40 to 60, ensuring that 80 combined inpatient beds are ultimately available again at HealthAlliance-Mary's Avenue and WMC-MidHudson.

28. The currently offline psychiatric beds are clearly needed, for the reasons noted below. New York, and the Hudson Valley in particular, are in the midst of a mental health crisis, requiring additional inpatient psychiatric beds to stabilize patients and help them on their path to recovery.

29. The communities that WMCHealth serves have a significant unmet need for mental health services. WMCHealth's 2022–2024 Community Health Needs Assessment and Community Service Plan for HealthAlliance states that a survey of residents in the region identified mental health as the single most significant health issue in Ulster County. The WMCHealth System is one of the few providers of inpatient mental health services in the Hudson Valley, with a total of 205 licensed inpatient psychiatric beds in its network.

30. The "Mid-Hudson Community Health Assessment 2022–2024," which includes WMC-MidHudson and WMC-Valhalla, states that access to mental health providers is the third most important issue in Dutchess County (in which WMC-MidHudson is the only hospital that provides inpatient psychiatric services), behind only access to housing and public transportation. Access to mental health providers is the highest-rated issue in Westchester, where WMC-Valhalla is located. From 2018 to 2022, the percentage of survey respondents who rated their own mental health as significantly "poor" doubled (from 10% to 20%), and the percentage who rated their mental health as "excellent" declined by half (from 50% to 27%).

31. The average daily census for the inpatient psychiatric units at HealthAlliance-Mary's Avenue was approximately 30 from 2015 to 2019, which suggests that the inpatient psychiatric bed need is at least that number.

32. A registered psychiatric nurse who worked at the HealthAlliance-Mary's Avenue inpatient psychiatric unit submitted written testimony to the Attorney General's June 2022 public hearing on access to mental health care that "[t]he closure of our 40-bed psych unit eliminated all in-patient psych beds in Ulster County, forcing the 200,000 residents to seek in-patient care at other locations much further away – we are the only hospital in Ulster County with certified psych beds and our census was consistently at 35 or more beds (or at about 80% of capacity)."

33. The nurse's written testimony also stated that "[w]ith the closure of our unit, local patients who needed in-patient psych treatment were instead referred or transferred to the Poughkeepsie site (about 40 minutes by car). Others were being referred to [WMCHealth] psychiatric units in WMC-Valhalla (about 1 ½ hours by car) or to Bon Secours in Port Jervis (about 1 1/3 hours by car). The closure of the psych units in Kingston was a big problem for our patients and their families. The other facilities with psych beds were much further away, required a lot more travel time, and required them to have access to a car to make the trip to visit their loved ones."

34. A clinical psychiatric technician in the HealthAlliance-Broadway ED testified at the Attorney General's June 2022 mental health hearing that the closure of inpatient psychiatric beds at HealthAlliance-Mary's Avenue "has been horrible for the patients. 85% of the patients I used to see on a regular basis are gone and I have no idea where they are. I'm very worried about them because usually there is not a good ending for these people with severe mental health issues if they are not in some kind of treatment."

35. The psychiatric technician also testified that the closure of inpatient psychiatric beds at HealthAlliance-Mary's Avenue "means patients are spending more time in the ER than they should. It used to be intake, stabilize, and move them on to treatment. Now people are stuck here for days waiting for a bed. We have 4 rooms with beds and 4 spaces in the hallway with psych stretchers and the conditions can be rough. We just are not set up to hold patients for longer periods."

36. The OAG finds that WMCHealth's acts and omissions have violated:

a. the following laws and regulations governing emergency treatment: EMTALA, 42 U.S.C. § 1395dd and regulations at 42 C.F.R. § 489.24; N.Y. Public Health Law § 2805-b; N.Y. Public Health Law § 2803-u; N.Y. Hospital Regulations (10 NYCRR 405 et seq.) (Patients' Rights, 10 NYCRR § 405.7; Admission/Discharge, 10 NYCRR § 405.9; Medical Records, 10 NYCRR § 405.10; and Emergency Services, 10 NYCRR § 405.19).

b. the following laws and regulations governing changes to inpatient psychiatric beds: N.Y. Public Health Law § 2802 and regulations at 10 NYCRR § 401.3(a) and 10 NYCRR § 401.3(e); N.Y. Mental Hygiene Law § 31.23(b)(1) and regulations at N.Y. Mental Hygiene Law 31.16.

37. WMCHealth neither admits nor denies the OAG's findings, Paragraphs 8 through 36 above.

38. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to N.Y. Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of the statutory and regulatory provisions set forth in Paragraphs 1 through 7 and 36 above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

PROSPECTIVE RELIEF

39. This Assurance binds WMCHealth, as well as its principals, officers, successors, and assigns.

40. WMCHealth shall not engage, or attempt to engage, in conduct in violation of any applicable laws and regulations, including but not limited to those identified in Paragraphs 1 through 7 and 36 above, and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in Paragraph 38, in addition to any other appropriate investigation, action, or proceeding.

41. WMCHealth will begin to implement the relief described in Paragraphs 42 through 66 below immediately upon the full execution of this Assurance. The provisions set forth in Paragraphs 42 through 66 (Sections I, II, and III) below apply only to WMC-Valhalla, WMC-MidHudson, and HealthAlliance (the "Applicable WMCHealth Facilities").

I. Reforms to Emergency Department Services

42. Definitions. As used in this Assurance:

a. The terms "Emergency Department" and "ED" refer to emergency departments in general hospitals.

b. "Behavioral health presentation" refers to a mental health or SUD condition, whether or not diagnosed, that caused a person to present to the ED.

