

File No. 140907

Committee Item No. 2

Board Item No. 15

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date October 8, 2014

Board of Supervisors Meeting

Date October 21, 2014

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

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Completed by: Linda Wong

Date October 3, 2014

Completed by: L.W.

Date October 14, 2014

1 [Annual Performance Contract Renewal - California Department of Health Care Services -  
2 Mental Health Services]

3 **Resolution retroactively approving Performance Contract No. 14-90344, between**  
4 **Community Behavioral Health Services and the Department of Health Care Services,**  
5 **incorporating the Mental Health Services Act, Projects for Assistance in Transition**  
6 **from Homelessness, the Mental Health Plan, and Community Mental Health Services**  
7 **Grant for the period of July 1, 2014, through June 30, 2015.**

8  
9 WHEREAS, The California Department of Health Care Services (DHCS) administers  
10 funding for the Mental Health Services Act (MHSA), Projects for Assistance in Transition from  
11 Homelessness (PATH), the Mental Health Plan, and Community Mental Health Services  
12 Grant (MHBG) programs; and

13 WHEREAS, The Mental Health Plan was established pursuant to Welfare and  
14 Institutions (W&I) Code, Section 14726 through 14712, direct the California Department of  
15 Health Care Services to implement and administer Managed Mental Health Care for Medi-Cal  
16 eligible residents of this state through contracts with mental health plans; and

17 WHEREAS, The Mental Health Services Fund was established pursuant to Welfare  
18 and Institutions (W&I) Code, Section 5890, and provides funds to counties for the  
19 implementation of its MHSA programs for prevention and early intervention, community  
20 services and supports, workforce development and training, innovation, plus capital facilities  
21 and technological needs; and

22 WHEREAS, Pursuant to United State Code, Title 42, Sections 290cc-21 through  
23 290cc-35, the PATH grant funds community based outreach, mental health and substance  
24 abuse referral/treatment, case management and other support services, as well as a limited  
25 set of housing services for the homeless mentally ill; and

1           WHEREAS, DHCS awards federal Community Mental Health Block Grant funds  
2 (MHBG) to counties in California to provide services to the following target populations:  
3 children and youth with serious emotional disturbances, adults and older adults with serious  
4 mental illnesses; and


5           WHEREAS, The County's performance contract, a copy of which is on file with the  
6 Clerk of the Board of Supervisors in File No. 140056, as required by Welfare and Institutions  
7 Code, Sections 5650(a), 5847, and Title 9, California Code of Regulations (CCR), Section  
8 3310, sets forth conditions and requirements that County must meet in order to receive this  
9 funding; now, therefore, be it

10           RESOLVED, That DPH is hereby retroactively authorized to enter into a performance  
11 contract agreement with DHCS; and, be it

12           FURTHER RESOLVED, That the Board of Supervisors hereby designates the Director  
13 of CBHS to sign said agreement on behalf of DPH; and, be it

14           FURTHER RESOLVED, That within thirty (30) days of the performance contract being  
15 fully executed by all parties the Director of Community Behavioral Health Services shall  
16 provide the performance contract to the Clerk of the Board for inclusion into the official file.

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18  
19 RECOMMENDED:

20   
21 \_\_\_\_\_

22 Barbara A. Garcia, MPA

23 Director of Health  
24  
25



<p><b>Item 2</b> <b>File 14-0907</b></p>	<p><b>Department:</b> Department of Public Health (DPH)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p>	
<ul style="list-style-type: none"> <li>• The proposed resolution would (1) approve a performance contract between the California Department of Health Care Services and the Department of Public Health (DPH) for the DPH Community Behavioral Health Services to provide services funded by (1) State Mental Health Services Act, and Federal PATH and Mental Health Services Block Grant funds to persons with mental illness and / or substance abuse problems, retroactive to July 1, 2014 through June 30, 2015; and (2) designate the Director of Community Behavioral Health Services to enter into the contract, including any amendments to the contract.</li> </ul>	
<p style="text-align: center;"><b>Key Points</b></p>	
<ul style="list-style-type: none"> <li>• The California Department of Health Care Services allocates Mental Health Services Act (Proposition 63) funds annually to the DPH Community Behavioral Health Services to provide mental health services. Beginning in December 2013 (Fiscal Year 2013-14), the California Department of Health Care Services requested that the DPH annually obtain Board of Supervisors approval by resolution for the performance contract.</li> <li>• In March 2014, the Board of Supervisors approved a resolution (File 14-0056) that approved the performance contract between the California Department of Health Care Services and the DPH for Fiscal Year 2013-14.</li> <li>• The proposed performance contract defines the mental health services to be performed by Community Behavioral Health Services and the requirements that Community Behavioral Health Services must meet to receive Mental Health Services Act, PATH, and Mental Health Services Block Grant funds.</li> </ul>	
<p style="text-align: center;"><b>Fiscal Impact</b></p>	
<ul style="list-style-type: none"> <li>• The proposed performance contract is a “zero dollar” contract. Mental Health Services Act, PATH, and Mental Health Services Block Grant funds are approved in the State budget each year and incorporated into the annual DPH budget, subject to Board of Supervisors appropriation approval. FY 2014-15 Mental Health Services Act, PATH, and Mental Health Services Block Grant funds are \$34,444,651.</li> </ul>	
<p style="text-align: center;"><b>Recommendation</b></p>	
<ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	

**MANDATE STATEMENT / BACKGROUND****Mandate Statement**

The California Department of Health Care Services requires Board of Supervisors approval, by resolution, for the performance contract between the California Department of Health Care Services and the San Francisco Department of Public Health in order for the Department of Public Health to receive (1) State Mental Health Services Act funds, (2) Federal Projects for Assistance in Transition from Homelessness (PATH) funds and (3) Federal Community Mental Health Services Block Grant funds. The resolution designates the county official authorized to enter into the contract.

**Background****Mental Health Services Act**

Proposition 63, approved by California voters in November 2004, created the Mental Health Services Act and Mental Health Services Fund. Proposition 63 imposed a 1 percent tax on incomes greater than \$1,000,000 per year and dedicated such tax revenues for expanded access to public mental health programs in California. Under the State Welfare and Institutions Code, tax revenues deposited to the Mental Health Services Fund are expended for the implementation of the Adult and Older Adult Mental Health System of Care Act<sup>1</sup>, Innovative Programs<sup>2</sup>, Prevention and Early Intervention Programs<sup>3</sup>, and the Children's Mental Health Services Act.<sup>4</sup>

Under the performance contract between the State and the Department of Public Health (DPH), the California Department of Health Care Services allocates approximately \$30 million annually to San Francisco, equal to 1.9 percent of available Mental Health Services funds based on a statewide formula determined by the California Department of Health Care Services. Under the Mental Health Services Act, the allocation to San Francisco is based on the DPH Community Behavioral Health Services' three-year plan or annual update to the three-year plan, which is subject to annual approval by the Board of Supervisors, by resolution. The resolution to approve the FY 2014-15 annual update to the Mental Health Services Act Program and Expenditure Plans is pending before the Board of Supervisors Neighborhood Services and Safety Committee action (File 14-0759).

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<sup>1</sup> The Adult and Older Adult Mental Health System of Care Act (Welfare and Institutions Code 5800-5814.5) establishes a comprehensive and coordinated system of care that includes community-based treatment, outreach services and other early intervention strategies, case management and interagency collaboration.

<sup>2</sup> Innovative Programs (Welfare and Institutions Code 5830) are established but not specifically defined in the Code. The California Department of Mental Health (which was later merged into the Department of Health Care Services) established guidelines that include (1) introduction of new mental health practices, (2) changes in existing mental health practices, and (3) introduction of a new application to the mental health system of a community-driven approach that has been successful in a non-mental health setting.

<sup>3</sup> 20 percent of Mental Health Services Act funding is allocated to Prevention and Early Intervention Programs, which include outreach to families, employers, primary health care providers, and others to identify early signs of mental illness, access to medically necessary care, and reductions in the stigma to mental illness diagnosis.

<sup>4</sup> 51 percent of Mental Health Service Act funding is allocated to children's services.

Substance Abuse and Mental Health Grants

The Substance Abuse and Mental Health Services Administration (SAMHSA) is one of eight federal Public Health Service agencies in the U.S. Department of Health and Human Services. SAMHSA provides (1) Projects for Assistance in Transition from Homelessness (PATH) funds and (2) Community Mental Health Services Block Grant funds. The California Department of Health Care Services administers the SAMHSA funds and allocates these Federal funds to San Francisco. The PATH funds are allocated to housing and case management services to persons with mental health and substance abuse issues. The Mental Health Services Block Grant funds are allocated to counties to target children and youth with serious emotional disturbances and adults and older adults with serious mental illness.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would approve the performance contract between the DPH and the California Department of Health Care Services in order for the DPH Community Behavioral Health Services to (1) receive State funds for providing services funded under the State Mental Health Services Act, (2) receive Federal PATH and Mental Health Services Block Grant funds in order to provide services to persons with mental illness and / or substance abuse problems retroactive to July 1, 2014 through June 30, 2015; and (3) designate the Director of Community Behavioral Health Services to enter into the performance contract, including any related amendments to the contract.

The proposed performance contract defines the mental health services to be performed by the DPH Community Behavioral Health Services and specifies the requirements that the DPH Community Behavioral Health Services must meet in order to receive the State Mental Health Services Act funds, Federal PATH funds, and Federal Mental Health Services Block Grant funds.

San Francisco Mental Health Services Act Three-Year Integrated Plan

The proposed performance contract requires that all expenditures be consistent with the San Francisco Mental Health Services Act 2014-17 Integrated plan, a three-year program and expenditure plan, and any annual updates to the three-year plan, as previously approved by the Board of Supervisors. As noted above, a resolution approving the San Francisco Mental Health Services 2014-17 Integrated Plan (File 14-0759) is currently pending in the Board of Supervisors Neighborhood Services and Safety Committee.

Table 1 below lists the services funded by the Mental Health Services Fund and administered by the DPH Community Behavioral Health Services in FY 2014-15.

**Table 1: Services in the San Francisco Mental Health Services Act 2014-17 Integrated Plan**

Services	Description
<b>Recovery-Oriented Treatment Services</b>	<ul style="list-style-type: none"> <li>• Includes services traditionally provided in the mental health system (individual or group therapy, medication management, treatment), with a focus on recovery</li> </ul>
<b>Mental Health Promotion &amp; Early Intervention (PEI) Services</b>	<ul style="list-style-type: none"> <li>• Aims to reduce risk factors</li> <li>• Promotes a holistic view of wellness</li> <li>• Delivers programs in community settings</li> </ul>
<b>Peer-to-Peer Support Services</b>	<ul style="list-style-type: none"> <li>• Offers recovery and other support services that are provided by and family members</li> </ul>
<b>Vocational Services</b>	<ul style="list-style-type: none"> <li>• Helps consumers secure employment (e.g., training, job search and retention services)</li> </ul>
<b>Housing</b>	<ul style="list-style-type: none"> <li>• Helps individuals with serious mental illness who are homeless or at-risk of homelessness secure or retain permanent housing</li> <li>• Facilitates access to short-term stabilization housing</li> </ul>
<b>Behavioral Health Workforce Development</b>	<ul style="list-style-type: none"> <li>• Recruits members from unrepresented and under-represented communities</li> <li>• Develops skills to work effectively in the mental health field</li> </ul>
<b>Capital Facilities/ Information Technology</b>	<ul style="list-style-type: none"> <li>• Improves facilities</li> <li>• Increase client access to personal health information</li> </ul>

*Source: Proposed San Francisco Mental Health Services Act 2014-17 Integrated Plan*

**FISCAL IMPACT**

The proposed resolution approves the performance contract between the DPH and the California Department of Health Care Services for the DPH Community Behavioral Health Services to provide State- and Federally-funded services to persons with mental illness and / or substance abuse issues. Board of Supervisors approval of the performance contract is required by the State in order for the DPH Community Behavioral Health Services to receive the applicable State and Federal funds used to provide services to persons with mental illness and / or substance abuse issues. Approval of the proposed resolution retroactively authorizes the DPH to accept Mental Health Services Act, PATH and Mental Health Services Block Grant funds that were included in the FY 2014-15 DPH budget, as previously appropriated by the Board of Supervisors.

