

without prior authorization and the beneficiary files a timely request for fair hearing.

- 3) Before requesting a state fair hearing, the beneficiary must exhaust the Contractor's problem resolution processes as described in Title 9, CCR, Section 1850.205.

I. Provision of Notice of Action.

Consistent with Title 42, CFR, Section 438.400(b) and Title 9, CCR, Section 1810.200 "Action," in the case of an MHP, means:

(a) A denial, modification, reduction or termination of a provider's request for MHP payment authorization of a specialty mental health service covered by the MHP.

(b) A determination by the MHP or its providers that the medical necessity criteria in Section 1830.205(b)(1), (b)(2), (b)(3)(C), or 1830.210(a) have not been met and the beneficiary is not entitled to any specialty mental health services from the MHP.

(c) A failure by the MHP to provide a specialty mental health service covered by the MHP within the timeframe for delivery of the service established by the MHP; or

(d) A failure by the MHP to act within the timeframes for resolution of grievances, appeals, or the expedited appeals.

Pursuant to Title 42, CFR, Section 438.404(a), the notice of action shall be in writing and shall meet the language and format requirements of Title 42, CFR, Section 438.10(c) and (d). The notice of action shall contain the items specified in Title 42, CFR, Section 438.404(a) and (b) and Title 9, CCR, Sections 1850.210.

- 1) The Contractor shall provide a beneficiary with a Notice of Action when the Contractor denies or modifies a Contractor payment authorization request from a provider for a specialty mental health service to the beneficiary.
- 2) When the denial or modification involves a request from a provider for continued Contractor payment authorization of a specialty mental health service or when the Contractor reduces or terminates a previously approved Contractor payment authorization, notice shall be provided in accordance with Title 22, CCR, Section 51014.1.

- 3) A Notice of Action is not required when a denial is a non-binding verbal description to a provider of the specialty mental health services that may be approved by the Contractor.
- 4) A Notice of Action is not required when the Contractor modifies the duration of any approved specialty mental health services as long as the Contractor provides an opportunity for the provider to request Contractor payment authorization of additional specialty mental health services before the end of the approved duration of services.
- 5) Except as provided in subsection 6 below, a Notice of Action is not required when the denial or modification is a denial or modification of a request for Contractor payment authorization for a specialty mental health service that has already been provided to the beneficiary.
- 6) A Notice of Action is required when the Contractor denies or modifies a payment authorization request from a provider for a specialty mental health service that has already been provided to the beneficiary when the denial or modification is a result of post-service, prepayment determination by the Contractor that the service was not medically necessary or otherwise was not a service covered by the Contractor.
- 7) The Contractor shall deny the Contractor payment authorization request and provide the beneficiary with a Notice of Action when the Contractor does not have sufficient information to approve or modify, or deny on the merits, a Contractor payment authorization request from a provider within the timeframes required by Title 9, CCR, Sections 1820.220 or 1830.215.
- 8) The Contractor shall provide the beneficiary with a Notice of Action if the Contractor fails to notify the affected parties of a grievance decision within 60 calendar days, of an appeal decision within 45 days, or of an expedited appeal decision within three working days. If the timeframe for a grievance, appeal or expedited appeal decision is extended pursuant to Title 9, CCR, Sections 1850.206, 1850.207 or 1850.208 and the Contractor failed to notify the affected parties of its decision within the extension period, the Contractor shall provide the beneficiary with a Notice of Action.
- 9) The Contractor shall provide a beneficiary with a Notice of Action if the Contractor fails to provide a specialty mental health service covered by the Contractor within the timeframe for delivery of the service established by the Contractor.

- 10) The Contractor shall comply with the requirements of Title 42, CFR, Section 438.404(b), and Title 9, CCR, Section 1850.210, regarding the content of Notices of Action and with the following timeframes for mailing of Notices of Action:
 - a) The written Notice of Action issued pursuant to (1) or (6) above shall be deposited with the United States Postal Service in time for pick-up no later than the third working day after the action. A Notice of Action issued pursuant to (2) above shall be provided in accordance with the applicable timelines set forth in Title 22, Section 51014.1 and Title 42, CFR, 431.220(E).
 - b) The written Notice of Action issued pursuant to (7) or (8) above shall be deposited with the United States Postal Service in time for pick-up on the date that the applicable timeframe expires.
 - c) The written Notice of Action issued pursuant to subsection (9) above shall be deposited with the United States Postal Service in time for pick up on the date that the timeframe for delivery of the service established by the Contractor expires.
- 11) When a Notice of Action would not be required as described in (3)-(5) above, the Contractor shall provide a beneficiary with a Notice of Action when the Contractor or its providers determine that the medical necessity criteria in Title 9, CCR, Section 1830.205(b)(1),(b)(2),(b)(3)(C), or 1830.210(a) have not been met and that the beneficiary is, therefore, not entitled to any specialty mental health services from the Contractor. A Notice of Action is not required when a provider, including the Contractor acting as a provider, determines that a beneficiary does not qualify for a specific service covered by the Contractor, including but not limited to: crisis intervention, crisis stabilization, crisis residential treatment services, psychiatric inpatient hospital services, or any specialty mental health service to treat a beneficiary's urgent condition, provided that the determination does not apply to any other specialty mental health service covered by the Contractor. The Notice of Action shall, at the election of the Contractor, be hand-delivered to the beneficiary on the date of the action or mailed to the beneficiary in accordance with Title 9, CCR, Section 1850.210(f)(1), and shall specify the information contained in Title 9, CCR, Section 1850.212(b).
- 12) For the purpose of this Section, each reference to a Medi-Cal managed care plan in Title 22, Section 51014.1, shall mean the Contractor.

- 13) For the purposes of this Section, "medical service", as used in Title 22, Section 51014.1, shall mean specialty mental health services that are subject to prior authorization by a Contractor pursuant to Title 9, CCR, Sections 1820.100 and 1830.100.
- 14) The Contractor shall retain copies of all Notices of Action issued to beneficiaries under this Section in a centralized file accessible to the Department and DHCS.

J. Contents of a Notice of Action.

- 1) The Notice of Action issued pursuant to Section I of this contract and Title 42, CFR, Section 438.404(b) and Title 9, CCR, Sections 1850.210(a)-(e) and 1850.212, shall contain the following information:
 - a) The action taken by the Contractor;
 - b) The reason for the action taken;
 - c) Citations to the regulations or Contractor payment authorization procedures supporting the action;
 - d) The beneficiary's right to file an appeal or expedited appeal with the Contractor; and,
 - e) The circumstances under which an expedited resolution is available, and how to request it; and,
 - f) Information about the beneficiary's right to request a fair hearing or an expedited fair hearing, including:
 - i. The method by which a hearing may be obtained;
 - ii. A statement that the beneficiary may be either self-represented, or represented by an authorized third party such as legal counsel, a relative, friend or any other person;
 - iii. An explanation of the circumstances under which a specialty mental health service will be continued if a fair hearing is requested; and,
 - iv. The time limits for requesting a fair hearing or an expedited fair hearing.

2) A Notice of Action issued pursuant to Title 9, CCR, Sections 1850.210(g) and 1850.212(b), relating to denials for lack of medical necessity, shall specify the following:

- i. The reason that the medical necessity criteria were not met, including a citation to the applicable regulation;
- ii. The beneficiary's options for obtaining care from sources other than the Contractor, if applicable;
- iii. The beneficiary's right to request a second opinion on the determination;
- iv. The beneficiary's right to file an appeal or expedited appeal with the Contractor; and,
- v. The beneficiary's right to request a fair hearing or an expedited fair hearing, including:
 - A. The method by which a hearing may be obtained;
 - B. The time period in which the request for a fair hearing or expedited fair hearing must be filed;
 - C. That the beneficiary may be either self-represented, or represented by an authorized third party such as legal counsel, a relative, friend or any other person;

K. Pursuant to Title 42, CFR, Section 438.404(c), the Contractor shall give notice at least 10 days before the effective date of action when the action is a termination, suspension, or reduction of previously authorized Medi-Cal-covered services, except:

- 1) The period of advanced notice is shortened to 5 days if probable beneficiary fraud has been verified;
- 2) The action shall be effective on the date of the Notice under the following circumstances:
 - a) The death of a beneficiary;
 - b) Receipt of a signed written beneficiary statement requesting service termination or giving information requiring termination or reduction of services (provided the beneficiary understands that this will be the result of supplying that information);

- c) The beneficiary's admission to an institution where he or she is ineligible for further services;
 - d) The beneficiary's whereabouts are unknown and mail directed to him or her has no forwarding address;
 - e) Notice that the beneficiary has been accepted for Medicaid services by another local jurisdiction;
 - f) A change in the beneficiary's physician's prescription for the level of medical care;
 - g) Endangerment of the safety or health of individuals in the facility; improvement in the resident's health sufficient to allow a more immediate transfer or discharge; urgent medical needs that require a resident's immediate transfer or discharge; or notice that a resident has not resided in the nursing facility for 30 days (but only in adverse actions based on NF transfers).
- 3) Pursuant to Title 42, CFR, Section 438.404(c)(2), timeframes for notice of action of denial of payment. If payment is denied, the Contractor shall give notice to the beneficiary on the date of the action.