43. WMCHealth shall implement uniform, written policies and procedures across the Applicable WMCHealth Facilities containing the requirements of Paragraphs 45 through 60 below (the "Revised Policies and Procedures"). WMCHealth shall submit the Revised

Policies and Procedures to the OAG within one hundred and twenty (120) days of the Effective Date.

44. EHR systems:

a. WMCHealth shall integrate or interoperate its EHR system to ensure that clinical records from other hospitals or campuses within and across WMCHealth are easily accessible in real time. For the avoidance of doubt, the Parties recognize that this obligation does not require that WMCHealth adopt a single EHR across its hospitals or campuses.

b. WMCHealth shall incorporate into its EHR system tools that generate treatment workflows that prompt medical staff to perform and document in its EHR system the actions set forth in Paragraphs 45 through 60 below. Such workflows shall include:

i. required workflows, checklists, or other tools that prompt staff to perform and document safety risk screenings during triage.

ii. notifications to staff regarding necessary precautions through a prominent, persistent banner on a whiteboard or storyboard, or tracking grid. For example, WMCHealth shall implement notifications for patients who, based on clinical judgment, pose a safety risk to the patient's self or others if the patient were to elope ("elopement safety risk"). See Paragraph 48 below.

iii. notifications to staff for relevant orders.

A. Screening and Assessment Protocols

45. Suicide Risk:

a. WMCHealth staff shall screen for suicide and self-harm risk all individuals who are brought to or present to the ED with a behavioral health presentation or who screen positive for behavioral health symptoms during triage using an evidence-based instrument such as the Columbia-Suicide Severity Rating Scale ("C-SSRS").

b. For individuals who are classified as "moderate" or "high" risk of suicide or self-harm in the suicide risk screening, a suicide risk assessment (such as the SAFE-T) shall be conducted by an appropriately qualified and supervised mental health professional trained in assessing suicide and self-harm risk. If non-psychiatrists conduct such assessments, they must have access to a board-certified psychiatrist during the assessment. For individuals classified as "low" risk, a psychiatric consult is recommended by WMCHealth policy, and if it is not ordered, the ED provider shall document clinical decision-making for not ordering the consult and shall address the suicide and/or self-harm risk in the chart.

46. Substance Use Disorder:

a. WMCHealth staff shall screen all individuals with behavioral health presentations for SUD using an evidence-based instrument, such as CAGE for adults or CRAFFT for adolescents.

b. For individuals with a documented active SUD or who appear to have or be at risk for a SUD, and to the extent clinically appropriate, an assessment shall be conducted by a licensed professional who is experienced in working with individuals using substances. The assessment shall include risk of acute

withdrawal (including use of the CIWA-Ar or another evidence-based tool such as OWA or COWS) and risk of accidental overdose post-discharge, as clinically appropriate.

c. For individuals who screen positive for a risk of overdose or of acute withdrawal, an evaluation shall be conducted by a physician, nurse practitioner, or physician's assistant.

d. WMCHealth shall modify its SUD policies as follows:

i. The detox admission policy must explain how a person is "evaluated" and/or identified as being appropriate for admission to the detox program.

ii. The SUD identification and assessment referral policy must explain how screening for withdrawal is performed.

47. Violence Risk:

a. WMCHealth staff shall screen for violence risk all individuals who are brought to or present to the ED with behavioral health presentations, using an add-on to the C-SSRS and/or an evidence-informed tool.

b. WMCHealth staff shall continue to reassess individuals' violence risk throughout their stay in the ED at intervals that are clinically indicated. For avoidance of doubt, this obligation does not require WMCHealth staff to use an assessment tool for reassessment but to recognize that one's violence risk often changes throughout the course of treatment, for example as a result of triggering events.

c. For patients who screen as presenting a risk of violent behavior, and who present with a behavioral health presentation, a WMCHealth staff member

trained in violence risk assessment shall perform a complete violence risk assessment, including review of the individual's self-report; a detailed review of the history of present illness; history from available electronic health records; records, if any, available in the PSYCKES database (in accordance with 10 NYCRR § 405.19(c)(5)(ii)(a)); and, if not present in electronic health records, to the extent clinically appropriate and reasonably available to the staff member, other sources such as police reports, notes from nursing homes and juvenile detention facilities, access to lethal means, and if the patient consents (or if WMCHealth deems overriding the patient's consent appropriate) and if such contact information is available, collateral information from family, friends, and community providers.

d. To the extent clinically appropriate, WMCHealth staff shall implement observation, which may include one-to-one observation if deemed clinically appropriate, for individuals who screen positive for violence risk in the ED.

48. Elopement Safety Risk Screening and Management:

a. WMCHealth staff shall assess all patients who present to the ED for whether such patient poses an elopement safety risk, with a stand-alone elopement safety risk question during triage.

b. Elopement safety risk screening shall be conducted while a patient is being triaged in the ED and as clinically indicated or needed thereafter.

c. In assessing elopement safety risk, WMCHealth staff shall consider the following risk factors, to the extent appropriate based on clinical assessment and judgment:

i. Patients who are mobile.

ii. Patients who require psychiatric evaluation due to chief complaint and/or other behaviors.

iii. Patients with a planned psychiatric admission or who have been determined to need an inpatient psychiatric admission.

iv. Patients without capacity (e.g., poor decision-making skills, altered mental status, or delirium). "Capacity" means the ability to understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of and alternatives to any proposed health care, and to reach an informed decision.