The proposed performance contract is a “zero dollar” contract. Mental Health Services Act, PATH, and Mental Health Services Block Grant funds are approved in the State budget each year and incorporated into the annual DPH budget, subject to Board of Supervisors appropriation approval. The Board of Supervisors previously appropriated \$34,374,445 in State Mental Health Services Act funds and Federal PATH and Mental Health Services Block Grant funds in the DPH FY 2014-15 budget, as shown in Table 2 below.



**Table 2: Budgeted Expenditures**

	Appropriated by the Board of Supervisors in the Fiscal Year 2014-15 Annual Appropriation Ordinance	FY 2014-15 DPH Estimated Amount	Difference
<b>Mental Health Services Act (State)</b>	\$30,973,615	\$30,973,615	\$-
<b>Mental Health Block Grant (Federal)</b>	2,828,081	2,872,039	43,958
<b>PATH (Federal)</b>	576,749	598,997	22,248
<b>Total</b>	<b>\$34,374,445</b>	<b>\$34,444,651</b>	<b>\$66,206</b>

As shown in Table 2 above, the Department of Public Health, is proposing to expend \$66,206 more than the grant amounts included in the FY 2014-15 budget approved by the Board of Supervisors. This increase is not subject to Board of Supervisors approval because each grant increase (\$43,958 for the Mental Health Block Grant, and \$22,248 for the PATH grant) is less than the threshold of \$50,000 for Board of Supervisors approval under City Administrative Code Section 10.170-1.

Services funded by the State Mental Health Services Act and Federal Mental Health Block Grant funds are provided by DPH staff and non-profit and for-profit contractors. According to Ms. Marlo Simmons, DPH Mental Health Services Act Director, Mental Health Services Act funds are allocated to 49 different non-profit and for-profit contractors and approximately 100 full-time equivalent (FTE) DPH positions to provide mental health services.

Federal PATH funds are passed through from the State to DPH, which allocates the funds to four non-profit providers for housing and case management services, including (1) South of Market Mental Health Services, (2) the Curry Senior Center, (3) Hyde Street Community Services and (4) Swords to Plowshares.

**RECOMMENDATION**

Approve the proposed resolution.



Edwin M. Lee  
Mayor

Barbara A. Garcia, MPA  
Director of Health

TO: Angela Calvillo, Clerk of the Board of Supervisors

FROM: Jo Robinson, MFT  
Director of Community Behavioral Health Services

THROUGH: Barbara A. Garcia, MPA  
Director of Health

DATE: August 12, 2014

SUBJECT: San Francisco Community Behavioral Health Services (CBHS) Performance Contract with the California Department of Health Care Services (DHCS), requiring approval by the Board of Supervisors and designation of the Community Behavioral Health Director as the signatory of the agreement.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2014 AUG 26 PM 4:20  
AK

**Purpose of Memorandum**

This memorandum provides an explanation of the Community Behavioral Health Services (CBHS) Performance Contract with the California Department of Health Care Services (DHCS) and provides a description of the requirement that CBHS receive approval from your Board as well as designating the Community Behavioral Health Director as the signatory of this agreement.

**Background**

The Department of Health Care Services (DHCS) administers funding for the Mental Health Services Act (MHSA), Projects for Assistance in Transition from Homelessness (PATH), the Mental Health Plan, and Community Mental Health Services Grant (MHBG) programs.

- **The Mental Health Services Fund (MHSA)** was established pursuant to W&I section 5890 and provides funds to counties for the implementation of its MHSA programs for prevention and early intervention, community services and supports, workforce development and training, innovation, plus capital facilities and technological needs.
- **The Projects for Assistance in Transition from Homelessness (PATH)**, established pursuant to Title 42, United State Code, sections 290cc-21 through 290cc-35, funds community based outreach, mental health and substance abuse referral/treatment, case management and other support services, as well as a limited set of housing services for the homeless mentally ill.
- **Federal Community Mental Health Block Grant funds (MHBG)** are awarded by DHCS to counties in California to provide services to the following target

populations: children and youth with serious emotional disturbances (SED), adults and older adults with serious mental illnesses (SMI).

- **The Mental Health Plan** (county) and the California Department of Health Care Services (Department), in accordance with Welfare and Institutions Code 14680 through 14726, enter into an agreement for implementation and administration Managed Mental Health Care for Medi-Cal eligible residents of San Francisco through contract the County's Mental Health Plan. The Department and San Francisco Community Behavioral Health Services agree to operate the Mental Health Plan for San Francisco County. In order to receive this funding, CBHS (a.k.a. the county Mental Health Plan (MHP)) is required to enter annually into a Performance Contract with the DHCS. The contract sets forth conditions and requirements the County must meet in order to receive this funding (reporting, compliance, target populations, etc.). This contract must be approved by the Board of Supervisors.

The most recent approval and designation of the Community Behavioral Health Director as the signatory of this agreement is on file with the Clerk of the Board of Supervisors in File No. 140056.

REGISTRATION NUMBER	AGREEMENT NUMBER 14-90344
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1. This Agreement is entered into between the State Agency and the Contractor named below:
- STATE AGENCY'S NAME (Also known as DHCS, CDHS, DHS or the State)  
 Department of Health Care Services
- CONTRACTOR'S NAME (Also referred to as Contractor)  
 San Francisco Community Behavioral Health Services
2. The term of this Agreement is: July 1, 2014 through June 30, 2015
3. The maximum amount of this Agreement is: \$ 0  
 Zero dollars
4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Program Specifications	13 pages
Exhibit A – Attachment I	1 page
Exhibit B – Funds Provision	1 page
Exhibit C * – General Terms and Conditions	GTC 610
Exhibit F – Information Confidentiality and Security Requirements	7 pages
Exhibit G – Privacy and Information Security Provisions	32 pages
Exhibit G – Attachment B – Information Exchange Agreement between the Social Security Administration (SSA) and the California Department of Health Care Services	66 pages

Items shown above with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.ols.dgs.ca.gov/StandardLanguage/default.htm>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

<b>CONTRACTOR</b>		<b>California Department of          General Services Use Only</b>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) San Francisco Community Behavioral Health Services		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Jo Robinson, MFT Director		
ADDRESS 1380 Howard Street, Fifth Floor, San Francisco, CA 94103		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME Department of Health Care Services		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Christina Soares, Chief, Contracts Management Unit		
ADDRESS 1501 Capitol Avenue, Suite 71.5195, MS 1403, P.O. Box 997413, Sacramento, CA 95899-7413		

Exempt per: W&I Code § 14703

**Exhibit A**  
Program Specifications

**1. Service Overview**

The California Department of Health Care Services (hereafter referred to as DHCS or Department) administers the Mental Health Services Act, Projects for Assistance in Transition from Homelessness (PATH) and Community Mental Health Services Grant (MHBG) programs and oversees county provision of community mental health services provided with realignment funds. Contractor (hereafter referred to as County in this Exhibit) must meet certain conditions and requirements to receive funding for these programs and community mental health services. This Agreement, which is County's performance contract, as required by Welfare and Institutions Code (W&I) sections 5650(a), 5847, and Title 9, California Code of Regulations (CCR), section 3310, sets forth conditions and requirements that County must meet in order to receive this funding. This Agreement does not cover federal financial participation or State general funds as they relate to Medi-Cal services provided through the Mental Health Plan Contracts. County agrees to comply with all of the conditions and requirements described herein.

DHCS shall monitor this Agreement to ensure compliance with applicable federal and State law and applicable regulations (W&I §§ 5610 and 5651.)

**2. Service Location**

The services shall be performed at appropriate sites as described in this contract.

**3. Service Hours**

The services shall be provided during times required by this contract.

**4. Project Representatives**

A. The project representatives during the term of this Agreement will be:

<b>Department of Health Care Services</b>	<b>Contractor's Name</b>
Contract Manager: Dina Kokkos-Gonzales	Contract Manager: Jo Robinson, MFT
Telephone: (916) 552-9055	Telephone: (415) 255-3440
Fax: (916) 440-7620	Fax: (415) 252-3015
Email: Dina.Kokkos@dhcs.ca.gov	Email: jo.robinson@sfdph.org

B. Direct all inquiries to:

**Exhibit A**  
Program Specifications

Department of Health Care Services	Contractor's Name
Mental Health Services Division/Program Policy Unit Attention: Dee Taylor 1500 Capitol Avenue, MS 2702 P.O. Box Number 997413 Sacramento, CA, 95899-7413	Attention: Jo Robinson Street address & room number, if applicable P.O. Box Number (if applicable) City, State, Zip Code
Telephone: (916) 552-9536 Fax: (916) 440-7620 Email: Dee.Taylor@dhcs.ca.gov	Telephone: (415) 255-3440 Fax: (415) 252-3015 Email: jo.robinson@sfdph.org

C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this Agreement.

**5. Services to be Performed**

County shall adhere to the program principles and, to the extent funds are available, County shall provide the array of treatment options in accordance with Welfare and Institutions Code sections 5600.2 through 5600.9, inclusive.

**A. GENERAL REQUIREMENTS FOR AGREEMENT**

County shall comply with all of the requirements Section A.1 of this Provision for all County mental health programs, including those specified in Sections B, C and D. County shall provide all of the data and information specified in Section A.2 to the extent that the data and information is required for each of the County mental health programs, including those specified in Sections B, C and D of this Provision, for which it receives federal or State funds.