17. Subcontracts.

- A. No subcontract terminates the legal responsibility of the Contractor to the Department to assure that all activities under this contract are carried out.
- B. All subcontracts shall be in writing.
- C. All inpatient subcontracts shall require that subcontractors maintain necessary licensing and certification.
- D. Each subcontract shall contain:
 - 1) Full disclosure of the method and amount of compensation or other consideration to be received by the subcontractor from the Contractor.
 - 2) Specification of the services to be provided.

- 3) Specification that the subcontract shall be governed by, and construed in accordance with, all laws and regulations, and all contractual obligations of the Contractor under this contract.
- 4) Specification of the term of the subcontract including the beginning and ending dates, as well as methods for amendment, termination and, if applicable, extension of the subcontract. The subcontract must be subject to full or partial termination if the subcontractor's performance is inadequate.
- 5) The nondiscrimination and compliance provisions of this contract as described in Exhibit D, Section 6.
- 6) Subcontractor's agreement to submit reports as required by the Contractor.
- 7) The subcontractor's agreement to make all of its books and records pertaining to the goods and services furnished under the terms of the subcontract available for inspection, examination or copying by the Department, DHCS, HHS, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives. The subcontract shall also state that inspection shall occur at all reasonable times, at the subcontractor's place of business, or at such other mutually agreeable location in California, in a form maintained in accordance with the general standards applicable to such book or record keeping, for a term of at least five years from the close of the state fiscal year in which the subcontract was in effect.
- 8) Subcontractor's agreement that assignment or delegation of the subcontract shall be void unless prior written approval is obtained from the Contractor.
- 9) Subcontractor's agreement to hold harmless both the State and beneficiaries in the event the Contractor cannot or does not pay for services performed by the subcontractor pursuant to the subcontract.
- 10) The subcontractor's agreement to comply with the Contractor's policies and procedures on advance directives and the Contractor's obligations for Physician Incentive Plans, if applicable based on the services provided under the subcontract.
- 11) A requirement that the Contractor's monitor the subcontractor and the subcontractor's obligation to provide a corrective action plan if deficiencies are identified.

18. Program Integrity Requirements.

- A. The Contractor shall comply with the provisions of Title 42, CFR, Sections 438.604, 438.606 and 438.608, regarding the certification of accurate data submitted by the Contractor to the State and which require the Contractor to have administrative or management arrangements or procedures designed to guard against fraud and abuse.
- B. The Contractor shall comply with the provisions of Title 42, CFR, Section 438.610, which relate to prohibited affiliations with individuals or affiliates of individuals debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under the guidelines implementing Executive Order No. 12549.
- C. Pursuant to Title 42, CFR, Section 438.214(d), the Contractor shall not employ or contract with providers or other individuals and entities excluded from participation in federal health care programs (as defined in section 1128B(f) of the Social Security Act) under either Section 1128, 1128A, or 1156 of the Social Security Act. Federal financial participation is not available for amounts expended for providers excluded by Medicare, Medicaid, or the State Children's Insurance Program, except for emergency services.
- D. The Contractor shall periodically check the Office of the Inspector General's List of Excluded Individuals/Entities and the Medi-Cal Suspended and Ineligible Provider List (S & I List) to prevent employment of, or payments to, any individuals or entities on those lists, and per DMH Letter Number 10-05, this must be satisfied prior to Medi-Cal certification of any individual or organizational provider. If the provider is listed on either the Office of the Inspector General's List of Excluded Individuals/Entities or the Medi-Cal S & I List, the Contractor shall not certify or pay any provider with Medi-Cal funds, and any such inappropriate payments or overpayments may be subject to recovery and/or be the basis for other sanctions by the appropriate authority.
- E. Report. Pursuant to 42 CFR, Section 455.1(a)(1), the Contractor must report fraud and abuse information to the Department.
 - 1) If the Contractor identifies an issue or receives notification of a complaint concerning an incident of possible potential fraud or abuse, the Contractor shall conduct an internal investigation to determine the validity of the issue/complaint, regarding potential fraud and/or abuse, and develop and implement corrective action, if needed. The majority of potential fraud or abuse issues are expected to be resolved at the Contractor level.

- 2) If the Contractor's internal investigation concludes that fraud or abuse has occurred or is suspected, the issue is egregious, or beyond the scope of the Contractor's ability to pursue, the Contractor shall report the issue to the Department for review and disposition.
 - 3) The Department is to be notified if the Contractor discontinues a provider contract or disciplines a provider due to a fraud or abuse issue. The Department will, in turn, notify DHCS.
- F. Service Verification. Pursuant to Title 42, CFR, Section 455.1(a)(2), the Contractor shall have a way to verify with beneficiaries that services were actually provided.
- G. Conflict of Interest. The contract specifies conflict of interest safeguards for officers and employees of the state and local entity, with responsibilities relating to contracts with MCOs and/or to the default enrollment process under the State Plan Amendment option that are at least as effective as the federal safeguards found under Section 27 of the Office of Federal Procurement Policy Act (41 USC 423).

19. Disclosures.

- A. Disclosure of 5% or More Ownership Interest:
- 1) Pursuant to Title 42, CFR, 455.104, Medicaid managed care entities must disclose certain information related to persons who have an ownership or control interest in the managed care entity, as defined in Title 42, CFR, Section 455.101. The parties hereby acknowledge that, because the Contractor is a political subdivision of the State of California, there are no persons who meet such definition, and therefore there is no information to disclose.
 - a. In the event that, in the future, any person obtains an interest of 5% or more of any mortgage, deed of trust, note or other obligation secured by Contractor, and that interest equals at least 5% of Contractor's property or assets, then Contractor will make the disclosures set forth in i and subsection 2(a).
 - i. The Contractor will disclose the name, address, date of birth, and Social Security Number of any managing employee, as that term is defined in Title 42, CFR, Section 455.101. However, for purposes of this disclosure, Contractor may use the business address for any member of its Board of Supervisors.
 - ii. The Contractor shall provide any such disclosure upon execution of this contract, upon its extension or renewal,

and within 35 days after any change in Contractor ownership or upon request of the Department or DHCS.

- 2) The Contractor shall ensure that its subcontractors/network providers submit the disclosures below to the Contractor regarding the network providers' (disclosing entities') ownership and control. The Contractor's network providers must be required to submit updated disclosures to the Contractor upon submitting the provider application, before entering into or renewing the network providers' contracts, and within 35 days after any change in the subcontractor/network provider's ownership or upon request of the Department or DHCS.

a. What Disclosures Must be Provided:

- i. The name and address of any person (individual or corporation) with an ownership or control interest in the network provider. The address for corporate entities shall include, as applicable, a primary business address, every business location, and a P.O. Box address;
- ii. Date of birth and Social Security Number (in the case of an individual);
- iii. Other tax identification number (in the case of a corporation with an ownership or control interest in the managed care entity or in any subcontractor in which the managed care entity has a 5 percent or more interest);
- iv. Whether the person (individual or corporation) with an ownership or control interest in the Contractor's network provider is related to another person with ownership or control interest in the same or any other network provider of the Contractor as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the managed care entity has a 5 percent or more interest is related to another person with ownership or control interest in the managed care entity as a spouse, parent, child, or sibling;
- v. The name of any other disclosing entity in which the Contractor or subcontracting network provider has an ownership or control interest; and

vi. The name, address, date of birth, and Social Security Number of any managing employee of the managed care entity.

3) To Whom Must the Disclosures be Provided. All disclosures must be provided to the Medicaid agency.

B. Disclosures Related to Business Transactions – Contractor must submit disclosures and updated disclosures to the Department or HHS including information regarding certain business transactions within 35 days, upon request.

1) The following information must be disclosed:

a) The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and,

b) Any significant business transactions between the Contractor and any wholly owned supplier, or between the Contractor and any subcontractor, during the 5-year period ending on the date of the request.