v. Patients with a history of or suspected diagnosis or behavior such as developmental delay, autism spectrum, dementia, cognitive impairment (acute or chronic), or acute psychiatric symptoms.

vi. Patients currently under involuntary or voluntary admission status in a psychiatric hospital, and patients whom WMCHealth staff have determined require involuntary or voluntary psychiatric admission.

vii. Patients transported to the hospital by law enforcement or in detention facilities.

viii. Patients who are visibly impaired, in the clinical judgment of WMCHealth staff.

ix. Patients with a past history of elopement or wandering.

d. If WMCHealth staff determine that elopement safety risk precautions are needed, such precautions shall include at least one of the following measures,

to the extent appropriate based on clinical assessment and judgment:

i. removal of patient's belongings to a separate secure area;

ii. attempt to have a patient remove their clothing and change into designated hospital-issued clothing and non-skid socks, for the purposes of reducing a patient's ability to elope and aiding the ability of security and law enforcement to locate a patient;

iii. assessment and application of an increased level of observation, which may include one-to-one observation by order if needed;

iv. plain language notifications to staff that a patient is an elopement safety risk, through an indication on a whiteboard, storyboard, or tracking grid;

v. if a patient attempts to elope, reassessment and application of an appropriate level of observation, with a new order issued if needed.

e. An elopement event shall trigger activation of a response system that includes immediate notifications to security, providers, and administration.

f. When determining the detail and length of search efforts for a patient who had been assessed as presenting an elopement safety risk, WMCHealth staff shall consider the patient's risk of harm to self or others, ability to care for self, legal commitment status, and capacity.

g. Policies shall clearly establish the procedures staff must follow to promptly determine whether elopements should be reported to outside authorities.

h. If WMCHealth staff become aware that a patient has a history of attempts to elope and/or of being considered an elopement safety risk, that shall be documented in the patient's medical record and shall thereafter produce a prompt in the EHR for

that patient notifying WMCHealth staff of the patient's history as a factor that should be considered in determining whether the patient requires elopement safety risk precautions.

i. Policies and training materials that distinguish "elopement safety risk" from other categories of patients who leave the ED prior to receiving discharge paperwork such as "left against medical advice," "left without being seen," and "left without consent" shall:

   i. state that an elopement safety risk event occurs "when a patient without capacity or who has been determined to need involuntary or voluntary inpatient psychiatric admission goes missing from the ED."

   ii. explain how WMCHealth staff shall determine whether a patient has capacity to make health care decisions and how this must be documented in the medical record.

   iii. describe the steps WMCHealth staff must follow when a patient with capacity leaves prior to receiving discharge instructions.

   iv. require that, for patients whose disposition is "left against medical advice," "left without being seen," or "left without consent," the medical record must document capacity, adequate decision-making skills, and that sufficient counseling or advisement was provided.

j. Policies and training materials shall describe the steps WMCHealth staff must follow when a patient who, in WMCHealth staff's clinical judgment based on the criteria for Elopement Risk Screening and Management, poses an elopement safety risk and leaves prior to receiving discharge instructions.

k. At HealthAlliance and WMC-MidHudson, WMCHealth shall continue to ensure that security guards visualize all entrances and exits to the ED, or use card swipes, alarms, or other technology delaying and notifying egress. At WMC-Valhalla, WMCHealth shall continue to ensure that security guards are stationed at all external doors, and that security guards or other trained personnel prevent egress, as clinically appropriate for patients who present an elopement safety risk. At the Applicable WMCHealth Facilities, a protocol shall be in place to relieve any security guard during breaks with additional personal or technological safeguards.

l. To the extent operationally feasible, WMCHealth shall use its best efforts to investigate or pilot a "waterfall" ED physician attending schedule, such that physicians have overlapping shifts during the busiest times of day.

49. Individuals with Complex Needs:

a. WMCHealth staff shall screen all individuals who are brought to or present to the ED with behavioral health presentations to determine if they are "individuals with complex needs" related to their ability to successfully transition to community-based care following discharge.

b. "Individual with complex needs" shall have the meaning set forth in 14 NYCRR § 590.4(a)(2).

c. When feasible in the determination of WMCHealth staff, WMCHealth staff shall invite outpatient providers and/or care managers working with individuals with complex needs to meet with the patient and collaborate with the ED team (within legal requirements for consent), even when the provider

and/or care manager is not an employee or otherwise affiliated with WMCHealth.

d. WMCHealth staff shall regularly assess whether individuals with complex needs would benefit from development of a care plan, and if so, develop strategies to improve care outside of ED visits (a "care plan") for that individual that will be available to staff in the EHR if the patient returns to the ED. The care plan may list the patient's individual needs and common complaints, challenges for managing the patient's care, medications previously used for the patient, recommended interventions and goals for WMCHealth staff to improve the safety, quality, and consistency of care for the patient in the ED, contact information for other treatment providers for the patient, and proposed further referrals for the patient to receive services outside of the ED, which may include referral to WMCHealth's Case Management Department, community resources, and/or day programs.