- 1) W&I section 5651 provides specific assurances, listed below, that must be included in this Agreement. County shall:
  - a. Comply with the expenditure requirements of Section 17608.05,
  - b. Provide services to persons receiving involuntary treatment as required by Part 1 (commencing with Section 5000) and Part 1.5 (commencing with Section 5585) of Division 5 of the Welfare and Institution Code,
  - c. Comply with all of the requirements necessary for Medi-Cal reimbursement for mental health treatment services and case management programs provided to Medi-Cal eligible individuals, including, but not limited to, the provisions set forth in Chapter 3 (commencing with Section 5700) of the Welfare and Institutions Code, and submit cost reports and other data to DHCS in the form and manner determined by the DHCS,
  - d. Ensure that the Local Mental Health Advisory Board has reviewed and approved procedures ensuring citizen and professional involvement at all stages of the planning process pursuant to W&I section 5604.2,
  - e. Comply with all provisions and requirements in law pertaining to patient rights,

**Exhibit A**  
Program Specifications

- f. Comply with all requirements in federal law and regulation pertaining to federally funded mental health programs,
  - g. Provide all data and information set forth in Sections 5610, 5664 and 5845(d)(6) of the Welfare and Institutions Code,
  - h. If the County elects to provide the services described in Chapter 2.5 (commencing with Section 5670) of Division 5 of the Welfare and Institution Code, comply with guidelines established for program initiatives outlined in this chapter, and
  - i. Comply with all applicable laws and regulations for all services delivered, including all laws, regulations, and guidelines of the Mental Health Services Act.
- 2) County shall comply with all data and information submission requirements specified in this Agreement.
- a. County shall provide all applicable data and information required by federal and/or State law in order to receive any funds to pay for its mental health programs and services, including but not limited to its MHSA programs, PATH grant (if the County receives funds from this grant) or MHBG grant. These federal and State laws include, Title 42, United States Code, sections 290cc-21 through 290cc-35 and 300x through 300x-9, inclusive, W&I sections 5610 and 5664 and the regulations that implement, interpret or make specific, these federal and State laws and any DHCS-issued guidelines that relate to the programs or services.
  - b. County shall comply with the reporting requirements set forth in Division 1 of Title 9 of the California Code of Regulations (CCR) and any other reporting requirements for which County receives federal or State funding source for mental health programs. County shall submit complete and accurate information to DHCS including, but not limited, to the following:
    - i. Client and Service Information (CSI) System Data (See Subparagraph c of this Paragraph)
    - ii. MHSA Quarterly Progress Reports, as specified in Title 9, CCR, section 3530.20. MHSA Quarterly Progress Reports provide the actual number of clients served by MHSA-funded program. Reports are submitted on a quarterly basis.
    - iii. Full Service Partnership Performance Outcome data, as specified in Title 9, CCR, section 3530.30.
    - iv. Consumer Perception Survey data, as specified in Title 9, CCR, section 3530.40.
    - v. County shall submit the Annual Mental Health Services Act Revenue and Expenditure Report to DHCS and the Mental Health Services Oversight and Accountability Commission (MHSOAC), pursuant to W&I section 5899(a) and Title 9, CCR, section 3510 and DHCS-issued guidelines.
  - c. County shall submit CSI data to DHCS, in accordance with the requirements set forth in the DHCS' CSI Data Dictionary. County shall:

**Exhibit A**  
Program Specifications

- i. Report monthly CSI data to DHCS within 60 calendar days after the end of the month in which services were provided.
  - ii. Report within 60 calendar days or be in compliance with an approved plan of correction the DHCS's CSI Unit.
  - iii. Make diligent efforts to minimize errors on the CSI error file.
  - iv. Notify DHCS 90 calendar days prior to any change in reporting system and/or change of automated system vendor.
- d. In the event that DHCS or County determines that changes requiring a change in County's or DHCS' obligation must be made relating to either the DHCS' or County's information needs due to federal or state law changes or business requirements, both the DHCS and County 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 requirements and impacts of the projected changes. DHCS and County agree to meet and discuss the design, development, and costs of the anticipated changes prior to implementation.
- e. If applicable to a specific federal or State funding source covered by this Agreement, County shall require each of its subcontractors to submit a fiscal year-end cost report, due to DHCS no later than December 31 following the close of the fiscal year, in accordance with applicable federal and State laws regulations and DHCS-issued guidelines.
- f. If applicable to a specific federal or State funding source covered by this Agreement, County shall comply with W&I section 5751.7 and ensure that minors are not admitted into inpatient psychiatric treatment with adults. If the health facility does not have specific separate housing arrangements, treatment staff, and treatment programs designed to serve children or adolescents it must request a waiver of this requirement from DHCS as follows:
- i. If this requirement creates an undue hardship on County, County may request a waiver of this requirement. County shall submit the waiver request on Attachment I of this Agreement, to DHCS.
  - ii. DHCS shall review County's waiver request and provide a written notice of approval or denial of the waiver. If County's waiver request is denied, it shall comply with the provision of W&I section 5751.7.
  - iii. County shall submit, and DHCS shall accept, the waiver request only at the time County submits this Agreement, signed by County, is submitted to DHCS for execution. County shall complete Attachment I, including responses to items 1 through 4 and attach it to this Agreement. See Exhibit A, Attachment I, entitled "Request For Waiver" of this Agreement for additional submission information.
  - iv. In unusual or emergency circumstances, when counties need to request waivers after the annual Performance Contract has been executed, these requests should be sent immediately to: Licensing and Certification Section, Program Oversight and Compliance Branch, California Department of Health Care Services, 1700 K Street, MS 2800, Sacramento, CA 95811-4037, Phone: (916) 323-1864.



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- v. Each admission of a minor to a facility that has an approved waiver shall be reported to the Local Mental Health Director.
- g. If County chooses to participate in the Assisted Outpatient Treatment program (AOT) Demonstration Project Act of 2002 it shall be required to comply with all applicable statutes including, but not limited to, W&I sections 5345 through 5349.5, inclusive. In addition, County shall submit to DHCS any documents that DHCS requests as part of its statutory responsibilities in accordance with DHCS Letter No.: 03-01 dated March 20, 2003.
- h. For all mental health funding sources received by County that require submission of a cost report, County shall submit a fiscal year-end cost report by December 31st following the close of the fiscal year in accordance with County's existing or future mental health programs applicable federal and State law. State law includes at least W&I section 5705, applicable regulations and DHCS-issued guidelines. The cost report shall be certified by the mental health director and one of the following: the County mental health departments chief financial officer (or equivalent), and individual who has delegated authority to sign for, and reports directly to the county mental health department's chief financial officer (or equivalent), or the county's auditor-controller (or equivalent). Data submitted shall be full and complete. The County shall also submit a reconciled cost report certified by the mental health director and the county's auditor-controller as being true and correct, no later than 18 months after the close of the following fiscal year.

If the County does not submit the cost reports by the reporting deadlines or does not meet the other requirements, DHCS shall request a plan of correction with specific timelines (W&I §5897 (d)). If County does not submit cost reports by the reporting deadlines or the County does not meet the other requirements, DHCS may, after a hearing held with no less than 20 days-notice to the county mental health director (W&I § 5655) withhold payments from the MHS Fund until the County is in compliance with W&I section 5664.

## **B. THE MENTAL HEALTH SERVICES ACT PROGRAM**

### **1) Program Description**

Proposition 63, which created the Mental Health Services Act (MHSA), was approved by the voters of California on November 2, 2004. The Mental Health Services (MHS) Fund, which provides funds to counties for the implementation of its MHSA programs, was established pursuant to W&I section 5890. The MHSA was designed to expand California's public mental health programs and services through funding received by a one percent tax on incomes in excess of \$1 million. Counties use this funding for projects and programs for prevention and early intervention, community services and supports, workforce development and training, innovation, plus capital facilities and technological needs through mental health projects and programs. The State Controller distributes MHS Funds to the counties to plan for and provide mental health programs and other related activities outlined in a county's three-year program and expenditure plan or annual update. MHS Funds are distributed by the State Controller's Office to the counties on a monthly basis.

DHCS shall monitor County's use of MHS Funds to ensure that the county meets the MHSA and MHS Fund requirements. (W&I section 5651(c).)

**Exhibit A**  
**Program Specifications**

**2) Issue Resolution Process**

County shall have an Issue Resolution Process (Process) to handle client disputes related to the provision of their mental health services. The Process shall be completed in an expedient and appropriate manner. County shall develop a log to record issues submitted as part of the Process. The log shall contain the date of the issue was received; a brief synopsis of the issue; the final issue resolution outcome; and the date the final issue resolution was reached.

**3) Revenue and Expenditure Report**

County shall submit its Revenue and Expenditure Report (RER) by December 31<sup>st</sup> following the close of the fiscal year in accordance with W&I sections 5705 and 5899, regulations and DHCS-issued guidelines. The RER shall be certified by the mental health director and one of the following: County mental health department's chief financial officer (or equivalent), and individual who has delegated authority to sign for, and reports directly to the County mental health department's chief financial officer (or equivalent), or the County's auditor-controller (or equivalent), using the DHCS-issued certification form. Data submitted shall be full and complete. County shall also submit a reconciled RER certified by the mental health director and the county's auditor-controller as being true and correct, using the DHCS-issued certification form, no later than 18 months after the close of the following fiscal year.

If County does not submit the RER by the reporting deadlines or the RER does not meet the requirements, DHCS shall request a plan of correction with specific timelines (W&I § 5897(d)). If the RER is not timely submitted, or does not meet the requirements, DHCS may, after a hearing held with no less than 20 days- notice to the county mental health director (W&I § 5655), withhold payments from the MHS Fund until the County is in compliance with Title 9, CCR, sections 3505(d) and 3510(c).

**4) Distribution and Use of Local Mental Health Services Funds:**

- a. W&I section 5891 provides that, commencing July 1, 2012, on or before the 15<sup>th</sup> day of each month, pursuant to a methodology provided by DHCS, the State Controller shall distribute to County's Local Mental Health Service Fund, established by County pursuant to W&I section 5892(f), all unexpended and unreserved funds on deposit as of the last day of the prior month in the Mental Health Services Fund for the provision of specified programs and other related activities.
- b. County shall allocate the monthly Local MHS Fund in accordance with W&I section 5892 as follows:
  - i. Twenty percent of the funds shall be used for prevention and early intervention (PEI) programs in accordance with Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840). The expenditure for PEI may be increased by County if DHCS determines that the increase will decrease the need and cost for additional services to severely mentally ill persons in County by an amount at least commensurate with the proposed increase.
  - ii. The balance of funds shall be distributed to County's mental health programs for services to persons with severe mental illnesses pursuant to Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850), for the children's

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system of care and Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800), for the adult and older adult system of care.

- iii. Five percent of the total funding for the County's mental health programs established pursuant to Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800), Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840), and Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850) shall be utilized for innovative programs in accordance with W&I sections 5830, 5847 and 5848.
  - iv. Programs for services pursuant to Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800), and Part 4 of Division 5 of the Welfare & Institutions Code (commencing with Section 5850) may include funds for technological needs and capital facilities, human resource needs, and a prudent reserve to ensure services do not have to be significantly reduced in years in which revenues are below the average of previous years. The total allocation for these purposes shall not exceed 20 percent of the average amount of funds allocated to County for the previous five years.
  - v. Allocations in Subparagraphs i. through iii. above, include funding for annual planning costs pursuant to W&I section 5848. The total of these costs shall not exceed five percent of the total annual revenues received for the Local MHS Fund. The planning costs shall include moneys for County's mental health programs to pay for the costs of having consumers, family members, and other stakeholders participate in the planning process and for the planning and implementation required for private provider contracts to be significantly expanded to provide additional services.
- c. County shall use Local MHS Fund monies to pay for those portions of the mental health programs/services for children and adults for which there is no other source of funds available. (W&I §§ 5813.5(b), 5878.3(a) and 9 CCR 3610(d).
  - d. County shall only use Local MHS Funds to expand mental health services. These funds shall not be used to supplant existing state or county funds utilized to provide mental health services. These funds shall only be used to pay for the programs authorized in W&I section 5892. These funds may not be used to pay for any other program and may not be loaned to County's general fund or any other County fund for any purpose. (W&I § 5891.)
  - e. All expenditures for County mental health programs shall be consistent with a currently approved three-year program and expenditure plan or annual update pursuant to W&I section 5847. (W&I § 5892(g).)