2) Contractor must obligate Network Providers to submit the same disclosures regarding network providers' as noted under subsection 1(a) and (b) within 35 days upon request.

C. Disclosures Related to Persons Convicted of Crimes – Contractor shall submit the following disclosures to the Department regarding the Contractor's management:

1) The identity of any person who is a managing employee of the Contractor who has been convicted of a crime related to federal health care programs. (Title 42, CFR, Section 455.106(a)(1), (2).)

2) The identity of any person who is an agent of the Contractor who has been convicted of a crime related to federal health care programs. (Title 42, CFR, Section 455.106(a)(1), (2).) For this purpose, the word "agent" has the meaning described in Title 42, CFR, Section 455.101.

3) The Contractor shall supply the disclosures before entering into the contract and at any time upon the Department's request.

4) Network providers should submit the same disclosures to Contractor regarding the network providers' owners, persons with

controlling interest, agents, and managing employees' criminal convictions. Network providers shall supply the disclosures before entering into the contract and at any time upon the Department's request.

20. Medi-Cal Eligibility Data System (MEDS) and MEDS Monthly Extract File (MMEF) Access.

The Contractor shall enter into a Medi-Cal Privacy and Security Agreement (agreement) with the Department prior to obtaining access to MEDS and the MEDS monthly extract file (MMEF). The Contractor agrees to comply with the provisions as specified in the agreement. The County Mental Health Director or his or her authorized designee shall certify annually that Contractor is in compliance with the agreement. Failure to comply with the terms of the agreement will result in the termination of access to MEDS and MMEF.

21. Additional Requirements.

- A. The Contractor shall maintain written policies and procedures on advance directives in compliance with the requirements of Title 42, CFR, Sections 422.128 and 438.6(i)(1), (3) and (4). Any written materials prepared by the Contractor for beneficiaries shall be updated to reflect changes in state laws governing advance directives as soon as possible, but no later than 90 days after the effective date of the change. For purposes of this contract, advance directives means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law, relating to the provision of health care when the individual is incapacitated as defined in Title 42, CFR, Section 489.100.
- B. Physician Incentive Plans. The Contractor shall obtain approval from the Department prior to implementing a Physician Incentive Plan. A Physician Incentive Plan is any compensation arrangement to pay a physician or physician group that may directly or indirectly have the effect of reducing or limiting the services provided to any beneficiary. For purposes of this definition, the words shall have the meanings set forth in Title 42, CFR, section 422.208(a). The Department shall approve the Contractor's request only if the proposed Physician Incentive Plan complies with all applicable federal and state regulations.

1) Pursuant to Title 42, CFR, Section 438.6(h), the Contractor shall comply with the requirements set forth in Title 42, CFR Section 422.208 and Title 42, CFR, Section 422.210.

2) The Contractor may operate a Physician Incentive Plan only if no specific payment can be made directly or indirectly under a Physician

Incentive Plan to a physician or physician group as an inducement to reduce or limit medically necessary services furnished to an individual.

3) When seeking approval from the Department for its Physician Incentive Plan, the Contractor will disclose the following:

a Whether services not furnished by physician/group are covered by incentive plan. No further disclosure required if the Physician Incentive Plan does not cover services not furnished by physician/group;

b The type of incentive arrangement, e.g. withhold, bonus, capitation;

c The percentage of funds withheld or bonus provided (if applicable);

d The size of the panel, and, if patients are pooled, the approved method used for pooling; and,

e If the physician/group is at substantial financial risk, proof that the physician/group has adequate stop loss coverage, including amount and type of stop-loss.

4) If a physician or physician group is put at substantial financial risk for services not provided by the physician/group, the Contractor shall ensure adequate stop-loss protection to individual physicians and conduct annual beneficiary surveys.

5) Disclosure to Beneficiaries. The Contractor shall provide information on its Physician Incentive Plan to any Medicaid beneficiary upon request (this includes the right to adequate and timely information on a Physician Incentive Plan).

6) Disclosure to Department. If required to conduct beneficiary survey, survey results shall be disclosed to the Department and, upon request, to beneficiaries, per Social Security Administration (SSA) 1903(m)(2)(A)(x); 42 CFR, 422.208; 42 CFR 422.210; 42 CFR 438.6(h); and SSA 1876(i)(8)(A)(ii)(II).

C. Sharing of Information with Beneficiaries. The Contractor shall not prohibit, or otherwise restrict, a licensed, waived, or registered professional, as defined in Title 9, CCR, Sections 1810.223 and 1810.254, who is acting within the lawful scope of practice (pursuant to Title 42, CFR, Section 438.102(a)(1)), from advising or advocating on behalf of a beneficiary for whom the provider is providing mental health services for any of the following:

1. the beneficiary's health status, medical care, or treatment options, including any alternative treatment that may be self-administered;
 2. information the beneficiary needs in order to decide among all relevant treatment options;
 3. the risks, benefits, and consequences of providing or failing to provide treatment; and
 4. the beneficiary's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions.
- D. Limitation on Services for Moral or Religious Grounds. Pursuant to Title 42, CFR, Section 438.102(a)(2), the Contractor shall not be required to provide, reimburse for, or provide coverage of, a counseling or referral service if the Contractor objects to the service on moral or religious grounds.
- E. Pursuant to Title 42, CFR, Section 438.102(b)(1), if the Contractor elects not to provide, reimburse for, or provide coverage of, a counseling or referral service because of an objection on moral or religious grounds, it must furnish information about the services it does not cover as follows:
1. To the Department
 - a) Prior to executing this contract;
 - b) Whenever it adopts the policy during the term of the contract; and,
 2. Notice shall be consistent with the provisions of Title 42, CFR, Section 438.10; shall be provided to potential beneficiaries before and during enrollment; and provided to beneficiaries within 90 days after adopting the policy with respect to any particular service.
- F. Beneficiary Liability for Payment. Pursuant to Title 9, CCR, Section 1810.365, the Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor shall not submit a claim to, or demand or otherwise collect reimbursement from, the beneficiary or persons acting on behalf of the beneficiary for any specialty mental health or related administrative services provided under this contract, except to collect other health insurance coverage, share of cost, and co-payments. Consistent with Title 42, CFR, Section 438.106, the Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor shall not hold beneficiaries liable for debts in the event that the Contractor becomes insolvent, for costs of covered services for which the State does not pay the Contractor, for costs of covered services for which the State or the Contractor does not pay the Contractor's providers, for costs of covered services provided under a contract, referral or other arrangement rather than from the Contractor, or for payment of subsequent screening

and treatment needed to diagnose the specific condition of or stabilize a beneficiary with an emergency psychiatric condition.

- G. The Contractor shall comply with Title 42, CFR Section 438.236(b), which requires it to adopt practice guidelines.
- 1) Such guideline shall meet the following requirements:
 - (a) They are based on valid and reliable clinical evidence or a consensus of health care professionals in the applicable field;
 - (b) They consider the needs of the beneficiaries;
 - (c) They are adopted in consultation with contracting health care professionals;
 - (d) They are reviewed and updated periodically as appropriate;
 - 2) Contractor shall disseminate the guidelines to all affected providers and, upon request, to beneficiaries and potential beneficiaries.
 - 3) Contractor shall take steps to assure that decisions for utilization management, beneficiary education, coverage of services, and other areas to which the guidelines apply shall be consistent with the guidelines.
- H. Health Information System. Pursuant to Title 42, CFR, Section 438.242 and consistent with Title 9, CCR, Section 1810.376, the Contractor shall maintain a health information system that collects, analyzes, integrates, and reports data. The system shall provide information on areas including, but not limited to, utilization, grievances, and appeals.

The Contractor's health information system shall, at a minimum:

- 1) Collect data on beneficiary and provider characteristics as specified by the Department, and on services furnished to beneficiaries as specified by the Department;
- 2) Ensure that data received from providers is accurate and complete by:
 - a. Verifying the accuracy and timeliness of reported data;
 - b. Screening the data for completeness, logic, and consistency;
 - and
 - c. Collecting service information in standardized formats to the extent feasible and appropriate.
- 3) Make all collected data available to the Department and, upon request, to CMS.

Consistent with Title 9, CCR, Section 1810.376(c), the Contractor's health information system is not required to collect and analyze all elements in electronic formats.

- I. Persons with special health care needs for the purposes of this contract are adults who have a serious mental disorder and children with a serious emotional disturbance as defined in Welfare and Institutions Code Section 5600.3. The Contractor shall identify persons with special health care

needs through the administration of surveys in accordance with the Department's Performance Outcome System.