50. Level of Care:

a. When deciding whether to admit or discharge from the ED an individual with a behavioral health presentation, to the extent clinically appropriate, WMCHealth staff shall consider existing symptoms and level of risk of harm to self or others based on observation in the ED and the individual's overall clinical history, engagement in care, and availability of existing services in the patient's community. If a physician assessing a patient's behavioral health determines that the patient is at low risk of harm to self or others because the physician believes that the patient is malingering, that information provided

by the patient or collateral sources is not credible, or other factors, despite having an initial presentation suggestive of high risk of suicide, violence, or decompensation, then the bases for that determination must be clearly documented in the medical record.

b. Under the guidance of consulting psychiatrists, WMCHealth staff shall consider an involuntary or emergency psychiatric admission for individuals who meet clinical and legal criteria.

c. WMCHealth staff shall evaluate whether a voluntary inpatient admission would be clinically appropriate for an individual even if the individual does not meet involuntary or emergency admission criteria.

d. If WMCHealth providers decide that voluntary or involuntary inpatient psychiatric admission is appropriate for a patient and there is no available inpatient bed at that hospital, WMCHealth staff, as appropriately assigned, shall search for a bed at another facility. WMCHealth shall implement and/or revise relevant policies and procedures to require documentation of the results of such efforts in the applicable documentation tool used by WMCHealth staff. The search need not be limited to the Applicable WMCHealth Facilities. Hospital staff shall attempt, including communicating with a patient's health insurance plan as needed, to secure a psychiatric inpatient bed for a patient in need. If no bed is available within a reasonable distance from the ED facility, staff shall document in the medical record which facilities they contacted and the outcomes of outreach to such facilities.

e. If WMCHealth staff determine that a voluntary or involuntary inpatient

psychiatric admission is appropriate for a patient, any reassessment of such patients shall involve a psychiatric consultation. In such cases, the examining psychiatrist shall clearly document the basis for any changes to the patient's plan. If a patient who had earlier agreed to a voluntary admission later demands to leave prior to the initiation of admission paperwork, and if WMCHealth makes a clinical determination that such patient could pose a risk of harm to themselves or others if the patient were to leave, WMCHealth staff shall reassess the patient and create a clinically appropriate treatment plan. If WMCHealth determines that the patient is sufficiently stable and does not pose a safety risk upon discharge, WMCHealth shall create a discharge plan that sets forth an appropriate lower level of care.

B. Communication and Collaboration with Non-Hospital Providers and Collaterals

51. For all individuals who are brought to or present to the ED with behavioral health presentations, WMCHealth staff shall make clinically appropriate efforts to perform the following:

a. review the individual's prior psychiatric and medical history, including in the EHR and the PSYCKES database, and, when possible, obtain contact information for outpatient treatment teams and care managers, family, and friends.

b. when assessing individuals who are brought in by the police due to behavioral disturbances in the community or individuals who are involuntarily removed from the community, if the individual consents or if WMCHealth deems overriding the individual's lack of consent to be clinically appropriate, make

at least one effort to obtain collateral information from the individual that initiated the involuntary removal and other sources of information, such as family members and friends, outpatient providers, staff at residential or long-term care programs, health home care managers, mobile crisis teams, schools, child welfare, and/or managed care organization care managers. If staff are unsuccessful in obtaining such information, they shall document reasonable efforts made to obtain such information. WMCHealth's policies shall specify that if a clinician determines that a patient lacks capacity and the patient does not provide consent to contact collateral sources, that consent may be overridden if WMCHealth staff deem it clinically appropriate.

c. WMCHealth staff should not make disposition decisions solely based on behavioral observation in the ED when other information is reasonably available to treating staff, including the information set forth in subsections (a), (b), and (d) of this Paragraph.

d. attempt to identify and contact additional sources of collateral information if the initial source of collateral information is not able to provide sufficient information.

e. document collateral outreach.

52. WMCHealth shall implement a communication mechanism to coordinate care with clinicians at community behavioral health agencies and residential or long-term care programs that provide behavioral health services, such as congregate care facilities, nursing homes, and supportive housing facilities. This communication mechanism shall include a plan for regular communication with community behavioral health agencies and residential

facilities that frequently refer patients to the ED to collaborate on how best to coordinate care and to foster a collaborative relationship between the hospital and the facility.

53. For all individuals with behavioral health presentations, in determining disposition, WMCHealth staff shall document efforts to review all available transfer documentation, including but not limited to emergency medical services pre-hospital care reports, transfer notes from other facilities, referral documentation, and involuntary removal forms, ensuring that, to the extent feasible, all such documentation is uploaded into the medical record, or document when such reviews are not possible and why.

C. Agitated Patients and Use of Restraints

54. WMCHealth shall modify its policies regarding agitated patients and restraints as follows:

a. The policies shall:

i. describe how incidents must be managed in real time to avoid use of restraints and newly prescribed medication (i.e., not part of the patient's existing medication regimen) to treat symptoms of behavioral health presentations, including agitation, whenever possible.

ii. For use of physical restraints, the policy shall:

1) limit use to the extent possible and in accordance with federal and New York requirements, and require within one hour after the initiation of the intervention a face-to-face evaluation of the patient. Staff must document such evaluation in the patient's chart.

2) require at least two staff to be present during the application of restraints.

3) require staff to conduct continuous clinical assessments of the patient.

4) require that the patient be kept on a continuous one-to-one level of observation when restraints are used.

5) mandate that such restraints may be used only by staff trained in federal and New York requirements for use of physical restraints.

iii. For use of newly prescribed medications to treat acute agitation, the policy shall:

1) allow use of only those medications that WMCHealth clinicians deem to be clinically appropriate for the patient's diagnosis.

2) require the prescriber to determine if the patient has the capacity to refuse treatment and to administer medications over objection only if the patient lacks capacity.

3) update the written dosing table available in WMCHealth's policies to include Thorazine, Benadryl, and other medications commonly used to treat symptoms of behavioral health presentations, including agitation.

4) continue to prohibit the use of medications as a chemical restraint, i.e., as a restriction to manage the patient's behavior and not as standard treatment or dosage for a patient's medical or psychiatric condition.