5) Three-Year Program and Expenditure Plan and Annual Updates:

- a. County shall prepare and submit a three-year program and expenditure plan, and annual updates, adopted by County's Board of Supervisors, to the Mental Health Services Oversight and Accountability Commission (MHSOAC) and the Department of Health Care Services (DHCS) within 30 calendar days after adoption. The three-year program and expenditure plan and annual updates shall include all of the following:
  - i. A program for Prevention and Early Intervention (PEI) in accordance with Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840).

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- ii. A program for services to children in accordance with Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850), to include a wraparound program pursuant to Chapter 4 of Part 6 of Division 9 of the Welfare and Institutions Code (commencing with Section 18250), or provide substantial evidence that it is not feasible to establish a wraparound program in the County.
  - iii. A program for services to adults and seniors in accordance with Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800).
  - iv. A program for innovations in accordance with Part 3.2 of Division 5 of the Welfare and Institutions Code (commencing with Section 5830). Counties shall expend funds for their innovation programs upon approval by the Mental Health Services Oversight and Accountability Commission.
  - v. A program for technological needs and capital facilities needed to provide services pursuant to Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800), Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840), and Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850). All plans for proposed facilities with restrictive settings shall demonstrate that the needs of the people to be served cannot be met in a less restrictive or more integrated setting.
  - vi. Identification of shortages in personnel to provide services pursuant to the above programs and the additional assistance needed from the education and training programs established pursuant to Part 3.1 of Division 5 of the Welfare and Institutions Code (commencing with Section 5820) and Title 9, CCR, section 3830(b).
  - vii. Establishment and maintenance of a prudent reserve to ensure the County program will continue to be able to serve children, adults, and seniors that it is currently serving pursuant to Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800), Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840), and Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850), during years in which revenues for the MHS Fund are below recent averages adjusted by changes in the state population and the California Consumer Price Index.
  - viii. Certification by County's mental health director, which ensures that County has complied with all pertinent regulations, laws, and statutes of the MHSA, including stakeholder participation and non-supplantation requirements.
  - ix. Certification by County's Mental Health Director and County's Auditor-Controller that the County has complied with any fiscal accountability requirements as directed by DHCS, and that all expenditures are consistent with the requirements of the MHSA.
- b. County shall include services in the programs described in Subparagraphs 5.a.i. through 5.a.v., inclusive, to address the needs of transition age youth between the ages of 16 years old to 25 years old, including the needs of transition age foster youth pursuant to W&I section 5847(c).

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- c. County shall prepare expenditure plans for the programs described in Subparagraphs 5.a.i. through 5.a.v., inclusive, and annual expenditure updates. Each expenditure plan update shall indicate the number of children, adults, and seniors to be served, and the cost per person. (W&I § 5847(e)).
  - d. County's three-year program and expenditure plan and annual updates shall include reports on the achievement of performance outcomes for services pursuant to the Adult and Older Adult Mental Health System of Care Act, Prevention and Early Intervention, and the Children's Mental Health Services Act funded by the MHS Fund and established jointly by DHCS and the MHSOAC, in collaboration with the California Mental Health Director's Association. (W&I § 5848(c)). County contracts with providers shall include the performance goals from the County's three-year program and expenditure plan and annual updates that apply to each provider's programs and services.
  - e. County's three-year program and expenditure plan and annual update shall consider ways to provide services that are similar to those established pursuant to the Mentally Ill Offender Crime Reduction Grant Program. Funds shall not be used to pay for persons incarcerated in state prison or parolees from state prisons. (W&I § 5813.5(f))
- 6) Planning Requirements and Stakeholder Involvement:
- a. County shall develop its three-year program and expenditure plan and annual update with local stakeholders, including adults and seniors with severe mental illness, families of children, adults, and seniors with severe mental illness, providers of services, law enforcement agencies, education, social services agencies, veterans, representatives from veterans organizations, providers of alcohol and drug services, health care organizations, and other important interest. Counties shall demonstrate a partnership with constituents and stakeholders throughout the process that includes meaningful stakeholder involvement on mental health policy, program planning, and implementation, monitoring, quality improvement, evaluation, and budget allocations. County shall prepare and circulate a draft plan and update for review and comment for at least 30 calendar days to representatives of stakeholders interest and any interested party who has requested a copy of the draft plans. (W&I § 5848(a))
  - b. County's mental health board, established pursuant to W&I section 5604, shall conduct a public hearing on the County's draft three-year program and expenditure plan and annual updates at the close of the 30 calendar day comment period. Each adopted three-year program and expenditure plan or annual update shall summarize and analyze substantive recommendations and describe substantive changes to the three-year program and expenditure plan and annual updates. The County's mental health board shall review the adopted three-year program and expenditure plan and annual updates and make recommendations to County's mental health department for amendments. (W&I § 5848(b) and Title 9, CCR, § 3315.)
- 7) County Requirements for Handling MHSA Funds
- a. County shall place all funds received from the State MHS Fund into a Local MHS Fund. The Local MHS Fund balance shall be invested consistent with other County funds and the interest earned on the investments shall be transferred into the Local MHS Fund. (W&I § 5892(f).)

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- b. The earnings on investment of these funds shall be available for distribution from the fund in future years. (W&I § 5892 (f).)
- c. Other than funds placed in a reserve in accordance with an approved plan, any funds allocated to County which it has not spent for the authorized purpose within the three years shall revert to the State. County may retain MSHA Funds for capital facilities, technological needs, or education and training for up to 10 years before reverting to the State. (W&I § 5892(h).)

8) Department Compliance Investigations:

DHCS may investigate County's performance of the Mental Health Services Act related provisions of this Agreement and compliance with the provisions of the Mental Health Services Act, and relevant regulations. In conducting such an investigation DHCS may inspect and copy books, records, papers, accounts, documents and any writing as defined by Evidence Code Section 250 that is pertinent or material to the investigation of the County. For purposes of this Paragraph "provider" means any person or entity that provides services, goods, supplies or merchandise, which are directly or indirectly funded pursuant to MHSA. (Gov. Code §§ 1180, 1181, 1182 and W&I Code § 14124.2.)

9) County Breach, Plan of Correction and Withholding of State Mental Health Funds:

- a. If DHCS determines that County is out-of-compliance with the Mental Health Services Act related provisions of this Agreement, DHCS may request that County submit a plan of correction, including a specific timeline to correct the deficiencies, to DHCS. (W&I § 5897(d).)
- b. If DHCS determines that County is substantially out-of-compliance with any provision of the Mental Health Services Act or relevant regulations, including all reporting requirements, and that administrative action is necessary, DHCS may after a hearing held with no less than 20 days- notice to the county mental health director (W&I § 5655):
  - i. Withhold part or all state mental health funds from County; and/or
  - ii. Require County to enter into negotiations with DHCS to agree on a plan for County to address County's non-compliance. (W&I § 5655.)

**C. PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS (PATH) PROGRAM (Title 42, United States Code, sections 290cc-21 through 290cc-35, inclusive)**

Pursuant to Title 42, United State Code, sections 290cc-21 through 290cc-35, inclusive, the State of California has been awarded federal homeless funds through the federal McKinney Projects for Assistance in Transition from Homelessness (PATH) formula grant. The PATH grant funds community based outreach, mental health and substance abuse referral/treatment, case management and other support services, as well as a limited set of housing services for the homeless mentally ill.

While county mental health programs serve thousands of homeless persons with realignment funds and other local revenues, the PATH grant augments these programs by

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**Program Specifications**

providing services to approximately 8,300 additional persons annually. The county determines its use of PATH funds based on county priorities and needs.

If County wants to receive PATH funds, it shall submit its RFA responses and required documentation specified in DHCS' Request for Application (RFA). County shall complete its RFA responses in accordance with the instructions, enclosures and attachments available on the DHCS website at:

<http://www.dhcs.ca.gov/services/MH/Pages/PATH.aspx>.

If County applied for and DHCS approved its request to receive PATH grant funds, the RFA, County's RFA responses and required documentation, and DHCS' approval constitute provisions of this Agreement and are incorporated by reference herein. County shall comply with all provisions of the RFA and the County's RFA responses in order to receive its PATH grant funds.

**D. COMMUNITY MENTAL HEALTH SERVICES GRANT (MHBG) PROGRAM (Title 42, United States Code section 300x-1 et seq.)**

DHCS awards federal Community Mental Health Services Block Grant funds (known as Mental Health Block Grant (MHBG)) to counties in California. The county mental health agencies provide a broad array of mental health services within their mental health system of care (SOC) programs. These programs provide services to the following target populations: children and youth with serious emotional disturbances (SED), adults and older adults with serious mental illnesses (SMI).

The MHBG funds provide the counties with a stable, flexible, and non-categorical funding base that the counties can use to develop innovative programs or augment existing programs within their SOC. The MHBG funds also assist the counties in providing an appropriate level of community mental health services to the most needy individuals in the target populations who have a mental health diagnosis, and/or individuals who have a mental health diagnosis with a co-occurring substance abuse disorder.

If County wants to receive MHBG funds, it shall submit its RFA responses and required documentation specified in DHCS' RFA. County shall complete its RFA responses in accordance with the instructions, enclosures and attachments available on the DHCS website at:

<http://www.dhcs.ca.gov/services/MH/Pages/MHBG.aspx>.

If County applied for and DHCS approved its request to receive MHBG grant funds, the RFA, County's RFA responses and required documentation, and DHCS' approval constitute provisions of this Agreement and are incorporated by reference herein. County shall comply with all provisions of the RFA and the County's RFA responses in order to receive its MHBG grant funds.

**Exhibit A**  
**Program Specifications**

**E. SPECIAL TERMS AND CONDITIONS**

**1. Audit and Record Retention**

(Applicable to agreements in excess of \$10,000)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purposes of this provision.
- b. The Contractor's and/or Subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).
- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.
  - 1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
  - 2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books, and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy, and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
- g. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

**2. Dispute Resolution Process**

- a. A Contractor grievance exists whenever there is a dispute arising from DHCS' action in the administration of an agreement. If there is a dispute or grievance between the



**Exhibit A**  
**Program Specifications**

Contractor and DHCS, the Contractor must seek resolution using the procedure outlined below.

- 1) The Contractor should first informally discuss the problem with the DHCS Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
  - 2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Health and Safety Code Section 100171.
  - c. Unless otherwise stipulated in writing by DHCS, all dispute, grievance and/or appeal correspondence shall be directed to the DHCS Program Contract Manager.
  - d. There are organizational differences within DHCS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the DHCS Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

**3. Novation**

- a. If the Contractor proposes any novation agreement, DHCS shall act upon the proposal within 60 days after receipt of the written proposal. DHCS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, DHCS will initiate an amendment to this Agreement to formally implement the approved proposal.

**Exhibit A, Attachment I**  
**Request for Waiver**

**Request for Waiver Pursuant To Section 5751.7 of the Welfare and Institutions Codes**

\_\_\_\_\_ hereby requests a waiver for the following public or private health facilities pursuant to Section 5751.7 of the Welfare and Institutions Code for the term of this contract. These are facilities where minors may be provided psychiatric treatment with nonspecific separate housing arrangements, treatment staff, and treatment programs designed to serve minors. However, no minor shall be admitted for psychiatric treatment into the same treatment ward as an adult receiving treatment who is in the custody of any jailor for a violent crime, is a known registered sex offender, or has a known history of, or exhibits inappropriate sexual or other violent behavior which would present a threat to the physical safety of others.