- J. Cost Sharing. Pursuant to Title 42, CFR, Section 438.108, any cost sharing imposed on Medicaid beneficiaries shall be in accordance with Title 42, CFR, Sections 447.50 through 447.60.
- K. Service Authorization and Notices of Action. Pursuant to Title 42, CFR, Section 431.201, the Contractor shall define service authorization in a manner that at least includes a beneficiary's request for the provision of a service.

EXHIBIT B

Payment Provisions.

1. Budget Contingency Clauses.

A. Federal Budget.

If federal funding for federal financial participation reimbursement in relation to this contract is eliminated or substantially reduced by Congress, the Department and the Contractor each shall have the option to either cancel this contract or propose a contract amendment to address changes to the program required as a result of the elimination or reduction of federal funding.

B. State Budget.

Through June 30, 2012, this program is funded by the State to the extent that the Legislature appropriates funds through the budget process.

On and after July 1, 2012, this program is funded by the State with funds paid to the Contractor from the Local Revenue Fund 2011.

If state funding for this program is eliminated or reduced by an act of the legislature after the effective date of this contract, the Department and the Contractor each shall have the option to either cancel this contract or propose a contract amendment to address changes to the program required as a result of the elimination or reduction of state funding, except that cancellation of the contract by the Contractor is subject to the requirements of Section 5775(d) of the Welfare and Institutions Code.

C. Delayed Federal or State Budget.

Contractor and Department agree to consult on interim measures for program operation that may be required to maintain adequate services to beneficiaries in the event that there is likely to be a delay in the availability of federal funding or enactment of the State Budget.

2. Payment to the Contractor.

- A. The Contractor shall receive payment of its Managed Care Allocation for the period April 1, 2012 through June 30, 2012, after funds are appropriated by the Legislature to the Department in item 4440-103-0001 of the Budget Act. Payment of the Managed Care Allocation shall be in

accordance with Section 5778(c) of the Welfare and Institutions Code and based on a formula determined by the Department in consultation with the California Mental Health Directors Association.

- B. The Contractor shall also receive payment of its Managed Care Allocation from Mental Health Service Funds for the period April 1, 2012 through June 30, 2012, after funds are appropriated by the Legislature to the Department in item 4440-103-3085 of the Budget Act. Payment of the Managed Care Allocation from Mental Health Service Funds shall be in accordance with Section 5892, subdivision (j)(1) of the Welfare and Institutions Code. These payments are subject to the limit set forth in Section 5892, subdivision (j)(6) of the Welfare and Institutions Code.
- C. The Contractor shall receive payment of its Managed Care Allocation from the Local Revenue Fund 2011 for the period July 1, 2012 through December 31, 2012.
- D. For the period April 1, 2012 through June 30, 2012, the state share for reimbursement of claims for EPSDT services, and any other claims for services that may include a State reimbursement funding share, shall become available after passage of the State Budget Act and, irrespective of the effective date of this contract, shall be used to fund all services provided since the beginning of the state fiscal year. The Contractor shall receive payment of the State portion for EPSDT services from an allocation in accordance with Section 5892, subdivision (j)(4), of the Welfare and Institutions Code. These payments are subject to the limit set forth in Section 5892, subdivision (j)(6), of the Welfare and Institutions Code.
- E. For the period July 1, 2012 through June 30, 2013, the Contractor shall receive payments for the State share for reimbursement of claims for EPSDT services, and any other claims for services that may include a State reimbursement funding share, from the Local Revenue Fund 2011.
- F. Pursuant to Section 5713 of the Welfare and Institutions Code, the Department may advance payments from the amounts available for either the Managed Care Allocation or the state share for claims for services provided under this contract. Any advance payment shall be made in the form and manner determined by the Director. Advance payments are subject to the provisions of the Budget Act.

3. Federal Financial Participation.

Nothing in this contract shall limit the Contractor's ability to submit claims for appropriate federal financial participation reimbursement based on actual, total fund expenditures for any covered services or utilization review and administrative costs. In accordance with Section 5718(c) of the Welfare and Institutions Code, the county shall ensure compliance with all requirements necessary for Medi-Cal reimbursement for these services. Claims for federal financial participation reimbursement shall be submitted by the Contractor and shall be sent by the Department to the Department of Health Care Services for adjudication throughout the fiscal year, regardless of when the State Budget is enacted.

4. Cost Reporting.

The Contractor shall submit a fiscal year-end cost report no later than December 31 following the close of each fiscal year unless that date is extended by the Department, in accordance with Welfare and Institutions Code Sections 5664(a) and (b), and 5718(c), and guidelines established by the Department. Data submitted shall be full and complete and the cost report shall be certified by the Contractor's Mental Health Director and one of the following: (1) the Contractor's Chief Financial Officer (or equivalent), (2) an individual who has delegated authority to sign for, and reports directly to the Contractor's Chief Financial Officer, or (3) the county's auditor controller, or equivalent. The cost report shall include both Contractor's costs and the cost of its subcontractors, if any. The cost report shall be completed in accordance with instructions contained in the Department's Cost and Financial Reporting System Instruction Manual for the applicable year; however, to the extent that the Contractor disagrees with such instructions, it may raise that disagreement in writing with the Department at the time the cost report is filed, and shall have the right to appeal such disagreement pursuant to procedures developed under Welfare and Institutions Code Section 14171.

In accordance with Section 5655 of the Welfare and Institutions Code, the Department shall provide technical assistance and consultation to the Contractor regarding the preparation and submission of timely cost reports. If the Contractor does not submit the cost report by the reporting deadline, including any extension period granted by the Department, the Department, in accordance with the provisions of Section 5775(e) of the Welfare and Institutions Code, may withhold payments of additional funds until the cost report that is due has been submitted.

5. Audits and Recoupment.

- A. When the Department receives notice from CMS of a deferral or offset by CMS or DHCS of payment of FFP in relation to claims by the Contractor, the Department shall notify the Contractor within 30 days of receiving the deferral or offset notice and include the reason for the deferral or offset, if known.
- B. Pursuant to Section 14170 of the Welfare and Institutions Code, cost reports submitted to the Department are subject to audit in the manner and form prescribed by the Department. The year-end cost report shall include both Contractor's costs and the costs of its subcontractors, if any. Contractor and its subcontractors shall be subject to audits and/or reviews, including client record reviews, by the Department. In accordance with Section 14170 of the Welfare and Institutions Code, any audit of Contractor's cost report shall occur within three years of the date of receipt by the Department of the final cost report with signed certification by the Contractor's Mental Health Director and one of the following: (1) the Contractor's Chief Financial Officer (or equivalent), (2) an individual who has delegated authority to sign for, and reports directly to the Contractor's Chief Financial Officer, or (3) the county auditor controller, or equivalent. Both signatures are required before the cost report shall be considered final. For purposes of this section, the cost report shall be considered audited once the Department has informed the Contractor of its intent to disallow costs on the cost report.
- C. If the adjustments result in the Department owing an amount to the Contractor, payment to the Contractor shall be made in accordance with applicable federal rules for federal funds (invoicing for federal funds). The Department shall invoice DHCS for the federal funds owed to the Contractor within 45 days after the adjustments are final. Consistent with federal law contained in Title 42, U.S.C. Sections 1396b(d)(2)(C) federal funds shall be recouped within 1 year after the issuance of a final audit report containing a final determination that there has been an overpayment of federal funds. In the case of federal fund recoupment, the Department shall send a notice and invoice to the Contractor, giving options for repayment after the adjustments are final. If the Contractor does not respond within the time period specified in the notice, the Department shall offset the recoupment amount from money owed to the Contractor in accordance with the Department's procedures.
- D. Any amount of state funds found to be owed to Contractor shall be paid by the Department from currently available State appropriations within 45 days or, if a current appropriation is not available, within 45 days of a new

State appropriation becoming available. If the adjustments result in the Contractor owing an amount to the Department, the Department shall invoice Contractor for repayment of state funds and the Contractor shall have the option of remitting payment to the Department or agreeing to an offset from amounts owed for current claims submitted. In the event that any amount of State funds must be recouped, pursuant to WIC 5717, repayment is to be collected within 30 days.