5) continue to require careful monitoring of the effects of medications on the patient and to conduct an expeditious medical examination once the patient is out of the acutely agitated state.

6) advise staff that they should consider limiting the volume of IM medications so as to minimize physical pain and avoid increasing agitation.

b. Documentation in a clinical note for all episodes of restraint and emergency involuntary medication to reduce agitation must include:

   i. documentation of specific steps taken to use, or considered to use, non-pharmacological alternatives to involuntary medication and the rationale for administering the restraint and/or emergency involuntary medication.

   ii. times, including timeline for discontinuation of restraints or emergency involuntary medication to reduce agitation, based on clinical judgment.

c. To the extent clinically appropriate, the temporary effect of medication administered to treat symptoms of behavioral health conditions, including agitation, shall be considered when determining whether a patient's condition has been stabilized and in safety and discharge planning.

d. All WMCHealth clinical staff who work in the ED shall be trained in verbal and other de-escalation techniques at least annually, consistent with the requirements of 42 C.F.R. § 482.13(f). The training shall address:

   i. impact and risks of working with aggressive patients on staff safety and wellness.

   ii. how leadership addresses concerns about the impact and risks of working with aggressive patients.

   iii. what staff need to do if they are injured or in need of other support because of incidents involving aggressive patients.

   iv. the appropriate use of drugs or medication to manage behavior and/or treat agitation, including how staff should assess the need for medication; the

appropriate dosing of medication, particularly when administered intramuscularly; and the effects of the medication.

D. Coordinated Discharge Planning

55. For individuals with complex needs (as defined above in Paragraph 49(b)), WMCHealth staff shall:

a. schedule an appointment for psychiatric aftercare with an identified provider within seven calendar days following discharge.

b. provide a discharge summary detailing the presenting mental health history, hospital course, and other relevant information to the program for a patient who wishes to receive psychiatric aftercare services.

c. document efforts to schedule an appointment for psychiatric aftercare.

d. not merely provide a referral to a walk-in clinic, unless no other alternatives are available, in which case WMCHealth staff shall document why a walk-in clinic was the only available option.

56. WMCHealth shall adopt a policy regarding justice-involved youth with behavioral health presentations that addresses:

a. ED bed placement for juvenile patients who, based on the documented clinical judgment of an appropriate WMCHealth practitioner, cannot be returned to their community placement location, such as a residential treatment program.

b. protocols for holding juvenile patients from detention facilities in its EDs and initiating treatment while locating an available bed, which shall ensure that hospital staff provide ongoing psychiatric and medical care to such patients in consultation with psychiatric consultants, including but not limited to

medication management.

57. WMCHealth shall implement policies and procedures regarding transfer between its facilities of patients needing inpatient mental health and/or inpatient SUD treatment. At a minimum, such policies and procedures shall:

a. establish a protocol for effectuation of transfers between WMCHealth's facilities of patients needing acute inpatient mental health and/or SUD services when such services cannot be provided by the originating facility due to capacity limitations. Such protocol shall designate responsible staff members, required modes of communication, and timeframes for transfer.

b. ensure the provision of appropriate transportation between WMCHealth's facilities for patients needing inpatient mental health and/or SUD services, including medically supervised transportation when clinically indicated, when WMCHealth staff have determined that such a transfer is clinically appropriate for a patient.

E. Pre-Discharge Interventions

58. For individuals with a moderate or high risk of self-harm or suicide, as determined by a suicide risk assessment (see Paragraph 45 above), WMCHealth behavioral health staff shall:

a. implement an evidence-based community suicide safety plan such as the Safety Planning Intervention before discharge.

b. where applicable, share the safety plan with outpatient, residential, or long-term care providers, within legal requirements for consent.

c. use efforts, such as follow-up calls, to ensure linkage to aftercare.

59. For individuals at risk for an opioid overdose, WMCHealth staff shall document efforts to do the following (or document that the patient did not consent or accept such intervention, or document why the following was not necessary):

a. to the extent clinically appropriate, dispense or prescribe naloxone or a similar agent and provide education on how to use it, as well as how to obtain more naloxone in the community.

b. standardize the provision of additional education about harm reduction strategies, such as never using alone, using fentanyl test strips, and information about contaminants by, for example, providing educational pamphlets in the waiting room.

c. for individuals with complex needs, make at least one follow-up call to patients to ensure linkage to aftercare.

60. WMCHealth staff shall, if appropriate to the clinical condition of a patient, offer buprenorphine or long-acting naltrexone to individuals who meet criteria for opioid use disorder, and WMCHealth staff shall assess whether referring such individuals to an outpatient provider that can continue the treatment would be clinically appropriate.

F. Training

61. WMCHealth shall develop a written training protocol regarding the provisions in Paragraphs 45 through 60 above for all WMCHealth clinical staff who work in the ED, including social workers and staff conducting psychiatric screening. WMCHealth shall submit such training materials to the Compliance Administrator for review and confirmation with the terms of this Assurance within one hundred and twenty (120) days of the Effective Date. WMCHealth shall also provide the training materials to the OAG.

a. WMCHealth shall train all WMCHealth clinical staff who work in the ED based on the written materials and in accordance with the written training protocol. All WMCHealth clinical staff who work in the ED shall be trained on the materials within ninety (90) days of Compliance Administrator approval of such materials. Thereafter, new clinical staff who work in the ED will be trained within sixty (60) days of commencing their duties. Training will continue on an annual basis and must be provided to all clinical staff who work in the ED no less than one (1) time per year until three (3) years after the Effective Date. Clinical staff who work in the ED shall be educated and re-trained, if necessary, whenever new policies or procedures are implemented or materially amended.

b. WMCHealth shall train security personnel regarding elopement prevention policies.

c. WMCHealth shall create and maintain records regarding all training conducted pursuant to this Paragraph, including records of staff completion of such training. Such records shall be reviewed by the Compliance Administrator as part of its audits and shall be provided to the OAG no more than thirty (30) days after a demand for such records is made.