The request for waiver must include, as an attachment, the following:

1. A description of the hardship to the County/City due to inadequate or unavailable alternative resources that would be caused by compliance with the state policy regarding the provision of psychiatric treatment to minors.
2. The specific treatment protocols and administrative procedures established by the County/City for identifying and providing appropriate treatment to minors admitted with adults.
3. Name, address, and telephone number of the facility
  - Number of Beds
  - Type of Facility / Licensure (including licensing agency and license #)
  - A copy of the facility's license or certificate
4. The County Board of Supervisors' decision to designate a facility as a facility for evaluation and treatment pursuant to Welfare and Institutions Codes 5150, 5585.50, and 5585.55.

Execution of this contract shall constitute approval of this waiver. Any waiver granted in the prior fiscal year's contract shall be deemed to continue until execution of this contract.

**Exhibit B  
Funds Provision**

**1. Budget Contingency Clause**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, DHCS shall have no liability to pay any funds whatsoever to San Francisco Community Behavioral Health Services or to furnish any other considerations under this Agreement and San Francisco Community Behavioral Health Services shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, DHCS shall have the option to either cancel this Agreement with no liability occurring to DHCS, or offer an agreement amendment to San Francisco Community Behavioral Health Services to reflect the reduced amount.



**Exhibit F**

**Information Confidentiality and Security Requirements**

1. **Definitions.** For purposes of this Exhibit, the following definitions shall apply:
  - A. **Public Information:** Information that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
  - B. **Confidential Information:** Information that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
  - C. **Sensitive Information:** Information that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive Information may be either Public Information or Confidential Information. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for Sensitive Information is that of integrity. Typically, Sensitive Information includes records of agency financial transactions and regulatory actions.
  - D. **Personal Information:** Information that identifies or describes an individual, including, but not limited to, their name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. **It is DHCS' policy to consider all information about individuals private unless such information is determined to be a public record.** This information must be protected from inappropriate access, use, or disclosure and must be made accessible to data subjects upon request. Personal Information includes the following:

Notice-triggering Personal Information: Specific items of personal information (name plus Social Security number, driver license/California identification card number, or financial account number) that may trigger a requirement to notify individuals if it is acquired by an unauthorized person. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph. See Civil Code sections 1798.29 and 1798.82.
2. **Nondisclosure.** The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any Personal Information, Sensitive Information, or Confidential Information (hereinafter identified as PSCI).
3. The Contractor and its employees, agents, or subcontractors shall not use any PSCI for any purpose other than carrying out the Contractor's obligations under this Agreement.
4. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of any PSCI not emanating from the person who is the subject of PSCI.
5. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the person who is the subject of PSCI, any PSCI to anyone other than DHCS without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.

**Exhibit F**  
Information Confidentiality and Security Requirements

6. The Contractor shall observe the following requirements:

**A. Safeguards.** The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PSCI, including electronic PSCI that it creates, receives, maintains, uses, or transmits on behalf of DHCS. 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, including at a minimum the following safeguards:

**1) Personnel Controls**

- a. **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS PSCI, must complete information privacy and security training, at least annually, at Business Associate'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 contract termination.
- 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 DHCS 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 DHCS PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- d. **Background Check.** Before a member of the workforce may access DHCS PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

**2) Technical Security Controls**

- a. **Workstation/Laptop encryption.** All workstations and laptops that process and/or store DHCS PHI or PI 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 DHCS Information Security Office.
- b. **Server Security.** Servers containing unencrypted DHCS 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.

**Exhibit F**

## Information Confidentiality and Security Requirements

- c. **Minimum Necessary.** Only the minimum necessary amount of DHCS PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- d. **Removable media devices.** All electronic files that contain DHCS 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 DHCS 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 DHCS 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.
- g. **User IDs and Password Controls.** All users must be issued a unique user name for accessing DHCS 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, at maximum within 24 hours. 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 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:
- Upper case letters (A-Z)
  - Lower case letters (a-z)
  - Arabic numerals (0-9)
  - Non-alphanumeric characters (punctuation symbols)
- h. **Data Destruction.** When no longer needed, all DHCS 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 DHCS Information Security Office.
- i. **System Timeout.** The system providing access to DHCS 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 DHCS 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 DHCS PHI or PI, or which alters

**Exhibit F****Information Confidentiality and Security Requirements**

DHCS 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 DHCS 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 DHCS 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 DHCS 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 PHI can be encrypted. This requirement pertains to any type of 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 DHCS 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.** All systems processing and/or storing DHCS 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 DHCS 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 DHCS 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 electronic DHCS PHI or PI 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 DHCS PHI to maintain retrievable exact copies of DHCS 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 DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

**5) Paper Document Controls**



**Exhibit F****Information Confidentiality and Security Requirements**

- a. **Supervision of Data.** DHCS 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. DHCS 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 DHCS PHI or PI is contained shall be escorted and DHCS PHI or PI shall be kept out of sight while visitors are in the area.
  - c. **Confidential Destruction.** DHCS PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
  - d. **Removal of Data.** DHCS PHI or PI must not be removed from the premises of the Contractor except with express written permission of DHCS.
  - e. **Faxing.** Faxes containing DHCS 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 of DHCS PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of DHCS 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 DHCS to use another method is obtained.
- B. Security Officer.** The Contractor shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with DHCS.
- C. Discovery and Notification of Breach.** The Contractor shall notify DHCS **immediately by telephone call plus email or fax** upon the discovery of breach of security of PSCI in computerized form if the PSCI was, or is reasonably believed to have been, acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration **or within twenty-four (24) hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PSCI in violation of this Agreement, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. Notice shall be made using the "DHCS Privacy Incident Report" form, including all information known at the time. The Contractor shall use the most current version of this form, which is posted on the DHCS Privacy Office website ([www.dhcs.ca.gov](http://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> If the incident occurs after business hours or on a weekend or holiday and involves electronic PSCI, notification shall be provided by calling the DHCS Information Technology Services Division (ITSD) Help Desk. Contractor shall take:
- 1) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and

**Exhibit F**  
**Information Confidentiality and Security Requirements**

- 2) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- D. Investigation of Breach.** The Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PSCI and within seventy-two (72) hours of the discovery, The Contractor shall submit an updated "DHCS 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 DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:
- E. Written Report.** The Contractor shall provide a written report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- F. Notification of Individuals.** The 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 DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications.
7. **Affect on lower tier transactions.** The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, regardless of whether they are for the acquisition of services, goods, or commodities. The Contractor shall incorporate the contents of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.
8. **Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS 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 Exhibit or the Agreement to which it is incorporated.

DHCS Program Contract Manager	DHCS Privacy Officer	DHCS Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer c/o Office of Legal Services Department of Health Care Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413  Email: <a href="mailto:privacyofficer@dhcs.ca.gov">privacyofficer@dhcs.ca.gov</a>  Telephone: (916) 445-4646	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413  Email: <a href="mailto:iso@dhcs.ca.gov">iso@dhcs.ca.gov</a>  Telephone: ITSD Help Desk (916) 440-7000 or (800) 579-0874

9. **Audits and Inspections.** From time to time, DHCS may inspect the facilities, systems, books and records of the Contractor to monitor compliance with the safeguards required in the Information Confidentiality and Security Requirements (ICSR) exhibit. Contractor shall promptly remedy any violation of any provision of this ICSR exhibit. The fact that DHCS inspects, or fails to inspect, or has

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Information Confidentiality and Security Requirements

the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this ICSR exhibit.



**EXHIBIT G**

**PRIVACY AND INFORMATION SECURITY PROVISIONS**

This Exhibit G is intended to protect the privacy and security of specified Department information that Contractor may access, receive, or transmit under this Agreement. The Department information covered under this Exhibit G consists of: (1) Protected Health Information as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA")(PHI); and (2) Personal Information (PI) as defined under the California Information Practices Act (CIPA), at California Civil Code Section 1798.3. Personal Information may include data provided to the Department by the Social Security Administration.

Exhibit G consists of the following parts:

1. Exhibit G-1, HIPAA Business Associate Addendum, which provides for the privacy and security of PHI.
2. Exhibit G-2, which provides for the privacy and security of PI in accordance with specified provisions of the Agreement between the Department and the Social Security Administration, known as the Information Exchange Agreement (IEA) and the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (Computer Agreement) to the extent Contractor access, receives, or transmits PI under these Agreements. Exhibit G-2 further provides for the privacy and security of PI under Civil Code Section 1798.3(a) and 1798.29.
3. Exhibit G-3, Miscellaneous Provision, sets forth additional terms and conditions that extend to the provisions of Exhibit G in its entirety.

**EXHIBIT G-1**

**HIPAA Business Associate Addendum**

**1. Recitals.**

- A. 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") between Department and Contractor arises only to the extent that Contractor creates, receives, maintains, transmits, uses or discloses PHI or ePHI on the Department's behalf, or provides services, arranges, performs or assists in the performance of functions or activities on behalf of the Department that are included in the definition of "business associate" in 45 C.F.R. 160.103 where the provision of the service involves the disclosure of PHI or ePHI from the Department, including but not limited to, utilization review, quality assurance, or benefit management. To the extent Contractor performs these services, functions, and activities on behalf of Department, Contractor is the Business Associate of the Department, acting on the Department's behalf. The Department and Contractor are each a party to this Agreement and are collectively referred to as the "parties."
- 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, to be used or disclosed in the course of providing services and activities as set forth in Section 1.A. of Exhibit G-1 of this Agreement. This information is hereafter referred to as "Department PHI".
- C. The purpose of this Exhibit G-1 is to protect the privacy and security of the PHI and ePHI 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. To the extent that data is both PHI or ePHI and Personally Identifying Information, both Exhibit G-2 (including Attachment B, the SSA Agreement between SSA, CHHS and DHCS, referred to in Exhibit G-2) and this Exhibit G-1 shall apply.

- D. The terms used in this Exhibit G-1, 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.
- 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 shall mean Protected Health Information or Electronic Protected Health Information, as defined below, accessed by Contractor 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 on behalf of the Department as specified in Section 1.A. of Exhibit G-1 of this Agreement. The terms PHI as used in this document shall mean Department PHI.
- E. Electronic Health Records 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. 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.
- J. 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.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Department PHI, or confidential data utilized by Contractor to perform the services, functions and activities on behalf of Department as set forth in Section 1.A. of Exhibit G-1 of this Agreement; or interference with system operations in an information system that processes, maintains or stores Department PHI.
- M. Security Rule shall mean the HIPAA regulations that are found at 45 CFR Parts 160 and 164.
- N. 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 G-1, Contractor may use or disclose Department PHI only to perform functions, activities or services specified in Section 1.A of Exhibit G-1 of this Agreement, for, or on behalf of the Department, provided that such use or disclosure would not violate the HIPAA regulations or the limitations set forth in 42 CFR Part 2, or any other applicable law, 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 G-1, Contractor may:

- 1) **Use and Disclose for Management and Administration.** Use and disclose Department PHI for the proper management and administration of the Contractor's business, provided that such disclosures are required by law, or the Contractor obtains reasonable assurances from the person to whom the information is disclosed, in accordance with section D(7) of this Exhibit G-1, 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 Department 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 Contractor, as 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 Department PHI about an individual to a health plan for payment or health care operations purposes if the Department 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.

