

**MEMORANDUM OF UNDERSTANDING BETWEEN FULTON COUNTY,
GRADY MEMORIAL HOSPITAL CORPORATION D/B/A GRADY
HEALTH SYSTEM, ATLANTA/FULTON COUNTY PREARREST
DIVERSION INITIATIVE, INC., AND THE GEORGIA HOUSING
FINANCE AND AUTHORITY ON BEHALF OF THE GEORGIA
DEPARTMENT OF COMMUNITY AFFAIRS FOR INFORMATION-
SHARING**

I. Agreement Terms

A. **Parties.** The parties to this Memorandum of Understanding (“MOU”) are Fulton County, Georgia, a political subdivision of the State of Georgia (hereinafter “Fulton County”), Grady Memorial Hospital Corporation d/b/a Grady Health System, (hereinafter “Grady” or “Grady Health System”), Atlanta/Fulton County Prearrest Diversion Initiative, Inc. (hereinafter “Atlanta PAD”), and the Georgia Housing Finance and Authority (“GHFA”) on behalf of the Georgia Department of Community Affairs (“DCA”) (hereinafter, each a “Member” and jointly, the “Members”).

B. **Purpose of Data Sharing.** The parties, as Members, are entering into this MOU, and each Member is granting the Members access to the Data (defined in section I.D., below), for the following purposes (the “Purpose”): For the Members to divert persons with substance use and/or behavioral health challenges from the criminal justice system when appropriate and ensure that they receive access to care and needed support and services when they are involved in the criminal justice system. The Members, by execution of this MOU, desire to engage in responsible data sharing to accomplish the Goals (as set forth below) of this MOU in order to ensure that individuals receive the best services to meet their needs as they navigate through the legal system.

C. **Goals.**

The objectives of the Members under this MOU are as follows:

1. Develop collaborative approaches to information sharing across behavioral health and criminal justice systems;
2. Improve information-sharing, communication, collaboration, and develop data to track progress of the above stated goal;
3. Reduce the number of people with substance use and/or behavioral health challenges who are incarcerated;
4. Reduce the length of incarceration of those with substance abuse and/or behavioral health challenges;
5. Increase connections to community-based services and supports; and
6. Reduce recidivism of people involved in the criminal justice system with substance abuse and/or behavioral health challenges.

7. Improve care-coordination for people with substance use and/or behavioral health challenges, including tracking service and program involvement.
8. Conduct research, data analysis and community reporting, including reporting to Fulton County leadership regarding policy decisions.

D. **Description of Data.** "Data" includes all types of information that the Members will share as a participant in this MOU and shall, at minimum include the following information for each patient: first and last name, gender, social security number, date of birth, each agency patient has visited or made contact with and contact information for such agency, and name and contact information for patient's case-manager or care coordinator at each agency. Data may also include the patient's race, ethnicity, veteran status, housing status, employment status, address, and phone number as well as information related to the patient's care or treatment; medical and pharmacy records; information related to patient's application for, enrollment in, and eligibility for health care and social services; information about the benefits the patient will receive or may be eligible to receive; and claims that seek payment for these benefits; and other information necessary to coordinate patient care, services and treatment.

E. **Term.** This MOU commences upon full execution by the authorized representatives of each Member (the "Effective Date") and shall automatically renew annually for five (5) additional one (1) year terms (each a "Renewal Term") on the anniversary of the Effective Date so as long as the Members retain the Data and a Member has not withdrawn its participation in the MOU after providing 30 days written notice to the other Members.

II. **Data Provider**

A. **License to Use Data.** Each Member hereby grants to all other Members a limited, non-exclusive, non-transferable, and revocable license to access, copy, and use the Data (the "Data") only for the Purpose and Goals of this MOU.