II. Inpatient Psychiatric and Substance Use Disorder Beds

62. Subject to timelines and required approvals by OMH, DOH, and the New York State Office of Addiction Services and Supports ("OASAS"), which may be modified by these agencies, for at least three (3) years from the Effective Date, WMCHealth shall operate inpatient psychiatric beds as follows:

a. At HealthAlliance-Mary's Avenue, WMCHealth shall operate a new 20-bed inpatient psychiatric unit, for a total of 20 licensed and operational inpatient psychiatric beds. Up to five of these beds may be allocated as "surge" beds, in which case WMCHealth shall allow these beds to be used for psychiatric inpatients, consistent with the terms of an activation protocol established by WMCHealth with OMH, when the remaining 15 inpatient psychiatric beds reach capacity.

b. At WMC-MidHudson, WMCHealth shall operate a total of 60 licensed and operational inpatient psychiatric beds by the end of construction at that location.

c. At WMC-Valhalla, WMCHealth shall maintain 101 licensed inpatient psychiatric beds, of which 97 shall be operational at all times. The remaining four (4) beds shall be made operational within 48 hours of other inpatient psychiatric beds reaching capacity.

63. Except for already-approved temporary bed closures associated with WMCHealth's approved construction project at WMC-MidHudson, WMCHealth shall not take any of these beds offline or submit any application or plan to any local, state, or federal agency to decertify or take offline any of the beds until three (3) years from the Effective Date, unless it is required to do so by order of a local, state, or federal agency. After three (3) years from the Effective Date, as set forth in Paragraph 62, if WMCHealth wishes to decertify or take any of the beds offline for a regulatory, legal, clinical, financial, or operational reason, prior to filing Certificate of Need and/or Prior Approval Review applications, it shall notify the OAG in writing and provide documentation explaining the

basis for the same, and the Parties shall meet and confer. OAG's consideration of WMCHealth's request shall factor in commitments by other providers in the region to maintain capacity and the financial strain on the affected facility or the WMCHealth System overall. During this period, all licensed beds shall remain operational, except for short-term closures consistent with N.Y. Mental Hygiene Law § 31.16(g)(2).

64. WMCHealth shall make new and meaningful investments in implementing one or more of the following services and shall report annually to the OAG a summary of the investments made:

a. conducting an assessment of the possibility of partnering with community-based providers to deploy peer counselors in its EDs to attempt to assist behavioral health patients with linkages to post-discharge care.

b. making available mental health clinicians to its licensed primary care clinics.

c. expanding addiction treatment services, including methadone treatment, outpatient addiction counseling, and dedicated clinical staffing at HealthAlliance-Mary's Avenue and WMC-MidHudson EDs.

d. putting into place an evidence-based procedure for assigning staff to make at least two follow-up calls to patients who screen for moderate or high risk of self-harm or suicide and are discharged from the ED as follows:

i. The first attempt at contact to be made within ten days of discharge. If the patient does not respond to the call, staff should make at least two more attempts at contact within one week.

ii. During each call with a patient, staff should assess current risk of self-harm or violence, review and revise the safety plan as needed, and support

treatment engagement.

iii. Staff should continue calls with patients who are not engaged in community-based services on a weekly basis until the patient is engaged in regular treatment or withdraws from contact.

iv. Making referrals for eligible patients with complex needs who are not enrolled in care management to an intensive care management provider such as Health Home Plus for AIDS/HIV population, an OMH Designated Specialty Mental Health Care Management Agency, or Health Homes Serving Children who can meet the patient prior to their leaving the ED, or else document why a referral was not possible.

e. outreach to the community regarding available behavioral health services in the WMCHealth System.

65. WMCHealth shall develop policies and procedures for evaluating and triaging patients from the HealthAlliance-Mary's Avenue ED into medical-surgical beds as permitted by the waiver WMCHealth has obtained from OASAS for this purpose, or, if appropriate, for transferring such patients to inpatient SUD treatment beds at WMC-MidHudson.

III. Oversight by Compliance Administrator

66. Within thirty (30) days of the Effective Date, WMCHealth will designate a WMCHealth employee or consultant, reasonably approved by the OAG, with health care management experience to serve as a compliance administrator (the "Compliance Administrator") to submit to OAG bi-annual reports detailing WMCHealth's compliance with the requirements set forth in this Assurance, Paragraphs 42 through 65 (each, a "Compliance Report"). The first such Compliance Report shall be submitted to the OAG

three (3) months after WMCHealth staff complete the training described above in Paragraph 61. Thereafter, the Compliance Administrator shall submit Compliance Reports every six (6) months, continuing until it has submitted a total of six (6) Compliance Reports, subject to the provisions of subparagraph (c) below. In any case where the circumstances warrant, the OAG may require WMCHealth to file an interim report of compliance upon thirty (30) days' notice. In assessing compliance, the Compliance Administrator may take into account differences between WMCHealth facilities. All Compliance Reports shall be kept confidential unless a court of competent jurisdiction orders disclosure pursuant to the New York State Freedom of Information Law, N.Y. Public Officers Law Art. 6.

