

**AMENDMENT NO. 1
TO COUNTY OF MONTEREY STANDARD AGREEMENT
BY AND BETWEEN
COUNTY OF MONTEREY AND KEITH VANDEVERE, ATTORNEY-AT-LAW**

THIS AMENDMENT NO. 1 is made to the AGREEMENT for the provision of hearing officer services in certification review hearings by and between **KEITH VANDEVERE, ATTORNEY-AT-LAW** hereinafter "CONTRACTOR", and the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County".

WHEREAS, the County and CONTRACTOR wish to amend the AGREEMENT to increase the total amount of the AGREEMENT and revise the Scope of Services/Payment Provisions and the Business Associate Agreement.

NOW THEREFORE, the County and CONTRACTOR hereby agree to amend the AGREEMENT in the following manner:

1. EXHIBIT A: SCOPE OF SERVICES/PAYMENT PROVISIONS is replaced by EXHIBIT A-1: SCOPE OF SERVICES/PAYMENT PROVISIONS. All references in the Agreement to EXHIBIT A shall be construed to refer to EXHIBIT A-1.
2. EXHIBIT D: BUSINESS ASSOCIATE AGREEMENT is replaced by EXHIBIT D-1: BUSINESS ASSOCIATE AGREEMENT. All references in the Agreement to EXHIBIT: D shall be construed to refer to EXHIBIT D-1.
3. This Amendment No. 1 is effective March 1, 2014.
4. Except as provided herein, all remaining terms, conditions and provisions of the AGREEMENT are unchanged and unaffected by this AMENDMENT and shall continue in full force and effect as set forth in the AGREEMENT.
5. A copy of this AMENDMENT No. 1 shall be attached to the original AGREEMENT executed by the County on May 14, 2013.

IN WITNESS WHEREOF, the parties have executed this AMENDMENT on the day and year written below.

MONTEREY COUNTY

**CONTRACTOR
KEITH VANDEVERE, ATTORNEY-AT-LAW**

Contracts/Purchasing Officer

By: Keith Vandever
Signature of Chair, President, or
Vice-President

Dated: _____

Keith Vandever, Attorney-at-Law
Printed Name and Title

[Signature]
Department Head

Dated: 12-31-13

Dated: 3-20-14

Approved as to Fiscal Provisions:

[Signature]
Deputy Auditor/Controller

By: _____
(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)*

Dated: 2-18-14

Approved as to Liability Provisions:

Printed Name and Title

Risk Management

Dated:

Dated: _____

Approved as to Form:

[Signature]
Deputy County Counsel

Dated: 2/18/14

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required

²Approval by Auditor-Controller is required

³Approval by Risk Management is necessary only if changes are made in Sections XI or XII

**EXHIBIT A-1:
SCOPE OF SERVICES**

I. IDENTIFICATION OF CONTRACTOR

Name: Keith Vandevere
Address: P.O. Box 945
Pacific Grove, CA 93950
831-915-1696
kvandevere@gmail.com

II. RECITALS

A. The Lanterman-Petris-Short Act mandates a hearing for all persons still detained within four days after being certified for involuntary mental health treatment. The County of Monterey shall use the services of CONTRACTOR as a qualified certification review hearing officer as defined by section 5256.1 of the Welfare and Institutions Code.

B. CONTRACTOR is duly qualified and desires to serve as a certification review hearing officer in accordance with the terms and conditions of this Agreement, the provisions of the Lanterman-Petris-Short Act, County and Health Department policies and procedures, and applicable laws.

III. QUALIFICATIONS

A. CONTRACTOR covenants that he is a licensed attorney in good standing and meets the requirements of “certification review hearing officer” as defined by section 5256.1 of the Welfare and Institutions Code. CONTRACTOR shall promptly notify COUNTY in the event CONTRACTOR is subject to disciplinary action by the state bar of any jurisdiction in which CONTRACTOR is admitted. Such discipline shall constitute good cause for termination of this Agreement.

B. COUNTY covenants that its certification review panel comprised of the Director of Behavioral Health, the Public Defender, and the County Counsel has unanimously approved the selection of CONTRACTOR as certification review hearing officer pursuant to section 5256.1 of the Welfare and Institutions Code.

IV. PERFORMANCE STANDARDS

A. Compliance with applicable law. At all times during the provision of professional services under the Agreement, CONTRACTOR shall comply with all applicable state and federal laws in conducting certification review hearings including, but not limited to, the Lanterman-Petris-Short Act as codified in the Welfare and Institutions Code and due process requirements.

B. Compliance with policies and procedures. At the conclusion of each hearing, CONTRACTOR shall issue a written opinion using the form entitled “Certification

Review Hearing” attached hereto as Exhibit B. In addition, CONTRACTOR shall comply with any procedures or policies as may be adopted by the County or the Health Department.

C. Conflict of Interest. In addition to the provisions included in Section 15.01 of this Agreement, in the event a conflict of interest arises in the context of a specific hearing, CONTRACTOR shall promptly notify all parties to the hearing of the conflict and withdraw from the hearing.