B. Data Availability. A small but significant population of individuals frequently utilize behavioral health and housing services in addition to having high rates of criminal justice involvement. Oftentimes repeated arrests and bookings are related to a lack of behavioral health and housing resources. Accordingly, it shall be the responsibility of all participating Members to disseminate a Release of Information (“ROI”) at their respective intakes (Fulton County Jail (the “Jail”), Grady Hospital, or PAD) to Eligible Individuals, i.e. individuals who are potentially involved in the criminal justice system, as well as all inmates at the Jail, in substantially the form of the ROI is attached hereto as Exhibit “A.” Upon a Member’s receipt of a signed and authorized ROI, it shall be uploaded into a HIPAA-compliant, confidentially-protected, third-party Case Management Technology Platform (the “Platform”) obtained and maintained by the Fulton County Department of Behavioral Health and Development Disabilities (“FCDBHDD”). Access to this Platform will be granted to only those entities authorized under the signed ROI and who are also Members to this MOU. The Platform shall only be accessed via confidential password, which will be disseminated to each Member of this MOU by the third-party developer of the Platform. If an Eligible Individual has not authorized the sharing of Data with a Member pursuant to that Eligible Individual’s ROI, that Member shall not have access to that individual’s information nor shall that Member, through the Platform, be able to verify the existence of such ROI. Upon upload of the ROI into the Platform, the individual processing the upload of the ROI shall certify access to only those Members who are authorized under the ROI.

C. Process

1. Members shall take all actions reasonably necessary to ensure that the Data remains strictly confidential and is not disclosed to, seen, used or obtained by any person or entity except in accordance with the terms of this MOU. Such information includes but is not limited to materials that describe or identify an Eligible Individual or other information that could be used to identify an Eligible Individual.
2. No information that is confidential or otherwise protected from disclosure shall be disclosed or disseminated without an ROI, signed and authorized by the Eligible Individual to whom the right of nondisclosure applies.
3. Members’ employees shall be granted access to the Data as authorized users if the respective Member deems access by such employees to be necessary and appropriate for the Purpose of this MOU. Members will ensure that all authorized users who handle the Data under this MOU have received sufficient training and instruction on how to securely handle and process Data in line with the requirements of the MOU and applicable State and Federal laws, and have signed authorized user agreements regarding use of the Data.

4. All Data obtained, learned, or developed in connection with the ROI by any of the Members shall be deemed confidential in accordance with all federal and State of Georgia laws and regulations, and shall not be disclosed to any person, organization, agency, or other entity except as collectively agreed to by all the Members as provided in this MOU. Each Member shall comply with all federal, state, and local laws concerning the confidentiality of all Data that is deemed confidential under such laws or regulations. As required by law, the Members shall comply with the Georgia Open Records Act.
5. Data Use Agreement. Each member shall be required to enter into a Data Use Agreement with Grady Health System, in substantially the form attached hereto as Exhibit "B".
6. Data sharing between the Members, regarding protected health information ("PHI") of specific Eligible Individuals under this MOU shall be pre-conditioned upon and governed by the existence of a signed and authorized ROI, which may restrict certain access by a Member.
7. Data sharing between the Members pursuant to the ROI shall be limited to the authorizations indicated therein. No Member to this MOU will disseminate or disclose information provided by another Member to any organization or individual without express authorization pursuant to the ROI;
8. No ROI shall be valid or used by any Member if the signed ROI does not authorize disclosure to the FCDBHDD;
9. Should any signatory or authorizing party of a ROI seek to revoke any or all authorizations under the ROI, the signatory or authorizing party shall submit a signed and dated written request for revocation to the Director of FCDBHDD. The Director of FCDBHDD will promptly notify all previously authorized entities under the ROI of the revocation;
10. In the absence of a prior written request for revocation of the ROI by the signatory or authorizing party, the ROI shall be deemed expired and invalidated one (1) year after the date of execution of the ROI by the Eligible Individual.

III. Data Recipient Roles and Responsibilities

- A. **Confidentiality Obligation and Security.** A receiving Member of the Data will hold the Data in confidence. All authorized users shall be required to use appropriate safeguards in compliance with the HIPAA Security Rule to prevent the use or disclosure of PHI other than as provided by this MOU.
- B. **Limitation on Use.** The receiving Member will use the Data only in accordance with the terms of this MOU and solely for the Purpose and Goals.
- C. **Data Protection.** Each Member will implement appropriate safeguards to prevent

unauthorized access to, use of, or disclosure of the Data.