a. The Compliance Reports shall include, but not be limited to:

   i. analysis of a randomly selected representative sample of ten (10) patient records from each of the three Applicable WMCHealth Facilities (WMC-Valhalla, WMC-MidHudson, and HealthAlliance-Mary's Avenue) of ED patients with behavioral health presentations who screened as being at safety risk of elopement or who, after being deemed a safety risk, eloped, to assess compliance with revised policies, including revised elopement safety risk screening and management policies, as described above in Paragraph 48. The Compliance Administrator's review shall include examination of appropriate risk assessment and implementation of appropriate precautionary interventions. If there are fewer than ten (10) applicable cases at each Applicable WMCHealth Facility, the Compliance Administrator shall review all of the qualifying cases and note that limitation in the applicable Compliance Report to OAG.

   ii. analysis of a randomly selected representative sample of ten (10) patient records

from each Applicable WMCHealth Facility of ED patients with behavioral health presentations who "left against medical advice," to assess compliance with revised policies, including revised elopement safety risk screening and management policies, as described above in Paragraph 48. A patient who "left against medical advice" is a patient who chose to leave the ED before the patient's medical provider recommended discharge and who provided informed consent acknowledging the potential risks of leaving. If there are fewer than ten (10) applicable cases at each Applicable WMCHealth Facility, the Compliance Administrator shall review all of the qualifying cases and note that limitation in the applicable Compliance Report to OAG.

iii. analysis of a randomly selected representative sample of ten (10) medical records of children under 18 years of age from each Applicable WMCHealth Facility who were administered medication to manage behavior and/or treat agitation in the ED, to assess compliance with revised policies regarding agitated patients and restraints, as described above in Paragraph 54. The completeness, accuracy, and consistency of the record shall be considered, including any observation notes and documentation of attempts to deescalate the patient. If there are fewer than ten (10) applicable cases at each Applicable WMCHealth Facility, the Compliance Administrator shall review all of the qualifying cases and note that limitation in the applicable Compliance Report to OAG.

iv. the randomly selected sample of medical records in one category under this Paragraph 66 may overlap with the sample of medical records in another

category, provided that a minimum of 45 medical records in total is reviewed ("Aggregate Minimum"), including a minimum of 15 medical records from each Applicable WMCHealth Facility ("Facility Minimum"), provided there is a sufficient number of qualifying cases at that WMCHealth Facility to meet the Facility Minimum. If there is not a sufficient number of qualifying cases at a WMCHealth Facility to meet the Facility Minimum, then the Compliance Administrator may select medical records from other WMCHealth Facilities to satisfy the Aggregate Minimum.

v. analysis of data regarding ED services for patients with behavioral health presentations, including: average daily census; length of stay; emergency medication usage and use of medication to manage behavior and/or treat agitation of children; use of restraints; patient flow/timeliness; recidivism; patients who eloped (after being deemed to be an elopement safety risk), walked out of, or left the ED against medical advice; and other metrics deemed relevant by the Compliance Administrator.

b. If, in the Compliance Reports described in this Paragraph, the Compliance Administrator or OAG concludes that WMCHealth is not compliant with the terms of this Assurance as set forth in Paragraphs 42 through 65 above, WMCHealth will create a written plan of corrective action, which it will provide within thirty (30) days to the Compliance Administrator and the OAG.

c. Within ninety (90) days from submission of the fourth Compliance Report, the Compliance Administrator's role shall cease to function if, after the Compliance Administrator has submitted at least (4) four Compliance Reports to the OAG,

WMCHealth makes a showing to the OAG, including through the Compliance Reports, that:

i. the medical records reviewed by the Compliance Administrator are in substantial compliance with revised policies regarding elopement screening and management and revised policies regarding agitated patients and restraints;

ii. WMCHealth is in substantial compliance with all other terms of this Assurance, with substantial compliance defined as a level of compliance with the requirements of the Assurance such that any identified deficiencies pose no greater risk to public health or safety than the potential for causing minimal harm; and

iii. the OAG agrees that WMCHealth is in substantial compliance with the terms of this Assurance.

d. If, after the receipt of the fourth Compliance Report, the OAG determines that WMCHealth is not in substantial compliance with the terms of this Assurance as described in subparagraph (c) above, the Compliance Administrator will continue to function and the OAG shall produce a written report setting forth WMCHealth's alleged substantial non-compliance with the terms of this Assurance and proposed steps for WMCHealth to come into substantial compliance. Following such OAG report, WMCHealth, in consultation with OAG, shall develop a plan of corrective action to achieve substantial compliance with the terms of this Assurance. In the event the Compliance Administrator continues to serve pursuant to the provisions of this Paragraph following the submission of the fourth Compliance Report, the

Compliance Administrator's role shall terminate upon the conclusion of a reporting cycle after which OAG deems that WMCHealth is in substantial compliance with the terms of this Assurance as described in subparagraph (c) above. Such termination shall occur no later than ninety (90) days after submission of the applicable Compliance Report to OAG; provided, however, that in no event shall the Compliance Administrator's role and the term of the Assurance continue for more than five (5) years past the Effective Date.

General Provisions

67. Acceptance of this Assurance by the OAG is not an approval or endorsement by OAG of any of WMCHealth's policies practices or procedures, and WMCHealth shall make no representation to the contrary.

68. In the event that WMCHealth reasonably believes that the performance of its obligations under any provision of this Assurance would conflict with any federal or state law or regulation that may be enacted or adopted after the Effective Date of this Assurance such that compliance with both this Assurance and such provision of law or regulation is not possible, WMCHealth shall notify the OAG promptly and the Parties shall meet and confer at their earliest convenience to attempt to resolve such alleged conflict.