6. Claims Adjudication Process.

- A. In accordance with Section 5718(c) of the Welfare and Institutions Code, claims for federal funds in reimbursement for services shall comply with eligibility and service requirements under applicable federal and state law.
- B. The Contractor shall certify each claim submitted to the Department in accordance with Title 9, CCR, Section 1840.112, at the time the claims are submitted to the Department. The Contractor's Chief Financial Officer or his or her equivalent, or an individual with authority delegated by the county auditor-controller, shall sign the certification, declaring, under penalty of perjury, that the Contractor has incurred an expenditure to cover the services included in the claims to satisfy the requirements for federal financial participation. The Contractor's Mental Health Director or an individual with authority delegated by the Mental Health Director shall sign the certification, declaring, under penalty of perjury that, to the best of his or her knowledge and belief, the claim is in all respects true, correct, and in accordance with the law and meets the requirements of Title 9, CCR, Section 1840.112(b). The Contractor shall have mechanisms that support the Mental Health Director's certification, including the certification that the services for which claims were submitted were actually provided to the beneficiary. If the Department requires additional information from the Contractor that will be used to establish Department payments to the Contractor, the Contractor shall certify that the additional information provided is in accordance with Title 42, CFR, Section 438.604.
- C. Claims not meeting federal and/or state requirements shall be returned to Contractor as not approved for payment, along with a reason for denial. Claims meeting all HIPAA transaction requirements and certified by the Contractor in accordance with Title 9, CCR, Section 1840.112, shall be processed and submitted by the Department to DHCS within 30 days for adjudication.
- D. Good cause justification for late claim submission is governed by regulation (Title 9, CCR, Section 1840.110) and is subject to approval by the Department of Health Care Services.

- E. In the event that the Department or the Contractor determines that significant changes must be made relating to either the Department's or the Contractor's claims submission and adjudication systems due to federal or state law changes or business requirements, both the Department and the Contractor agree to provide notice to the other party as soon as practicable prior to implementation. This notice shall include information and comments regarding the anticipated costs and other impacts of the projected changes. The Department and the Contractor agree to meet and discuss the design, development, and costs of the anticipated changes prior to implementation.
- F. The Contractor shall comply with Title 9, CCR, Section 1840.304, when submitting claims for federal financial participation for services billed by individual or group providers. The Contractor shall submit service codes from the Health Care Procedure Coding System (HCPCS) published in the most current Mental Health Medi-Cal billing manual.

7. Payment Data Certification.

Contractor shall certify the data it provides to the Department to be used in determining payment of FFP to the Contractor, in accordance with Title 42, CFR, Sections 438.604 and 438.606.

8. System Changes.

In the event changes in federal or state law, including court decisions and interpretations, necessitate significant changes in either the fiscal or program operations, or a significant change in the cost of providing covered services the Department and the Contractor agree to meet and consult, pursuant to Section 5777(c) of the Welfare and Institutions Code, regarding (a) changes required to remain in compliance with the new law or significant changes in existing obligations, (b) projected programmatic and fiscal impacts, (c) necessary contract amendments. To the extent that contract amendments are necessary, the parties agree to act to ensure appropriate amendments are made to accommodate any changes required by law.

9. Administrative Reimbursement.

The Department shall consult and work with Contractor to determine how federal reimbursement can be obtained for additional or unforeseen administration costs. Consistent with federal and state law, the Department shall process and send to DHCS for reimbursement claims for Medi-Cal Administrative Activity submitted by Contractor within 45 days of receipt.

10. Notification of Request for Contract Amendment.

In addition to the provisions in Exhibit D, section 2 below, both parties agree to notify the other party whenever an amendment to this contract is to be requested so that informal discussion and consultation can occur prior to a formal amendment process.

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Exhibit D

Special Provisions

1. Fulfillment of Obligation.

No covenant, condition, duty, obligation, or undertaking continued or made a part of this contract shall be waived except by written agreement of the parties hereto, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever will not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed or discharged by the party to which the same may apply. Until performance or satisfaction of all covenants, conditions, duties, obligations, and undertakings is complete, the other party shall have the right to invoke any remedy available under this contract, or under law, notwithstanding such forbearance or indulgence.

2. Amendment of Contract.

Should either party during the life of this contract desire a change in this contract, such change shall be proposed in writing to the other party. The other party shall acknowledge receipt of the proposal within 10 days and shall have 60 days (or such different period as the parties mutually may set) after receipt of such proposal to review and consider the proposal, to consult and negotiate with the proposing party, and to accept or reject the proposal. Acceptance or rejection may be made orally within the 60-day period, and shall be confirmed in writing within five days thereafter. The party proposing any such change shall have the right to withdraw the proposal at any time prior to acceptance or rejection by the other party. Any such proposal shall set forth a detailed explanation of the reason and basis for the proposed change, a complete statement of cost and benefits of the proposed change and the text of the desired amendment to this contract that would provide for the change. If the proposal is accepted, this contract shall be amended to provide for the change mutually agreed to by the parties on the condition that the amendment is approved by the Department of General Services, if necessary.

3. Contract Disputes.

Should a dispute arise between the Contractor and the Department relating to performance under this contract, other than disputes governed by a dispute resolution process in Chapter 11 of Division 1, Title 9 of the CCR, the Contractor shall, prior to exercising any other remedy which may be available, provide the Department with written notice of the particulars of the dispute within 30 calendar days of the date the dispute arises. The Department shall meet with the Contractor, review the factors in the dispute, and recommend a means of resolving the dispute before a written response is given to the Contractor. The

Department shall provide a written response to the Contractor within 30 days of receipt of the Contractor's written notice.

4. Inspection Rights.

The Contractor shall allow the Department, DHCS, HHS, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this contract, and to inspect, evaluate, and audit any and all books, records, and facilities maintained by the Contractor and its subcontractors pertaining to such services at any time during normal business hours. Books and records include, but are not limited to, all physical records originated or prepared pursuant to the performance under this contract including working papers, reports, financial records and books of account, beneficiary records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for beneficiaries. Upon request, at any time during the period of this contract, the Contractor shall furnish any such record, or copy thereof, to the Department, DHCS, or HHS. Authorized agencies shall maintain the confidentiality of such books and records in accordance with applicable laws and regulations.

5. Notices.

Unless otherwise specified in this contract, all notices to be given under this contract shall be in writing and shall be deemed to have been given when mailed, to the Department or the Contractor at the following addresses, unless the contract explicitly requires notice to another individual or organizational unit:

Department

County Technical Assistance
1600 9th Street, Room 100
Sacramento, CA 95814

Contractor

Monterey County Behavioral Health
Wayne W. Clark, PhD, Behavioral Health Director
1270 Natividad Road
Salinas, CA 93906-3198

6. Nondiscrimination.

- A. Consistent with the requirements of applicable federal or state law, the Contractor shall not engage in any unlawful discriminatory practices in the admission of beneficiaries, assignments of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age, sexual preference or mental or physical handicap.
- B. The Contractor shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Human Services, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.
- C. The Contractor shall include the nondiscrimination and compliance provisions of this contract in all subcontracts to perform work under this contract.
- D. Notwithstanding other provisions of this section, the Contractor may require a determination of medical necessity pursuant to Title 9, CCR, Sections 1820.205, 1830.205 and/or 1830.210, prior to providing covered services to a beneficiary.

7. Patients' Rights.

The parties to this contract shall comply with applicable laws and regulations relating to patients' rights, including but not limited to Welfare and Institutions Code 5325, Title 9, CCR, Sections 860 through 868, and Title 42, CFR, Section 438.100. The Contractor shall ensure that its subcontractors comply with these provisions.

Pursuant to Title 42, CFR, Section 438.100(a) and Title 42, CFR, Sections 438.100(b)(1) and (b)(2)), the Contractor shall have written policies regarding the beneficiary rights specified in this section, including the following rights:

- A. Each beneficiary is guaranteed the right to be treated with respect and with due consideration for his or her dignity and privacy.
- B. Each beneficiary is guaranteed the right to receive information on available treatment options and alternatives, presented in a manner appropriate to the beneficiary's condition and ability to understand.

- C. Each beneficiary is guaranteed the right to participate in decisions regarding his or her health care, including the right to refuse treatment.
- D. Each beneficiary is guaranteed the right to be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.
- E. Each beneficiary is guaranteed the right to request and receive a copy of his or her medical records, and to request that they be amended or corrected, as specified in 45 CFR, Section 164.524 and 164.526.
- F. Pursuant to Title 42, CFR, Section 438.100(c), the parties acknowledge and agree that each beneficiary is free to exercise his or her rights, and the exercise of those rights will not adversely affect the way the Contractor and its providers or the Department treat the beneficiary.

8. Relationship of the Parties.

The Department and the Contractor are, and shall at all times be deemed to be, independent agencies. Each party to this contract shall be wholly responsible for the manner in which it performs the obligations and services required of it by the terms of this contract. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the parties or any of their agents or employees. Each party assumes exclusively the responsibility for the acts of its employees or agents as they relate to the services to be provided during the course and scope of their employment. The Department and its agents and employees shall not be entitled to any rights or privileges of the Contractor's employees and shall not be considered in any manner to be Contractor employees. The Contractor and its agents and employees, shall not be entitled to any rights or privileges of state employees and shall not be considered in any manner to be state employees.