D. Notice of Disclosure

1. **Notice.** The receiving Member will immediately notify the disclosing Member in writing upon discovery of any:
 - a. unauthorized disclosure of the Data, or loss, unauthorized possession, use, or knowledge of the Data.
2. **Cooperation.** The receiving Member will cooperate with the disclosing Member in any reasonable effort by the disclosing Member to regain possession of the Data and to prevent its further unauthorized use or disclosure.

E. Return or Destruction of Data and Property. On the expiration or termination of this MOU, or on a Member's termination of its involvement in the MOU, or at a Member's request, the Members shall promptly:

1. return the Data and any other property, information, and documents, including confidential information, provided by that Member;
2. destroy all copies it made of Data and any other property, information, and documents, including confidential information; and
3. if requested by a Member, deliver to the Member a certificate confirming the Member's compliance with the return or destruction obligation under this section.

F. Permitted Disclosure. The receiving Member may disclose Data:

1. if and to the extent that the disclosing Member consents in writing to such disclosure; or
2. to the receiving Member's officers, directors, employees, affiliates, or representatives who:
 - a. have a need to know the Data,
 - b. have been informed of the confidentiality obligations of this MOU, and
 - c. agree to be bound by the terms of this MOU.

G. Required Disclosure

1. **Notice of Disclosure.** The receiving Member may disclose Data if it is compelled by law to disclose any Data if the receiving Member:
 - a. provides the disclosing Member with prompt written notice so that the disclosing Member may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this MOU; and

- b. cooperates with the disclosing Member to obtain a protective order or another appropriate remedy.
- 2. **Limited Disclosure.** If the Member cannot obtain a protective order, another appropriate remedy, or otherwise fails to quash the legal process requiring disclosure, the receiving Member may disclose the requested Data only to the extent necessary to satisfy the request.

IV. Representations

- 1. **Mutual Representations.** By executing this Agreement, each Member represents and warrants to the other Members the following:
 - a. **No Restriction.** It is not under any restriction or obligation that could affect the performance of its obligations under this agreement.
 - b. **No Violation, Breach, or Conflict.** Its execution, delivery, and performance of this MOU and the other documents to which it is a party, and the consummation of the transactions contemplated in this MOU, shall not:
 - 1. result in its violation or breach of any applicable law or court or regulatory order; or
 - 2. except as listed in its Disclosure Schedule, require the consent of any person, or conflict with, result in a violation or breach of, constitute a default under, or result in the acceleration of any material contract.

VI. Member's Representations

- A. **Ownership.** Each Member retains ownership of its Data. The Member who owns the Data has the exclusive right to grant to the other Members the authority to use the Data, subject to revocation by the Eligible Individual.
- B. **No Prior Grant or Transfer.** Member has not:
 - 1. granted and is not obligated to grant any license to any third party, other than the Platform developer, that would conflict with the license grant under this MOU; or
 - 2. assigned or exclusively licensed, and is not obligated to assign or exclusively license, use of the Data to any third party that would conflict with the license grant under this MOU.

VII. **No Warranty**

A. **Provided "As Is."** The Data is provided "as is."

B. **No Warranty of Accuracy or Completeness.** No Member makes any warranty as to the accuracy or completeness of the Data.

VIII. **Intellectual Property Ownership**

A. **No License to Existing Intellectual Property.** Except for any intellectual property rights included in the grant of use of the Data, the Members hereby acknowledge that this MOU does not constitute a grant by any Member to any other Member of any license or right to any Member's intellectual property existing as of the Effective Date of this MOU or developed subsequently thereto.

B. **Ownership of Developed Intellectual Property.** If any Member develops any new intellectual property in connection with this MOU, the Members shall enter into a separate definitive agreement regarding the ownership of that new intellectual property.

1. **Use of Name.** No Member may use another Member's name, logos, trademarks, or other marks without that Member's written consent.

2. **Assignment.** No Member may assign this MOU or any of its rights or obligations under this MOU without the other Members' written consent.

IX. **Rights and Remedies**

A. **Termination on Notice.** Any Member may terminate its involvement in this MOU for any reason upon 30 days' written notice to the other Members.