**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, including but not limited to 42 CFR Part 2.
- 2) **Compliance with the HIPAA Security Rule.** 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 take any and all steps necessary to ensure

the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:

- a. Complying with all of the data system security precautions listed in Attachment A, Data Security Requirements;
  - b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement; and
  - c. Providing 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.
- 4) **Security Officer.** 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.
- 5) **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 G.
- 6) **Reporting Unauthorized Use or Disclosure.** To report to Department any use or disclosure of Department PHI not provided for by this Exhibit G of which it becomes aware.
- 7) **Contractor's Agents and Subcontractors.**
- a. To enter into written agreements with any agents, including subcontractors and vendors to whom Contractor provides Department PHI, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Contractor with respect to such Department PHI under this Exhibit G, and that require compliance 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. As required by HIPAA, the HITECH Act and the HIPAA regulations, including 45 CFR Sections 164.308 and 164.314, Contractor shall incorporate, when applicable, the relevant provisions of this Exhibit G-1 into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI be reported to Contractor.

- b. 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:
  - i) 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
  - ii) Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

**8) Availability of Information to the Department and Individuals to Provide Access and Information:**

- a. 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 Department 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 health plan under this Agreement that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for the Department health plan for which Contractor is providing services under this Agreement; 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.

- b. 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) and the HIPAA regulations.
- 9) **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.
  - 10) **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.
  - 11) **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 such 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 and later, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.

- 12) **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:
- a. **Initial Notice to the Department.** (1) To notify the Department **immediately by telephone call or email or fax** upon the discovery of a breach of unsecured PHI in electronic media or in any other media if the PHI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person. (2) To notify the Department **within 24 hours (one hour if SSA data) by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement or this ExhibitG-1, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Contractor 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 Contractor.

Notice shall be provided to the Information Protection Unit, Office of HIPAA Compliance. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the Information Protection Unit (916.445.4646, 866-866-0602), or by emailing [privacyofficer@dhcs.ca.gov](mailto:privacyofficer@dhcs.ca.gov). 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](http://www.dhcs.ca.gov), then select "Privacy" in the left column and then "Business Partner" 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 Department PHI, Contractor shall take:

- i) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the

operating environment; and

- ii) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- b. **Investigation and Investigation Report.** To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI . 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 Information Protection Unit.
- c. **Complete Report.** To provide a complete report of the investigation to the Department Program Contract Manager and the Information Protection Unit 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, and the HIPAA regulations. 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 whether individual notifications and a corrective action plan are required.

- d. **Responsibility for Reporting of Breaches.** If the cause of a breach of Department PHI 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 (after obtaining prior written approval of DHCS). If a breach of unsecured Department PHI involves more than 500 residents of the State of California or under its jurisdiction, Contractor shall first notify DHCS, then the Secretary of the breach immediately upon discovery of the breach. If a breach involves more than 500 California residents, Contractor shall also provide, after obtaining written prior approval of DHCS, notice to the Attorney General for the State of California, Privacy Enforcement Section. 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.
- e. **Responsibility for Notification of Affected Individuals.** If the cause of a breach of Department PHI is attributable to Contractor or its agents, subcontractors or vendors and notification of the affected individuals is required under state or federal law, Contractor shall bear all costs of such notifications as well as any costs associated with the breach. In addition, the Department reserves the right to require Contractor to notify such affected individuals, which notifications shall comply with the requirements set forth in 42U.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 after discovery of the breach. The Department Privacy 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.
- f. **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.

<b>Department Program Contract Manager</b>	<b>DHCS Privacy Officer</b>	<b>DHCS Information Security Officer</b>
See the Exhibit A, Scope of Work for Program Contract Manager information	Information Protection Unit c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 (916) 445-4646; (866) 866-0602  Email: <a href="mailto:privacyofficer@dhcs.ca.gov">privacyofficer@dhcs.ca.gov</a>  Fax: (916) 440-7680	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413  Email: <a href="mailto:iso@dhcs.ca.gov">iso@dhcs.ca.gov</a>  Telephone: ITSD Service Desk (916) 440-7000; (800) 579-0874  Fax: (916)440-5537

- 13) **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 G-1, it shall take the following steps:

- a. 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
  - b. Immediately terminate the Agreement if the Department has breached a material term of the Exhibit G-1 and cure is not possible.
- 14) **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.

**E. Obligations of the Department.**

The Department agrees to:

- 1) **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 Department PHI, if such changes affect the Contractor's permitted or required uses and disclosures.
- 2) **Notification of Restrictions.** Notify the Contractor of any restriction to the use or disclosure of Department 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.
- 3) **Requests Conflicting with HIPAA Rules.** Not request the Contractor to use or disclose Department PHI in any manner that would not be permissible under the HIPAA regulations if done by the Department.
- 4) **Notice of Privacy Practices.** Provide Contractor with the web link to the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR Section 164.520, as well as any changes to such notice. Visit the DHCS website to view the most current Notice of Privacy Practices at:  
<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/NoticeofPrivacyPractices.aspx> or the DHCS website at [www.dhcs.ca.gov](http://www.dhcs.ca.gov) (select "Privacy in the right column and "Notice of Privacy Practices" on the right side of the page).

**F. Audits, Inspection and Enforcement**

If Contractor is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office for 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 G-1, Contractor shall immediately notify the Department. Upon request from the Department, Contractor shall provide the Department with a copy of any Department PHI that Contractor, as the Business Associate, provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI 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).

**G. Termination.**

- 1) **Term.** The Term of this Exhibit G-1 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)(J).
- 2) **Termination for Cause.** In accordance with 45 CFR Section 164.504(e)(1)(iii), upon the Department's knowledge of a material breach or violation of this Exhibit G-1 by Contractor, the Department shall:
  - a. 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
  - b. Immediately terminate this Agreement if Contractor has breached a material term of this Exhibit G-1 and cure is not possible.

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## EXHIBIT G-2

### Privacy and Security of Personal Information and Personally Identifiable Information Not Subject to HIPAA

#### 1. Recitals.

- A. In addition to the Privacy and Security Rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) the Department is subject to various other legal and contractual requirements with respect to the personal information (PI) and personally identifiable information (PII) it maintains. These include:
- 1) The California Information Practices Act of 1977 (California Civil Code §§1798 et seq.),
  - 2) The Agreement between the Social Security Administration (SSA) and the Department, known as the Information Exchange Agreement (IEA), which incorporates the Computer Matching and Privacy Protection Act Agreement (CMPPA) between the SSA and the California Health and Human Services Agency. The IEA, including the CMPPA is attached to this Exhibit G as Attachment B and is hereby incorporated in this Agreement.
  - 3) Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2.
- B. The purpose of this Exhibit G-2 is to set forth Contractor's privacy and security obligations with respect to PI and PII that Contractor may create, receive, maintain, use, or disclose for or on behalf of Department pursuant to this Agreement. Specifically this Exhibit applies to PI and PII which is not Protected Health Information (PHI) as defined by HIPAA and therefore is not addressed in Exhibit G-1 of this Agreement, the HIPAA Business Associate Addendum; however, to the extent that data is both PHI or ePHI and PII, both Exhibit G-1 and this Exhibit G-2 shall apply.
- C. The IEA Agreement referenced in A.2) above requires the Department to extend its substantive privacy and security terms to subcontractors who receive data provided to DHCS by the Social Security Administration. If Contractor receives data from DHCS that includes data provided to DHCS by the Social Security Administration, Contractor must comply with the following specific sections of the IEA Agreement: 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. Contractor must also ensure that any agents, including a subcontractor, to whom it provides DHCS data that includes data provided by the Social Security Administration, agree to the same requirements for privacy and security safeguards for such confidential data that apply to Contractor with respect to such information.

- D. The terms used in this Exhibit G-2, but not otherwise defined, shall have the same meanings as those terms have in the above referenced statute and Agreement. Any reference to statutory, regulatory, or contractual 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 the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.
- B. "Breach of the security of the system" shall have the meaning given to such term under the California Information Practices Act, Civil Code section 1798.29(f).
- C. "CMPPA Agreement" means the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (CHHS).
- D. "Department PI" shall mean 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.
- E. "IEA" shall mean the Information Exchange Agreement currently in effect between the Social Security Administration (SSA) and the California Department of Health Care Services (DHCS).
- F. "Notice-triggering Personal Information" shall mean the personal information identified in Civil Code section 1798.29 whose unauthorized access may trigger notification requirements under Civil Code section 1798.29. For purposes of this provision, identity shall include, but not be limited to, name, address, email address, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, a photograph or a biometric identifier. Notice-triggering Personal Information includes PI in electronic, paper or any other medium.

- G. "Personally Identifiable Information" (PII) shall have the meaning given to such term in the IEA and CMPPA.
- H. "Personal Information" (PI) shall have the meaning given to such term in California Civil Code Section 1798.3(a).
- I. "Required by law" means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII 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.
- J. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PI, or confidential data utilized in complying with this Agreement; or interference with system operations in an information system that processes, maintains or stores PI.

### 3. Terms of Agreement

#### A. Permitted Uses and Disclosures of Department PI and PII by Contractor

Except as otherwise indicated in this Exhibit G-2, Contractor may use or disclose Department PI only to perform functions, activities or services for or on behalf of the Department pursuant to the terms of this Agreement provided that such use or disclosure would not violate the California Information Practices Act (CIPA) if done by the Department.

#### B. Responsibilities of Contractor

Contractor agrees:

- 1) **Nondisclosure.** Not to use or disclose Department PI or PII other than as permitted or required by this Agreement or as required by applicable state and federal law.

- 2) **Safeguards.** To implement appropriate and reasonable administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of Department PI and PII, to protect against anticipated threats or hazards to the security or integrity of Department PI and PII, and to prevent use or disclosure of Department PI or PII other than as provided for by this Agreement. Contractor shall develop and maintain a written information privacy and security program that include administrative, technical and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities, which incorporate the requirements of section 3, Security, below. Contractor will provide DHCS with its current policies upon request.
- 3) **Security.** Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
- a. Complying with all of the data system security precautions listed in Attachment A, Business Associate Data Security Requirements;
  - b. Providing 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; and
  - c. If the data obtained by Contractor from DHCS includes PII, Contractor shall also comply with the substantive privacy and security requirements in the Computer Matching and Privacy Protection Act Agreement between the SSA and the California Health and Human Services Agency (CHHS) and in the Agreement between the SSA and DHCS, known as the Information Exchange Agreement, which are attached as Attachment B and incorporated into this Agreement. The specific sections of the IEA with substantive privacy and security requirements to be complied with are sections E, F, and G, 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 SSA. Contractor also agrees to ensure that any agents, including a subcontractor to whom it provides

DHCS PII, agree to the same requirements for privacy and security safeguards for confidential data that apply to Contractor with respect to such information.

