

# THE EPSTEIN LAW FIRM

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June 26, 2018

Mr. Richard Raimond  
Community Care of North Carolina  
*delivered via email to rraimond@communitycarenc.org*

Mr. Seth Terndrup  
Community Care of Southern Piedmont  
*delivered via email to sethterndrup@ccofsp.com*

Re: Proposed Changes to Alliance Agreement

Mr. Raimond and Mr. Terndrup,

Below are some suggested edits to the June 21, 2018, draft of the Alliance Agreement (“Agreement”). I am submitting these proposed edits on behalf of my clients, Community Care of Western North Carolina, Community Care of the Sandhills, and Community Care of Wake and Johnston Counties.

I appreciate your willingness to consider these suggested edits and would be happy to schedule an additional call to discuss these issues.

My clients view the proposed change concerning proxy voting as being the most important proposed change. The additional edits, listed below, are intended only to strengthen the Agreement.

## **Proxy Voting**

My clients propose that Alliance Members be able to vote by proxy. To achieve this, my clients propose that Section V.C.8. be edited to read (change in bold):

“8. Voting. Except as otherwise provided in this Agreement, and so long as a quorum is present when the vote is taken, the vote of a supermajority two-thirds (2/3) of Alliance Members shall constitute the act of the Alliance. Notwithstanding the presence of both a primary and alternate representative at any given meeting, each Alliance Member shall have only one (1) vote to be exercised by the primary representative or, in the absence of the primary representative, his or her alternate. **If both the primary representative and his or her alternate are unable to cast**

**a vote due to their absence, the Alliance Member may designate a proxy and such proxy shall be allowed to cast one (1) vote on behalf of the primary representative.”**

**Additional Proposed Edits**

1. We propose changing the first two sentences of Section XIX.A. to read: “All disputes, controversies, or claims among any or between Alliance Members, of any kind, arising from this Agreement or any work performed under this Agreement (a “Dispute”), shall be submitted for resolution according to the terms of this Agreement prior to the Alliance Members involved in the Dispute pursuing litigation or any other dispute-resolution option. The Alliance Member bringing forward the Dispute shall commence the dispute-resolution process by providing the all other Alliance Members with written notice of the Dispute.”

We believe this will clarify that the dispute-resolution process is mandatory, not optional.

2. We recommend removing Section XVIII.D. since the substance of this section is covered in detail earlier in the Agreement.
3. We recommend using a consistent spelling for “payor” and “payer”.
4. We recommend changing Section V.C.10. to read “. . . of the meeting. This individual may be . . .” This recommendation is only an attempt to avoid the word “secretary” in order to avoid any indication that the Council will be electing a Secretary as an officer.
5. We recommend changing Section V.C.11. to read “. . . is signed by all Alliance Members. Such written consent may be executed in multiple parts so long as the signature of every Alliance Member is recorded.” This edit is an effort to avoid a requirement that each Alliance Member sign the same document.
6. We recommend changing Article VIII to read “. . . under the State Plan. Such Network boundaries are not binding on the Alliance as to Alliance work going forward. These boundaries shall constitute a starting point only and the Alliance shall collectively determine how . . .” This edit is proposed simply to strengthen the statement that the boundaries are not binding on the Alliance. It is not intended to change any substance.
7. We recommend changing Section XII.G. to read “. . . the performance of Alliance work proximately cause loss or injury to a third party, that Alliance Member alone shall be liable to the third party; and the Alliance Member proximately causing the third party loss . . .” This edit is suggested to try to avoid a situation in which a liable Alliance Member could try to avoid indemnification by arguing that an “omission” by the other Alliance Members “result[ed]” in an injury. We believe the proximate-causation language will help protect the Members whose “omission” may be only a remote cause of the injury to the third party.

8. We recommend editing Article XVII so that the last sentence reads: “. . . the parties agree that those Framework Agreements are terminated.” This is just an effort to clarify that the old agreements are absolutely terminated.
9. We recommend searching for the term “Interested Third Parties” in the Agreement and replacing it as necessary. It appears that the new draft intends to replace this term with the term “Customer”.
10. We recommend editing Section XVII to avoid the use of “Director” and “director”.
11. We recommend editing the penultimate WHEREAS clause to include an “and” at the end. It would then be consistent with the other WHEREAS clauses.

Again, we appreciate your willingness to consider these edits. Please let me know if you need any additional detail or explanation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Drew Nelson', with a stylized, cursive script.

Drew Nelson