B. **Termination for Material Breach.** Each Member may terminate its involvement in this MOU with immediate effect by delivering notice of the termination to the other Members, if:

1. the other Members fail to perform, have made or make any failures in, or otherwise materially breaches, any of its obligations, covenants, or representations under this MOU; and
2. the failure, inaccuracy, or breach continues for a period of fifteen (15) days after the injured Member delivers notice to the breaching Member or Members reasonably detailing the breach.

C. **Termination for Insolvency.** If either Member becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other Members may terminate this MOU with immediate effect.

X. **Agreement Interpretation.** This MOU, together with all attachments, schedules, exhibits, and other documents that are referenced in this MOU, represent the final expression of the Members' intent relating to the subject matter of this MOU; contain all the terms the parties agreed to relating to the subject matter; and replace all of the Members' previous discussions, understandings, and agreements relating to the subject matter of this MOU. Any ambiguities in this MOU shall be resolved in a manner consistent with applicable state and federal laws regarding privacy, security, and confidentiality, including but not limited to HIPAA and the HIPAA Regulations.

XI. **Notices**

A. Method and Receipt of Notice. The Members will give all notices and communications among the Members in writing by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, or (iii) first-class registered or certified mail, postage prepaid to the address set forth below:

If to Fulton County:

With a copy to:

If to Grady Health System:

With a copy to:

If to Atlanta PAD:

Atlanta/Fulton County Prearrest Diversion Initiative, Inc.

Attn: Moki Macias

236 Forsyth Street, SW, Suite 200

Atlanta, Georgia 30303

With a copy to:

If to GHFA/DCA:

With a copy to:

Any notice given under this MOU will be effective upon

1. the other Member's receipt of it; or
2. if mailed, the earlier of the other Member's receipt of it or the fifth

business day after mailing it.

- XII. **Governing Law.** This MOU will be governed, construed, and enforced in accordance with the laws of the State of Georgia, without regard to its conflict of laws and any lawsuit regarding this MOU or the subject matter thereof shall be in the state and federal courts located within Fulton County, Georgia and by executing this MOU each Member consents to the jurisdiction and venue of said courts.
- XIII. **Severability.** If any part of this MOU is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.
- XIV. **Waiver.** The failure or neglect by a Member to enforce any of rights under this MOU will not be deemed to be a waiver of that Member's rights. Members shall not be responsible or liable for the actions of other members, and Members shall retain all defenses and immunities otherwise available to them.
- XV. **No Third-Party Beneficiaries.** Unless explicitly stated otherwise elsewhere in this MOU, no person, including an Eligible Individual, or entity other than the Members themselves has any rights or remedies under this MOU.
- XVI. **Amendments.** This MOU may be modified and/or amended only as mutually agreed upon in writing and signed by the authorized representatives of the Members. It may not be altered, modified, rescinded or extended orally.
- XVII. **Complete Agreement.** This MOU constitutes the complete agreement between the Members hereto with respect to the subject matter hereof and shall continue in effect unless modified, amended, or terminated.
- XVII. **Signatories:** Each undersigned Member certifies that he or she is authorized to enter into this MOU on behalf of their respective organization.

IN WITNESS WHEREOF, the parties hereto have executed this MOU through their duly authorized officers this ____ day of _____, 2022.

[Signatures on Following Page]

FULTON COUNTY, GEORGIA

Robert L. Pitts, Chairman
Fulton County Board of Commissioners

Attest:

Tonya R. Grier
Clerk to the Commission

Approved as to Content:

LaTrina R. Foster, Director
Department of Behavioral Health
and Developmental Disabilities

Approved as to Form:

Y. Soo Jo, County Attorney

GRADY MEMORIAL HOSPITAL CORPORATION
d/b/a GRADY HEALTH SYSTEMS

ATLANTA/FULTON COUNTY
PREARREST DIVISION INITIATIVE, INC.

GEORGIA HOUSING FINANCE
AUTHORITY on behalf of the GEORGIA
DEPARTMENT OF COMMUNITY AFFAIRS

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