69. WMCHealth expressly agrees and acknowledges that a default in the performance of any obligation under this Assurance is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in Paragraph 38, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in Paragraph 36, pursuant to N.Y. Executive Law § 63(15).

Ongoing Cooperation

70. WMCHealth agrees to cooperate with all ongoing requests by the OAG for information related to this investigation and to ensure compliance with this Assurance.

Penalties, Fees, and/or Costs

71. WMCHealth shall pay to the State of New York $400,000 in penalties, fees, and/or costs. Payment shall be made in full within one hundred eighty (180) days of the Effective Date of this Assurance. Payments shall be made in accordance with any other instructions provided by an OAG representative and shall reference Assurance No. 24-013.

72. The Parties agree that it would be difficult to value the damages caused by default in the performance of any obligation under this Paragraph, and therefore agree that WMCHealth shall pay to the State of New York a stipulated penalty of $10,000 for repeated, material defaults in the performance of any obligation under this Paragraph occurring after the Effective Date of the Assurance. In the event that a stipulated penalty is issued, OAG shall delineate at which WMCHealth facility or campus the default(s) occurred, so that WMCHealth may appropriately rectify and account for the default(s).

MISCELLANEOUS

Subsequent Proceedings

73. WMCHealth expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to Paragraph 79 below, and agrees and acknowledges that in such event:

a. any statute of limitations or other time-related defenses available at the time of the Effective Date of this Assurance shall be tolled;

b. the OAG may use statements, documents, or other materials produced or provided by WMCHealth prior to or after the Effective Date of this Assurance;

c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and WMCHealth irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue; and

d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to N.Y. Executive Law § 63(15).

74. If a court of competent jurisdiction determines that WMCHealth has materially violated this Assurance, WMCHealth shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance

75. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of WMCHealth. WMCHealth shall include in any such successor, assignment, or transfer agreement a provision that binds the successor, assignee, or transferee to the terms of this Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG, which shall not be unreasonably withheld.

76. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

77. Any failure by the OAG to insist upon the strict performance by WMCHealth of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter

to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by WMCHealth.

Communications

78. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 24-013, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to WMCHealth, to:

David Lubarsky, M.D.
President and Chief Executive Officer
Executive Offices
Ambulatory Care Pavilion
100 Woods Road
Valhalla, New York 10595
with copy to: Office of Legal Affairs, Attn: General Counsel at
WMCLegalNotices@wmchealth.org

or in his absence, to the person holding the title of President and Chief Executive Officer, WMCHealth.

If to the OAG, to: Michael D. Reisman and Gina Bull, or in their absence, to the person holding the title of Bureau Chief, Health Care Bureau.

Representations and Warranties

79. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by WMCHealth and their counsel and the OAG's own factual investigation as set forth in Findings, Paragraphs 8 through 36 above. WMCHealth represents and warrants that neither it nor its counsel has made any material

representations to the OAG that are inaccurate or misleading. If any material representations by WMCHealth or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

80. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by WMCHealth in agreeing to this Assurance.

81. WMCHealth represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. WMCHealth further represents and warrants that WMCHealth, by David Lubarsky, M.D., as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Board of Directors of WMC and HealthAlliance, respectively.

82. The obligations of this Assurance set forth in Paragraphs 42 through 61, and 64 through 65 shall expire at the conclusion of the five (5) year period after the Effective Date.

General Principles

83. Unless a term limit for compliance is otherwise specified within this Assurance, WMCHealth's obligations under this Assurance are enduring. Nothing in this Assurance shall relieve WMCHealth of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

84. WMCHealth shall not in any manner discriminate or retaliate against any of its employees or staff members, including but not limited to employees or staff members who cooperated or are perceived to have cooperated with the investigation of this matter or any future investigation related to enforcing this agreement.

85. WMCHealth agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, the propriety of this Assurance. This Paragraph shall not: (i) preclude WMCHealth from acknowledging that, by entering this Assurance, it did not admit to the OAG's Findings and entered the Assurance to avoid the time and expense of litigation; (ii) affect WMCHealth's testimonial obligations; or (iii) affect WMCHealth's right to take legal or factual positions in response to, or defense of, any inquiry, audit, litigation, or other proceedings, including, without limitation, any inquiry or action brought by an individual, entity, or governmental authority.

86. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that WMCHealth violates this Assurance after its Effective Date.

87. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

88. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

89. WMCHealth acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

90. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

91. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

92. This Assurance may be executed in multiple counterparts by the Parties

hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the Effective Date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

93. The Effective Date of this Assurance shall be April 21, 2025.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: [redacted]
Michael D. Reisman
Assistant Attorney General
Health Care Bureau

Westchester County Health Care Corporation
Health

By: [redacted]
D
President and Chief Executive Officer

STATE OF New York)
) ss.:
COUNTY OF Westchester)

On the 14th day of April in the year 2025 before me personally came David Lubarsky, M.D. to me known, who, being by me duly sworn, did depose and say that he resides in White Plains NY that he is the President and Chief Executive Officer of Westchester County Health Care Corporation and HealthAlliance, Inc., the corporation described in and which

executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his name thereto by like authority.

Sworn to before me this
14th day of April, 2025

[redacted]
NOTARY PUBLIC

AnnMarie Wymbs
Notary Public, State of New York
Registration #01WY6331887
Qualified In Westchester County
Commission Expires Oct. 19, 2027