- 4) **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 PI or PII by Contractor or its subcontractors in violation of this Exhibit G-2.
- 5) **Contractor's Agents and Subcontractors.** To impose the same restrictions and conditions set forth in this Exhibit G-2 on any subcontractors or other agents with whom Contractor subcontracts any activities under this Agreement that involve the disclosure of Department PI or PII to the subcontractor.
- 6) **Availability of Information to DHCS.** To make Department PI and PII available to the Department for purposes of oversight, inspection, amendment, and response to requests for records, injunctions, judgments, and orders for production of Department PI and PII. If Contractor receives Department PII, upon request by DHCS, Contractor shall provide DHCS with a list of all employees, contractors and agents who have access to Department PII, including employees, contractors and agents of its subcontractors and agents.
- 7) **Cooperation with DHCS.** With respect to Department PI, to cooperate with and assist the Department to the extent necessary to ensure the Department's compliance with the applicable terms of the CIPA including, but not limited to, accounting of disclosures of Department PI, correction of errors in Department PI, production of Department PI, disclosure of a security breach involving Department PI and notice of such breach to the affected individual(s).
- 8) **Confidentiality of Alcohol and Drug Abuse Patient Records.** Contractor agrees to comply with all confidentiality requirements set forth in Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2. Contractor is aware that criminal penalties may be imposed for a violation of these confidentiality requirements.
- 9) **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:
  - a. **Initial Notice to the Department.** (1) To notify the Department



**immediately by telephone call or email or fax upon the discovery of a breach of unsecured Department PI or PII in electronic media or in any other media if the PI or PII was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon discovery of a suspected security incident involving Department PII. (2) To notify the Department within one (1) hour by email or fax if the data is data subject to the SSA Agreement; and within 24 hours by email or fax of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of Department PI or PII in violation of this Agreement or this Exhibit G-1 or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Contractor 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 Contractor.**

- b. Notice shall be provided to the Information Protection Unit, Office of HIPAA Compliance. If the incident occurs after business hours or on a weekend or holiday and involves electronic Department PI or PII, 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](http://www.dhcs.ca.gov), then select "Privacy" in the left column and then "Business Partner" near the middle of the page) or use this link:  
<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>.
- c. Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of Department PI or PII, Contractor shall take:
- i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
  - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and

regulations.

- d. **Investigation and Investigation Report.** To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI. 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 Information Security Officer.
- e. **Complete Report.** To provide a complete report of the investigation to the Department Program Contract Manager and the Information Protection Unit 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. 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 whether individual notifications and a corrective action plan are required.
- f. **Responsibility for Reporting of Breaches.** If the cause of a breach of Department PI or PII is attributable to Contractor or its agents, subcontractors or vendors, Contractor is responsible for all required reporting of the breach as specified in CIPA, section 1798.29 and as may be required under the IEA. Contractor shall bear all costs of required

notifications to individuals as well as any costs associated with the breach. The Privacy 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.

- g. 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.
- h. **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.

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

**10) Designation of Individual Responsible for Security**

Contractor shall designate an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for carrying out the requirements of this Exhibit G-2 and for communicating on security matters with the Department.

### EXHIBIT G-3

#### Miscellaneous Terms and Conditions

##### Applicable to Exhibit G

- 1) **Disclaimer.** The Department makes no warranty or representation that compliance by Contractor with this Exhibit G, 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, PI and PII.
  
- 2) **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 G 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, and the HIPAA regulations, and other applicable state and federal laws. Upon either party's request, the other party agrees to promptly enter into negotiations concerning an amendment to this Exhibit G embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, and other applicable state and federal laws. The Department may terminate this Agreement upon thirty (30) days written notice in the event:
  - a) Contractor does not promptly enter into negotiations to amend this Exhibit G when requested by the Department pursuant to this section; or
  - b) 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.
  
- 3) **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 or other security or privacy law. 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.
- 4) **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, or the HIPAA regulations, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.
  - 5) **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Exhibit G 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.
  - 6) **Interpretation.** The terms and conditions in this Exhibit G shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, and the HIPAA regulations. The parties agree that any ambiguity in the terms and conditions of this Exhibit G shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations, and, if applicable, any other relevant state and federal laws.
  - 7) **Conflict.** In case of a conflict between any applicable privacy or security rules, laws, regulations or standards the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI, PI and PII 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.
  - 8) **Regulatory References.** A reference in the terms and conditions of this Exhibit G to a section in the HIPAA regulations means the section as in effect or as amended.
  - 9) **Survival.** The respective rights and obligations of Contractor under Section 3, Item D of Exhibit G-1, and Section 3, Item B of Exhibit G-2, Responsibilities of Contractor, shall survive the termination or expiration of this Agreement.

- 10) **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.
- 11) **Audits, Inspection and Enforcement.** 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 G. Contractor shall promptly remedy any violation of any provision of this Exhibit G. 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 G. 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 G.
- 12) **Due Diligence.** Contractor shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Exhibit G and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and other applicable state and federal law, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Exhibit G.
- 13) **Term.** The Term of this Exhibit G-1 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), and when all Department PI and PII is destroyed in accordance with Attachment A.
- 14) **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all Department PHI, PI and PII that Contractor still maintains in any form, and shall retain no copies of such PHI, PI or PII. 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, PI or PII. Contractor shall continue to extend the protections of this Exhibit G to such Department PHI, PI and PII, and shall limit further use of such data to those purposes that make the return or destruction of such data infeasible. This provision shall apply to Department PHI, PI and PII that is in the possession of subcontractors or agents of Contractor.

**Attachment A**  
**Data Security Requirements**

**1. 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.

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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.

1 [Performance Contract Approval - California Department of Health Care Services - Mental  
2 Health Services]

3 **Resolution retroactively approving Performance Contract No. 13-90332, between**  
4 **Community Behavioral Health Services and the Department of Health Care Services,**  
5 **incorporating the Mental Health Services Act, Projects for Assistance in Transition**  
6 **from Homelessness and Community Mental Health Services Grant; for the period of**  
7 **July 1, 2013, through June 30, 2014; and authorizing the Department of Public Health -**  
8 **Community Behavioral Health Services Director to sign said agreement and any and all**  
9 **amendments in the future.**

10  
11 WHEREAS, The California Department of Health Care Services (DHCS) administers  
12 funding for the Mental Health Services Act (MHSA), Projects for Assistance in Transition from  
13 Homelessness (PATH) and Community Mental Health Services Grant (MHBG) programs; and

14 WHEREAS, The Mental Health Services Fund was established pursuant to Welfare  
15 and Institutions (W&I) Code, Section 5890, and provides funds to counties for the  
16 implementation of its MHSA programs for prevention and early intervention, community  
17 services and supports, workforce development and training, innovation, plus capital facilities  
18 and technological needs; and

19 WHEREAS, Pursuant to United State Code, Title 42, Sections 290cc-21 through  
20 290cc-35, the PATH grant funds community based outreach, mental health and substance  
21 abuse referral/treatment, case management and other support services, as well as a limited  
22 set of housing services for the homeless mentally ill; and

23 WHEREAS, DHCS awards federal Community Mental Health Block Grant funds  
24 (MHBG) to counties in California to provide services to the following target populations:

1 children and youth with serious emotional disturbances, adults and older adults with serious  
2 mental illnesses; and

3 WHEREAS, The County's performance contract, a copy of which is on file with the  
4 Clerk of the Board of Supervisors in File No. 140056, as required by Welfare and Institutions  
5 Code, Sections 5650(a), 5847, and Title 9, California Code of Regulations (CCR), Section  
6 3310, sets forth conditions and requirements that County must meet in order to receive this  
7 funding; and

8 WHEREAS, The Director of Community Behavioral Health Services is designated to  
9 sign this Agreement and any and all amendments in the future including increases to add  
10 other components on behalf of the Department of Public Health (DPH); now, therefore, be it

11 RESOLVED, That DPH is hereby retroactively authorized to enter into a performance  
12 contract agreement with DHCS; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors hereby designates the Director  
14 of CBHS to sign said agreement on behalf of DPH; and, be it

15 FURTHER RESOLVED, That the Director of Community Behavioral Health Services is  
16 designated to sign any and all amendments to this agreement; and, be it

17 FURTHER RESOLVED, That within thirty (30) days of the performance contract being  
18 fully executed by all parties the Director of Community Behavioral Health Services shall  
19 provide the performance contract to the Clerk of the Board for inclusion into the official file.  
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RECOMMENDED:



Barbara A. Garcia, MPA  
Director of Health



City and County of San Francisco

Tails  
Resolution

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 140056

Date Passed: March 11, 2014

Resolution retroactively approving Performance Contract No. 13-90332, between Community Behavioral Health Services and the Department of Health Care Services, incorporating the Mental Health Services Act, Projects for Assistance in Transition from Homelessness, and Community Mental Health Services Grant programs, for the period of July 1, 2013, through June 30, 2014; and authorizing the Community Behavioral Health Services Director, Department of Public Health, to sign said agreement and any and all amendments in the future.

March 05, 2014 Budget and Finance Committee - RECOMMENDED


March 11, 2014 Board of Supervisors - ADOPTED

Ayes: 9 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar and Tang

Excused: 2 - Wiener and Yee

File No. 140056

I hereby certify that the foregoing Resolution was ADOPTED on 3/11/2014 by the Board of Supervisors of the City and County of San Francisco.

  
Angela Calvillo  
Clerk of the Board

  
Mayor

  
Date Approved



this section and the contributions shall not be applied in determining the amounts to be paid. These unrestricted contributions shall not be used in part or in whole to defray the costs or the allocated costs of the Medi-Cal program.

14711. (a) The department shall develop, in consultation with the California Mental Health Directors Association, a reimbursement methodology for use in the Medi-Cal claims processing and interim payment system that maximizes federal funding and utilizes, as much as practicable, federal Medicaid and Medicare reimbursement principles. The department shall work with the federal Centers for Medicare and Medicaid Services in the development of the methodology required by this section.

(b) Reimbursement amounts developed through the methodology required by this section shall be consistent with federal Medicaid requirements and the approved Medicaid state plan and waivers.

(c) Administrative costs shall be claimed separately in a manner consistent with federal Medicaid requirements and the approved Medicaid state plan and waivers and shall be limited to 15 percent of the total actual cost of direct client services.

(d) The cost of performing quality assurance and utilization review activities shall be reimbursed separately and shall not be included in administrative cost.

(e) The reimbursement methodology established pursuant to this section shall be based upon certified public expenditures, which encourage economy and efficiency in service delivery.

(f) The reimbursement amounts established for direct client services pursuant to this section shall be based on increments of time for all noninpatient services.

(g) The reimbursement methodology shall not be implemented until it has received any necessary federal approvals.

(h) This section shall become operative on July 1, 2012.

Welfare and Institutions Code  
514712-14726

~~14712.~~ (a) Notwithstanding any other provision of state law, the department shall implement managed mental health care for Medi-Cal beneficiaries through contracts with mental health plans. Mental health plans may include individual counties, counties acting jointly, or an organization or nongovernmental entity determined by the department to meet mental health plan standards. A contract may be exclusive and may be awarded on a geographic basis.

(b) Two or more counties acting jointly may agree to deliver or subcontract for the delivery of specialty mental health services subject to the approval by the department. The agreement may encompass all or any portion of the specialty mental health services provided pursuant to this chapter. This agreement shall not relieve the individual counties of fiscal responsibility for providing these services. Any agreement between counties shall delineate each county's responsibilities and fiscal liability for overpayments.

(c) (1) The department shall contract with a county or counties acting jointly for the delivery of specialty mental health services to each county's eligible Medi-Cal beneficiary population. If a county decides not to contract with the department, does not renew its contract, or is unable to meet the standards set by the department, the county shall inform the department of this decision in writing.

(2) If the county is unwilling to contract for the delivery of specialty mental health services, the department shall ensure that specialty mental health services are provided to Medi-Cal beneficiaries.

(3) If the department or county determines that the county is unable to adequately provide specialty mental health services, or that the county does not meet the standards of a mental health plan, the department shall ensure that specialty mental health services are provided to Medi-Cal beneficiaries.

(4) The department may contract with qualifying individual counties, counties acting jointly, or other qualified entities approved by the department for the delivery of specialty mental health services in any county that is unable or unwilling to contract with the department. The county may not subsequently contract to provide specialty mental health services under this chapter unless the department elects to contract with the county.