D. Obligations upon termination. In the event of termination, CONTRACTOR shall remain obligated with regard to the confidentiality and record-keeping requirements of this Agreement.

**EXHIBIT A-1, continued:
PAYMENT PROVISIONS**

I. PAYMENT PROVISIONS

COUNTY will reimburse CONTRACTOR at the following rate:

- \$100.00 per hearing

II. MAXIMUM LIABILITY

Subject to the limitation set forth herein, COUNTY shall pay to CONTRACTOR during the term of this Agreement a maximum amount of **\$117,000** for services authorized pursuant to Exhibit A-1. The dollar amount for this Agreement is stipulated as follows:

Fiscal Year	Amount
July 1, 2013 to June 30, 2014	\$39,000
July 1, 2014 to June 30, 2015	\$39,000
July 1, 2015 to June 30, 2016	\$39,000
Total Maximum Liability	\$117,000

III. PAYMENT CONDITIONS

A In order to receive any payment under this Agreement, CONTRACTOR shall submit reports and claims in such form as may be required by the County of Monterey, Department of Health, Behavioral Health Bureau. Specifically, CONTRACTOR shall submit its claims on a form acceptable to COUNTY so as to reach the Behavioral Health Bureau no later than the 30th day of the month following the month of service. Upon termination of this Agreement, CONTRACTOR shall submit its final claim for payment no later than thirty (30) days after the completion of services.

B If CONTRACTOR fails to submit claims for services provided under the term of this Agreement as described above, the COUNTY may, at its sole discretion, deny payment for that month of service and disallow the claim.

C COUNTY shall review and certify CONTRACTOR's claim either in the requested amount or in such other amount as COUNTY approves in conformity with this Agreement, and shall then submit such certified claim to the COUNTY Auditor. The County Auditor-Controller shall pay the amount certified within thirty (30) days of receiving the certified invoice.

IV. REDUCTION and/or TERMINATION OF GOVERNMENT FUNDING

Notwithstanding any other provision of this Agreement, if the state or federal government terminates or reduces its funding to the COUNTY for services that are to be provided under this Agreement, then COUNTY may, after consultation with the CONTRACTOR, elect to terminate this Agreement by giving written notice of termination to CONTRACTOR effective immediately or on such other date as COUNTY specifies in the notice. Alternatively, it is mutually agreed that the Agreement shall be amended to reflect any reduction in funding.

V. MONTHLY CLAIMS

CONTRACTOR shall submit a monthly claim for services rendered to:

Mailing address:

Monterey County Health Department
Behavioral Health Bureau
1270 Natividad Road, Suite 107
Salinas, CA 93906
ATTN: Accounts Payable

Or

Electronic mailbox:

MCHDBHFinance@co.monterey.ca.us

VI. CONTRACT MONITOR

David Vandenberg, J.D.
Patients' Rights Advocate
Monterey County Health Department
Behavioral Health Bureau
1270 Natividad Rd.
Salinas, CA 93906
(831) 755-4518
vandenbergd@co.monterey.ca.us

EXHIBIT D-1:

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective **January 1, 2014** (“Effective Date”), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of the **Health Department** (“Covered Entity”) and **Keith Vandevere, Attorney-At Law** (“Business Associate”) (each a “Party” and collectively the “Parties”).

Business Associate provides certain services for Covered Entity (“Services”) that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity (“PHI”). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the “Security Rule”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* (“CMIA”), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. The Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

1. Definitions

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

2. Permitted Uses And Disclosures Of PHI

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law , or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(f) use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1);

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

3. Responsibilities Of The Parties With Respect To PHI

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within five (5) business days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) upon twenty (20) business days' prior written request, make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within twenty (20) business days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within two (2) business days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) subject to Section 4.4 below, return to Covered Entity within twenty-one (21) business days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) if all or any portion of the PHI is maintained in a Designated Record Set:

(i) upon twenty (20) business days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

(ii) upon twenty (20) business days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

(j) maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(k) notify the Covered Entity within five (5) business days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge; and

(l) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security.

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within five (5) business days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

3.3 Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

(d) notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and

(e) notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4. Terms And Termination

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) business days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(i)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

5. Miscellaneous

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

Keith Vandevere, Attorney-At-Law
P.O. Box 945 Pacific Grove, CA 93950
Attn: Keith Vandevere, Attorney-At-Law
Tel: (831) 915-1696

If to Covered Entity, to:

Monterey County Health Department, Behavioral Health Bureau
1270 Natividad Rd. Salinas, CA 93906
Attn: Wayne W. Clark, Ph.D., Behavioral Health Director
Tel: (831) 755-4509
Fax: (831) 755-4980

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

5.7 Indemnification. The parties agree that Section 8.0 of the Agreement between the Parties shall control in the event of a claim, loss, or material breach of this Agreement by either Party.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

[BUSINESS ASSOCIATE]
KEITH VANDEVERE,
ATTORNEY-AT-LAW

By: 

Print Name: Keith Vandevere

Print Title: Attorney

Date: 1-18-14

[COVERED ENTITY]
COUNTY OF MONTEREY

By: 

Print Name: Ray Bullick

Print Title: Director of Health

Date: 3-20-14