9. Waiver of Default.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this contract.

10. Additional Provisions.

- A. The Contractor shall comply with the provisions of the Copeland Anti-Kickback Act (18 U.S.C. Section 874 and 40 U.S.C. Section 276c), which requires that all contracts and subcontracts in excess of \$2000 for construction or repair awarded by the Contractor and its subcontractors

shall include a provision for compliance with the Copeland Anti-Kickback Act (18 U.S.C. Section 874), as supplemented by Department of Labor regulations (Title 29, CFR, Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States").

- B. The Contractor shall comply with the provisions of the Davis-Bacon Act, as amended (40 U.S.C. Section 276a to a-7), which provides that, when required by Federal Medicaid program legislation, all construction contracts awarded by the Contractor and its subcontractors of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. Section 276a to a-7) as supplemented by Department of Labor regulations (Title 29, CFR, Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction").
- C. The Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. Section 327-333), as applicable, which requires that all subcontracts awarded by the Contractor in excess of \$2,000 for construction and in excess of \$2,500 for other subcontracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-333), as supplemented by Department of Labor regulations (Title 29, CFR, Part 5).
- D. The Contractor shall comply with the provisions of the Clean Air Act (42 U.S.C. Section 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), as amended, which provide that contracts and subcontracts of amounts in excess of \$100,000 shall contain a provision that requires the Contractor or subcontractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. Violations shall be reported to the federal Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency.

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EXHIBIT E

Additional Provisions.

1. Term and Termination.

A. Contract Renewal.

This contract may be renewed unless good cause is shown for non-renewal pursuant to Title 9, CCR, Section 1810.321. This contract shall be renewed every three years.

B. Contract Termination.

The Department or the Contractor may terminate this contract in accordance with Title 9, CCR, Section 1810.323.

C. Mandatory Termination.

The Department is required to terminate this contract in accordance with Subdivision (d) of Section 5777 of the Welfare and Institutions Code when circumstances occur as specified in that provision.

The Department shall terminate its contract if the Secretary of the federal Health and Human Services Agency has determined that the Contractor does not meet the requirements for participation in the Medicaid program as provided in Title XIX of the Social Security Act. The Department shall deliver written notice of termination to the Contractor at least 60 calendar days prior to the effective date of termination.

D. Termination of Obligations.

All obligations to provide covered services under this contract shall automatically terminate on the effective date of any termination of this contract. The Contractor shall be responsible for providing covered services to beneficiaries until the termination or expiration of the contract and shall remain liable for the processing and payment of invoices and statements for covered services provided to beneficiaries prior to such expiration or termination.

E. When Contractor terminates a subcontract with a provider, Contractor shall make a good faith effort to provide notice of this termination, within 15 days, to the persons that Contractor, based on available information, determines have recently been receiving services from that provider.

2. Duties of the State.

In discharging its obligations under this contract, the Department shall perform the following duties:

A. Payment for Services.

The Department shall make the appropriate payments set forth in Exhibit B and take all available steps to secure and pay FFP to the Contractor, once the Department receives FFP, for claims submitted by the Contractor. The Department shall notify Contractor and allow Contractor an opportunity to comment to the Department when questions are posed by CMS, or when there is a federal deferral, withholding, or disallowance with respect to claims made by the Contractor.

B. Reviews.

The Department shall conduct reviews of access to and quality of care in Contractor's county at least once every three years and issue reports to the Contractor detailing findings, recommendations, and corrective action, as appropriate, pursuant to Title 9, CCR, Sections 1810.380 and 1810.385. The Department shall also arrange for an annual external quality review of the Contractor as required by Title 42, CFR, Section 438.204(d) and Title 9, CCR, Section 1810.380(a)(7).

C. Monitoring for Compliance.

The Department shall monitor the Contractor's operations for compliance with the provisions of this contract, and applicable federal and state law and regulations. Such monitoring activities shall include, but not be limited to, inspection and auditing of Contractor facilities, management systems and procedures, and books and records, as the Department deems appropriate, at any time during the Contractor's or facility's normal business hours. When monitoring activities identify areas of non-compliance, the Department shall issue reports to the Contractor detailing findings, recommendations, and corrective action. Failure to comply with required corrective action could lead to civil penalties, as appropriate, pursuant to Title 9, CCR, Sections 1810.380 and 1810.385.

D. The Department shall review and either approve, disapprove, or request additional information for each Implementation Plan as defined in Title 9, CCR, Section 1810.221 and 1810.310. Notices of Approval, Notices of Disapproval and requests for additional information shall be forwarded to the Contractor within 60 days of the receipt of the Implementation Plan. A

Contractor shall submit proposed changes to its approved Implementation Plan in writing to the Department for review. A Contractor shall submit proposed changes in the policies, processes or procedures that would modify the Contractor's current Implementation Plan prior to implementing the proposed changes. (See Title 9, CCR, Section 1810.310 (b)-(c).)

- E. The Department shall act promptly to review the Contractor's Cultural Competence Plan submitted pursuant to Title 9, CCR, Section 1810.410. The Department shall provide a Notice of Approval or a Notice of Disapproval, including the reasons for the disapproval, to the Contractor within 60 calendar days after receipt of the plan from the Contractor. If the Department fails to provide a Notice of Approval or Disapproval, the Contractor may implement the plan 60 calendar days from its submission to the Department.

- F. Certification of Organizational Provider Sites Owned or Operated by the Contractor.

The Department shall certify the organizational provider sites that are owned, leased or operated by the Contractor, in accordance with Title 9, CCR, Section 1810.435, and the requirements specified in Exhibit A1, Section 4 of this contract. This certification shall be performed prior to the date on which the Contractor begins to deliver services under this contract at these sites and once every three years after that date, unless the Department determines an earlier date is necessary. The on-site review required by Title 9, CCR, Section 1810.435(e), shall be conducted of any site owned, leased, or operated by the Contractor and used for to deliver covered services to beneficiaries, except that on-site review is not required for public school or satellite sites.

The Department may allow the Contractor to begin delivering covered services to beneficiaries at a site subject to on-site review by the Department prior to the date of the on-site review, provided the site is operational and has any required fire clearances. The earliest date the Contractor may begin delivering covered services at a site subject to on site review by the Department is the date the Contractor requested certification of the site in accordance with procedures established by the Department, the date the site was operational, or the date a required fire clearance was obtained, whichever date is latest.

The Department may allow the Contractor to continue delivering covered services to beneficiaries at a site subject to on-site review by the Department as part of the recertification process prior to the date of the on-site review, provided the site is operational and has all required fire clearances.

Nothing in this section precludes the Department from establishing procedures for issuance of separate provider identification numbers for each of the organizational provider sites operated by the Contractor to facilitate the claiming of federal financial participation by the Contractor and the Department's tracking of that information.

G. Distribution of Informing Materials.

The Department shall provide annual notice to all beneficiaries in accordance with Title 42, CFR, Section 438.10(f)(2), and Title 9, CCR, Section 1810.360(c).

H. Sanctions.

The Department shall conduct oversight and impose sanctions on the Contractor for violations of the terms of this contract, and applicable federal and state law and regulations, in accordance with Title 9, CCR, Sections 1810.380 and 1810.385.

I. Notification.

The Department shall notify beneficiaries of their Medi-Cal specialty mental health benefits and options available upon termination or expiration of this contract.

J. Performance Measurement.

The Department shall measure the Contractor's performance based on Medi-Cal approved claims and other data available to the Department using standard measures established by the Department in consultation with stakeholders.

EXHIBIT F

HIPAA Business Associate Addendum

1. Recitals.

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. Section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").
- B. The Department wishes to disclose to Contractor certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, and personal information ("PI") under state law.
- C. As set forth in this Agreement, Contractor is the Business Associate of the Department acting on the Department's behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of the Department and creates, receives, maintains, transmits, uses or discloses PHI, ePHI and PI. The Department and Contractor are each a party to this Agreement and are collectively referred to as the "parties."
- D. The purpose of this Exhibit F is to protect the privacy and security of the PHI, ePHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that the Department must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act.
- E. The terms used in this Exhibit F, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

2. Definitions.

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations, and under the Information Practices Act, Civil Code section 1798.29.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- D. Department PHI or PI shall mean Protected Health Information, Electronic Protected Health Information or Personal Information, as defined below, accessed in a database maintained by the Department, received by Contractor from the Department or acquired or created by Contractor in connection with performing the functions, activities and services specified in this Agreement on behalf of the Department. The terms PHI or PI as used in this document shall mean Department PHI or PI.
- E. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921 and implementing regulations.
- F. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- G. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR Section 160.103.
- H. Privacy Rule shall mean the HIPAA Regulations that are found at 45 CFR Parts 160 and 164, subparts A and E.
- I. Personal Information (PI) shall have the meaning given to such term in California Civil Code Section 1798.29.

- J. Protected Health Information (PHI) means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR Section 160.103 and as defined under HIPAA.
- K. Required by law, as set forth under 45 CFR Section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- L. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- M. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data utilized in complying with this Agreement; or interference with system operations in an information system that processes, maintains or stores PHI or PI.
- N. Security Rule shall mean the HIPAA regulations that are found at 45 CFR Parts 160 and 164.
- O. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. Section 17932(h), any guidance issued by the Secretary pursuant to such Act and the HIPAA regulations.

3. Terms of Agreement.

A. Permitted Uses and Disclosures of Department PHI by Contractor.

Except as otherwise indicated in this Exhibit F, Contractor may use or disclose Department PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of the Department, provided that such use or disclosure would not violate the HIPAA regulations, if done by the Department. Any such use or disclosure, if not for purposes of treatment activities of a health care provider as defined by the Privacy

Rule, must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR Section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

B. Specific Use and Disclosure Provisions. Except as otherwise indicated in this Exhibit F, Contractor may:

- 1) **Use and disclose for management and administration.** Use and disclose Department PHI for the proper management and administration of the Contractor business, provided that such disclosures are required by law, or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be 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 Contractor of any instances of which it is aware that the confidentiality of the information has been breached.
- 2) **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to the Department to the extent requested by the Department and agreed to by Contractor. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of the Department with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the Department.

C. Prohibited Uses and Disclosures

- 1) Contractor shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. Section 17935(a) and 45 CFR Section 164.522(a).
- 2) Contractor shall not directly or indirectly receive remuneration in exchange for Department PHI, except with the prior written consent of the Department and as permitted by 42 U.S.C. Section 17935(d)(2).

D. Responsibilities of Contractor

Contractor agrees:

- 1) **Nondisclosure.** Not to use or disclose Department PHI other than as permitted or required by this Agreement or as required by law.
- 2) **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Department PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of the Department, in compliance with 45 CFR Sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of Department PHI other than as provided for by this Agreement. Contractor shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR Section 164, subpart C, in compliance with 45 CFR Section 164.316. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Contractor will provide the Department with its current and updated policies upon request.
- 3) **Security.** Contractor shall ensure the continuous security of all computerized data systems containing Department PHI or PI and to protect paper documents containing Department PHI or PI. At a minimum, Contractor shall:
 - a) Comply with all of the data system security precautions listed in Attachment A, Business Associate Data Security Requirements with respect to Department PHI;
 - b) Achieve and maintain compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of the Department under this Agreement;
 - c) Provide a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated

Information Systems, which sets forth guidelines for automated information systems in Federal agencies;

- d) Comply with the substantive privacy and security requirements in the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (CHHS) and in the Agreement between the Social Security Administration and DHCS, known as the Information Exchange Agreement (IEA Agreement), which are appended as Attachment B and hereby incorporated into this Agreement. The specific sections of the IEA Agreement with substantive privacy and security requirements which are to be complied with are in the following sections, E, Security Procedures, F, Contractor/Agent Responsibilities, and G, Safeguarding and Reporting Responsibilities for Personally Identifiable Information ("PII"), and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with the Social Security Administration.
 - e) In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Contractor must comply within a reasonable period of time with changes to these standards that occur after the effective date of this Agreement.
 - f) Contractor shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with the Department.
- E. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Department PHI by Contractor or its subcontractors in violation of the requirements of this Exhibit F.
- F. **Contractor's Agents and Subcontractors.**
- 1) To enter into written agreements with any agents, including subcontractors and vendors, to whom Contractor provides

Department PHI or PI that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Contractor with respect to such PHI and PI under this Exhibit F, and that comply with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI and PI. Contractor shall incorporate, when applicable, the relevant provisions of this Exhibit F into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI or PI be reported to Contractor.

- 2) In accordance with 45 CFR Section 164.504(e)(1)(ii), upon Contractor's knowledge of a material breach or violation by its subcontractor of the agreement between Contractor and the subcontractor, Contractor shall:
 - a) Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by the Department; or
 - b) Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

G. Availability of Information to the Department and Individuals to Provide Access and Information:

- 1) To provide access as the Department may require, and in the time and manner designated by the Department (upon reasonable notice and during Contractor's normal business hours) to PHI in a Designated Record Set, to the Department (or, as directed by the Department), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for the Department that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for Department health plans; or those records used to make decisions about individuals on behalf of the Department. Contractor shall use the forms and processes developed by the Department for this purpose and shall respond to requests for access to records transmitted by the Department within fifteen (15)

calendar days of receipt of the request by producing the records or verifying that there are none.

- 2) If Contractor maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Contractor shall provide such information in an electronic format to enable the Department to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. Section 17935(e). This section shall be effective as of the date that 42 U.S.C. Section 17935(e) and its implementing regulations apply to the Department.
- 3) If Contractor receives data from the Department that was provided to the Department by the Social Security Administration, upon request by the Department, Contractor shall provide the Department with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.

H. Amendment of Department PHI. To make any amendment(s) to Department PHI that were requested by a patient and that the Department directs or agrees should be made to assure compliance with 45 CFR Section 164.526., in the time and manner designated by the Department, with the Contractor being given a minimum of twenty (20) days within which to make the amendment.

I. Internal Practices. To make Contractor's internal practices, books and records relating to the use and disclosure of Department PHI available to the Department or to the Secretary, for purposes of determining the Department's compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Contractor, Contractor shall provide written notification to the Department and shall set forth the efforts it made to obtain the information.

J. Documentation of Disclosures. To document and make available to the Department or (at the direction of the Department) to an Individual such disclosures of Department PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR Section 164.528 and 42 U.S.C. Section 17935(c). If Contractor maintains electronic health records for the Department as of January 1, 2009, Contractor must provide an accounting of disclosures, including

those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Contractor acquires electronic health records for the Department after January 1, 2009, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting. This section shall be effective only as of the date that 42 USC section 17935(c) and its implementing regulations apply to the Department.

K. Breaches and Security Incidents. During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:

- 1. Initial Notice to the Department.** (1) To notify the Department **immediately by telephone call plus email or fax** upon the discovery of a breach of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to the Department by the Social Security Administration. (2) To notify the Department **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate.

Notice shall be provided to the Department Program Contract Manager and the Department Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the Department Information Security Officer. Notice shall be made using the DHCS "Privacy Incident Report" form, including all information known at the time. Contractor shall use the most current version of this form, which is posted on the DHCS Information Security Officer website (www.dhcs.ca.gov, then select "Privacy" in the left column and then "Business Use" near the

middle of the page) or use this link:

<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, Contractor shall take:

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
 - b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
2. **Investigation and Investigation Report.** To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI or PI. Within 72 hours of the discovery, Contractor shall submit an updated "Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the Department Program Contract Manager and the Department Information Security Officer:
3. **Complete Report.** To provide a complete report of the investigation to the Department Program Contract Manager and the Department Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Department requests information in addition to that listed on the "Privacy Incident Report" form, Contractor shall make reasonable efforts to provide the Department with such information. If, because of the circumstances of the incident, Contractor needs more than ten (10) working days from the discovery to submit a complete report, the Department may grant a reasonable extension of time, in which case Contractor shall submit periodic updates until the complete report is submitted. If necessary, a Supplemental Report may be used to submit revised

or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "Privacy Incident Report" form. The Department will review and approve the determination of whether a breach occurred and individual notifications are required, and the corrective action plan.

4. **Notification of Individuals.** If the cause of a breach of PHI or PI is attributable to Contractor or its subcontractors, agents or vendors, Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The Department Program Contract Manager and the Department Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made. The Department will provide its review and approval expeditiously and without unreasonable delay.
5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Contractor or its agents, subcontractors or vendors, Contractor is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Contractor shall notify the Secretary of the breach immediately upon discovery of the breach. If Contractor has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to the Department in addition to Contractor, Contractor shall notify the Department, and the Department and Contractor may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.
6. **Department Contact Information.** To direct communications to the above referenced Department staff, the Contractor shall initiate contact as indicated herein. The Department reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an

amendment to this Addendum or the Agreement to which it is incorporated.

Contractor shall use the following contact information up to and including June 30, 2012:

Department Program Contract Manager	DMH Information Security Officer
See the Exhibit A, Scope of Work for Program Contract Manager information	Information Security Officer California Department of Mental Health 1600 9th Street, Room 150 Sacramento, CA 95814 Phone: (916) 651-6776 Email: iso@dmh.ca.gov Fax: (916) 651-1341

Contractor shall use the following contact information on July 1, 2012, and thereafter:

Department Program Contract Manager	DHCS Privacy Officer	DHCS Information Security Officer
See the Exhibit A, Scope of Work for Program Contract Manager information	Privacy Officer c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 Email: privacyofficer@dhcs.ca.gov Telephone: (916) 445-4646 Fax: (916) 440-7680	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: iso@dhcs.ca.gov Telephone: ITSD Service Desk (916) 440-7000 or (800) 579-0874 Fax: (916) 440-5537

- L. **Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Contractor knows of a material breach or violation by the Department of this Exhibit F, it shall take the following steps:
- 1) Provide an opportunity for the Department to cure the breach or end the violation and terminate the Agreement if the Department does not cure the breach or end the violation within the time specified by Contractor; or

2) Immediately terminate the Agreement if the Department has breached a material term of the Exhibit F and cure is not possible.

M. **Due Diligence.** Contractor shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Exhibit F and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Exhibit F.

N. **Sanctions and/or Penalties.** Contractor understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Contractors may result in the imposition of sanctions and/or penalties on Contractor under HIPAA, the HITECH Act and the HIPAA regulations.

4. **Obligations of the Department.**

The Department agrees to:

A. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Contractor with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Contractor's permitted or required uses and disclosures.

B. **Notification of Restrictions.** Notify the Contractor of any restriction to the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect the Contractor's use or disclosure of PHI.

C. **Requests Conflicting with HIPAA Rules.** Not request the Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by the Department.

5. **Audits, Inspection and Enforcement**

A. From time to time, and subject to all applicable federal and state privacy and security laws and regulations, the Department may conduct a reasonable inspection of the facilities, systems, books and records of Contractor to monitor compliance with this Exhibit F. Contractor shall promptly remedy any violation of any provision of this Exhibit F. The fact that the Department inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this Exhibit F. The Department's failure to detect a non-compliant practice, or a failure to report a detected non-

compliant practice to Contractor does not constitute acceptance of such practice or a waiver of The Department's enforcement rights under this Agreement, including this Exhibit F.

- B.** If Contractor is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Exhibit F, Contractor shall notify the Department. Upon request from the Department, Contractor shall provide the Department with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Contractor is responsible for any civil penalties assessed due to an audit or investigation of Contractor, in accordance with 42 U.S.C. Section 17934(c).

6. Termination.

- A. Term.** The Term of this Exhibit F shall extend beyond the termination of the Agreement and shall terminate when all Department PHI is destroyed or returned to the Department, in accordance with 45 CFR Section 164.504(e)(2)(ii)(I).
- B. Termination for Cause.** In accordance with 45 CFR Section 164.504(e)(1)(ii), upon the Department's knowledge of a material breach or violation of this Exhibit F by Contractor, the Department shall:
- 1) Provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by the Department; or
 - 2) Immediately terminate this Agreement if Contractor has breached a material term of this Exhibit F and cure is not possible.
- C. Judicial or Administrative Proceedings.** Contractor will notify the Department if it is named as a defendant in a criminal proceeding for a violation of HIPAA. The Department may terminate this Agreement if Contractor is found guilty of a criminal violation of HIPAA. The Department may terminate this Agreement if a finding or stipulation that the Contractor has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Contractor is a party or has been joined. DHCS will consider the nature and seriousness of the violation in deciding whether or not to terminate the Agreement.

D. Effect of Termination. Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all Department PHI that Contractor still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Contractor shall notify the Department of the conditions that make the return or destruction infeasible, and the Department and Contractor shall determine the terms and conditions under which Contractor may retain the PHI. Contractor shall continue to extend the protections of this Exhibit F to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to Department PHI that is in the possession of subcontractors or agents of Contractor.

7. Miscellaneous Provisions.

A. Disclaimer. The Department makes no warranty or representation that compliance by Contractor with this Exhibit F, HIPAA or the HIPAA regulations will be adequate or satisfactory for Contractor's own purposes or that any information in Contractor's possession or control, or transmitted or received by Contractor, is or will be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of the Department PHI.

B. Amendment. The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit F may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of Department PHI. Upon the Department's request, Contractor agrees to promptly enter into negotiations with the Department concerning an amendment to this Exhibit F embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. The Department may terminate this Agreement upon thirty (30) days written notice in the event:

- 1) Contractor does not promptly enter into negotiations to amend this Exhibit F when requested by the Department pursuant to this section; or
- 2) Contractor does not enter into an amendment providing assurances regarding the safeguarding of Department PHI that the Department

deems is necessary to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

- C. Assistance in Litigation or Administrative Proceedings.** Contractor shall make itself and any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Agreement, available to the Department at no cost to the Department to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Department, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.
- D. No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Exhibit F is intended to confer, nor shall anything herein confer, upon any person other than the Department or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. Interpretation.** The terms and conditions in this Exhibit F shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit F shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.
- F. Regulatory References.** A reference in the terms and conditions of this Exhibit F to a section in the HIPAA regulations means the section as in effect or as amended.
- G. Survival.** The respective rights and obligations of Contractor under Section 6, Item D of this Exhibit F shall survive the termination or expiration of this Agreement.
- H. No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Attachment A

Business Associate Data Security Requirements

I. Personnel Controls

- A. **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of the Department, or access or disclose Department PHI or PI must complete information privacy and security training, at least annually, at Contractor's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following termination of this Agreement.
- B. **Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. **Confidentiality Statement.** All persons that will be working with Department PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to Department PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for Department inspection for a period of six (6) years following termination of this Agreement.
- D. **Background Check.** Before a member of the workforce may access Department PHI or PI, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years.

2. Technical Security Controls

- A. **Workstation/Laptop encryption.** All workstations and laptops that store Department PHI or PI either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as

Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the Department Information Security Office.

- B. **Server Security.** Servers containing unencrypted Department PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. **Minimum Necessary.** Only the minimum necessary amount of Department PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. **Removable media devices.** All electronic files that contain Department PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- E. **Antivirus software.** All workstations, laptops and other systems that process and/or store Department PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. **Patch Management.** All workstations, laptops and other systems that process and/or store Department PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release. Applications and systems that cannot be patched within this time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Applications and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.
- G. **User IDs and Password Controls.** All users must be issued a unique user name for accessing Department PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed at least every 90

days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:

- 1) Upper case letters (A-Z)
- 2) Lower case letters (a-z)
- 3) Arabic numerals (0-9)
- 4) Non-alphanumeric characters (punctuation symbols)

- H. Data Destruction.** When no longer needed, all Department PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the Department Information Security Office.
- I. System Timeout.** The system providing access to Department PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. Warning Banners.** All systems providing access to Department PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for Department PHI or PI, or which alters Department PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If Department PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. Access Controls.** The system providing access to Department PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- M. Transmission encryption.** All data transmissions of Department PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing Department PHI can be encrypted. This requirement pertains

to any type of Department PHI or PI in motion such as website access, file transfer, and E-Mail.

- N. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting Department PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. **Audit Controls**

- A. **System Security Review.** Contractor must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing Department PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- B. **Log Reviews.** All systems processing and/or storing Department PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- C. **Change Control.** All systems processing and/or storing Department PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. **Business Continuity / Disaster Recovery Controls**

- A. **Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of Department PHI or PI held in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- B. **Data Backup Plan.** Contractor must have established documented procedures to backup Department PHI to maintain retrievable exact copies of Department PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore Department PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of Department data.

5. Paper Document Controls

- A. Supervision of Data.** Department PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. Department PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. Escorting Visitors.** Visitors to areas where Department PHI or PI is contained shall be escorted and Department PHI or PI shall be kept out of sight while visitors are in the area.
- C. Confidential Destruction.** Department PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- D. Removal of Data.** Only the minimum necessary Department PHI or PI may be removed from the premises of the Contractor except with express written permission of the Department. Department PHI or PI shall not be considered "removed from the premises" if it is only being transported from one of Contractor's locations to another of Contractor's locations.
- E. Faxing.** Faxes containing Department PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- F. Mailing.** Mailings containing Department PHI or PI shall be sealed and secured from damage or inappropriate viewing of such PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of Department PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of the Department to use another method is obtained.