(d) If a county does not contract with the department or other department-approved entity to provide specialty mental health services, the department shall work with the Department of Finance and the Controller to sequester funds from the county that is unable or unwilling to contract in accordance with Section 30027.10 of the Government Code.

(e) Whenever the department determines that a mental health plan has failed to comply with this chapter or any regulations, contractual requirements, state plan, or waivers adopted pursuant to this chapter, the department shall notify the mental health plan in writing within 30 days of its determination and may impose sanctions, including, but not limited to, fines, penalties, the withholding of payments, special requirements, probationary or corrective actions, or any other actions deemed necessary to promptly ensure contract and performance compliance. If the department imposes fines or penalties, to the extent permitted by federal law and state law or contract, it may offset the fines from either of the following:

(1) Funds from the Mental Health Subaccount, the Mental Health Equity Subaccount, and the Vehicle License Collection Account of the Local Revenue Fund and funds from the Mental Health Account and the Behavioral Health Subaccount of the Local Revenue Fund 2011.

(2) Any other mental health realignment funds from which the Controller is authorized to make distributions to the counties, if the funds described in paragraph (1) are insufficient for the purposes described in this subdivision.

(f) The due process and appeals process specified in paragraph (4) of subdivision (b) of Section 14718 shall be made available to the mental health plan under the circumstances described in subdivision

(e).

14713. (a) The department and mental health plans shall comply with all applicable federal laws, regulations, and the guidelines, standards, and requirements specified in the state plan, waiver, and mental health plan contract, and, except as provided in this chapter, all applicable state statutes and regulations.

(b) If federal requirements that affect the provisions of this chapter are changed, it is the intent of the Legislature that state requirements be revised to comply with those changes.

14714. (a) (1) Except as otherwise specified in this chapter, a contract entered into pursuant to this chapter shall include a

provision that the mental health plan contractor shall bear the financial risk for the cost of providing medically necessary specialty mental health services to Medi-Cal beneficiaries.

(2) If the mental health plan is not administered by a county, the mental health plan shall not transfer the obligation for any specialty mental health services to Medi-Cal beneficiaries to the county. The mental health plan may purchase services from the county. The mental health plan shall establish mutually agreed-upon protocols with the county that clearly establish conditions under which beneficiaries may obtain non-Medi-Cal reimbursable services from the county. Additionally, the plan shall establish mutually agreed-upon protocols with the county for the conditions of transfer of beneficiaries who have lost Medi-Cal eligibility to the county for care under Part 2 (commencing with Section 5600), Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of Division 5.

(3) The mental health plan shall be financially responsible for ensuring access and a minimum required scope of benefits and services, consistent with state and federal requirements, to Medi-Cal beneficiaries who are residents of that county regardless of where the beneficiary resides. The department shall require that the same definition of medical necessity be used, and the minimum scope of benefits offered by each mental health plan be the same, except to the extent that prior federal approval is received and is consistent with state and federal laws.

(b) (1) Any contract entered into pursuant to this chapter may be renewed if the mental health plan continues to meet the requirements of this chapter, regulations promulgated pursuant thereto, and the terms and conditions of the contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may base the decision to renew on timely completion of a mutually agreed-upon plan of correction of any deficiencies, submissions of required information in a timely manner, or other conditions of the contract.

(2) In the event the contract is not renewed based on the reasons specified in paragraph (1), the department shall notify the Department of Finance, the fiscal and policy committees of the Legislature, and the Controller of the amounts to be sequestered from the Mental Health Subaccount, the Mental Health Equity Account, and the Vehicle License Fee Collection Account of the Local Revenue Fund and the Mental Health Account and the Behavioral Health Subaccount of the Local Revenue Fund 2011, and the Controller shall sequester those funds in the Behavioral Health Subaccount pursuant to Section 30027.10 of the Government Code. ~~Upon this sequestration, the~~  
department shall use the funds in accordance with the provisions of Section 30027.10 of the Government Code.

(c) (1) The obligations of the mental health plan shall be changed only by contract or contract amendment.

(2) Notwithstanding paragraph (1), the mental health plan shall comply with federal and state requirements, including the applicable sections of the state plan and waiver.

(3) A change may be made during a contract term or at the time of contract renewal, when there is a change in obligations required by federal or state law or when required by a change in the interpretation or implementation of any law or regulation.

(4) To the extent permitted by federal law, either the department or the mental health plan may request that contract negotiations be reopened during the course of a contract due to substantial changes in the cost of covered benefits that result from an unanticipated event.

(d) The department shall immediately terminate a contract when the director finds that there is an immediate threat to the health and safety of Medi-Cal beneficiaries. Termination of the contract for other reasons shall be subject to reasonable notice of the department's intent to take that action and notification to affected beneficiaries. The plan may request a hearing by the Office of Administrative Hearings and Appeals.

(e) A mental health plan may terminate its contract in accordance with the provisions in the contract. The mental health plan shall provide written notice to the department at least 180 days prior to the termination or nonrenewal of the contract.

(f) Upon the request of the director, the Director of the Department of Managed Health Care may exempt a mental health plan from the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). These exemptions may be subject to conditions the director deems appropriate. Nothing in this chapter shall be construed to impair or diminish the authority of the Director of the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975, nor shall anything in this chapter be construed to reduce or otherwise limit the obligation of a mental health plan contractor licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder. The director, in consultation with the Director of the Department of Managed Health Care, shall analyze the appropriateness of licensure or application of applicable standards of the Knox-Keene Health Care Service Plan Act of 1975.

(g) The department shall provide oversight to the mental health plans to ensure quality, access, cost efficiency, and compliance with data and reporting requirements. At a minimum, the department shall, through a method independent of any agency of the mental health plan contractor, monitor the level and quality of services provided, expenditures pursuant to the contract, and conformity with federal and state law.

(h) County employees implementing or administering a mental health plan act in a discretionary capacity when they determine whether or not to admit a person for care or to provide any level of care pursuant to this chapter.

(i) If a county discontinues operations as the mental health plan, the department shall approve any new mental health plan. The new mental health plan shall give reasonable consideration to affiliation with nonprofit community mental health agencies that were under contract with the county and that meet the mental health plan's quality and cost efficiency standards.

(j) Nothing in this chapter shall be construed to modify, alter, or increase the obligations of counties as otherwise limited and defined in Chapter 3 (commencing with Section 5700) of Part 2 of Division 5. The county's maximum obligation for services to persons not eligible for Medi-Cal shall be no more than the amount of funds remaining in the mental health subaccount pursuant to Sections 17600, 17601, 17604, 17605, and 17609 after fulfilling the Medi-Cal contract obligations.

14715. (a) (1) The department shall require any mental health plan that provides Medi-Cal specialty mental health services to enter into a memorandum of understanding with any Medi-Cal managed care plan

that provides Medi-Cal health services to some of the same Medi-Cal recipients served by the mental health plan. The memorandum of understanding shall comply with applicable regulations.

(2) For purposes of this section, a "Medi-Cal managed care plan" means any prepaid health plan or Medi-Cal managed care plan contracting with the department to provide services to enrolled Medi-Cal beneficiaries under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200), or Part 4 (commencing with Section 101525) of Division 101 of the Health and Safety Code.

(b) The department shall require the memorandum of understanding to include all of the following:

(1) A process or entity to be designated by the local mental health plan to receive notice of actions, denials, or deferrals from the Medi-Cal managed care plan, and to provide any additional information requested in the deferral notice as necessary for a medical necessity determination.

(2) A requirement that the local mental health plan respond by the close of the business day following the day the deferral notice is received.

(c) The department may sanction a mental health plan pursuant to subdivision (e) of Section 14712 for failure to comply with this section.

(d) This section shall apply to any contracts entered into, amended, modified, extended, or renewed on or after January 1, 2001.

14716. (a) Each local mental health plan shall establish a procedure to ensure access to outpatient specialty mental health services, as required by the Early Periodic Screening and Diagnostic Treatment program standards, for any child in foster care who has been placed outside his or her county of adjudication.

(b) The procedure required by subdivision (a) may be established through one or more of the following:

(1) The establishment of, and federal approval, if required, of, a statewide system or procedure.

(2) An arrangement between local mental health plans for reimbursement for services provided by a mental health plan other than the mental health plan in the county of adjudication and designation of an entity to provide additional information needed for approval or reimbursement. This arrangement shall not require ~~providers who are already credentialed or certified by the mental health plan in the beneficiary's county of residence to be credentialed or certified by, or to contract with, the mental health plan in the county of adjudication.~~

(3) Arrangements between the mental health plan in the county of adjudication and mental health providers in the beneficiary's county of residence for authorization of, and reimbursement for, services. This arrangement shall not require providers credentialed or certified by, and in good standing with, the mental health plan in the beneficiary's county of residence to be credentialed or certified by the mental health plan in the county of adjudication.

(c) The department shall collect and keep statistics that will enable the department to compare access to outpatient specialty mental health services by foster children placed in their county of adjudication with access to outpatient specialty mental health services by foster children placed outside of their county of adjudication.

14717. (a) In order to facilitate the receipt of medically necessary specialty mental health services by a foster child who is placed outside his or her county of original jurisdiction, the department shall take all of the following actions:

(1) On or before July 1, 2008, create all of the following items, in consultation with stakeholders, including, but not limited to, the California Institute for Mental Health, the Child and Family Policy Institute, the California Mental Health Directors Association, and the California Alliance of Child and Family Services:

(A) A standardized contract for the purchase of medically necessary specialty mental health services from organizational providers, when a contract is required.

(B) A standardized specialty mental health service authorization procedure.

(C) A standardized set of documentation standards and forms, including, but not limited to, forms for treatment plans, annual treatment plan updates, day treatment intensive and day treatment rehabilitative progress notes, and treatment authorization requests.

(2) On or before January 1, 2009, use the standardized items as described in paragraph (1) to provide medically necessary specialty mental health services to a foster child who is placed outside his or her county of original jurisdiction, so that organizational providers who are already certified by a mental health plan are not required to be additionally certified by the mental health plan in the county of original jurisdiction.

(3) (A) On or before January 1, 2009, use the standardized items described in paragraph (1) to provide medically necessary specialty mental health services to a foster child placed outside his or her county of original jurisdiction to constitute a complete contract, authorization procedure, and set of documentation standards and forms, so that no additional documents are required.

(B) Authorize a county mental health plan to be exempt from subparagraph (A) and have an addendum to a contract, authorization procedure, or set of documentation standards and forms, if the county mental health plan has an externally placed requirement, such as a requirement from a federal integrity agreement, that would affect one of these documents.

(4) Following consultation with stakeholders, including, but not limited to, the California Institute for Mental Health, the Child and Family Policy Institute, the California Mental Health Directors Association, the California State Association of Counties, and the California Alliance of Child and Family Services, require the use of the standardized contracts, authorization procedures, and documentation standards and forms as specified in paragraph (1) in the 2008-09 state-county mental health plan contract and each state-county mental health plan contract thereafter.

(5) The mental health plan shall complete a standardized contract, as provided in paragraph (1), if a contract is required, or another mechanism of payment if a contract is not required, with a provider or providers of the county's choice, to deliver approved specialty mental health services for a specified foster child, within 30 days of an approved treatment authorization request.

(b) The California Health and Human Services Agency shall coordinate the efforts of the department and the State Department of Social Services to do all of the following:

(1) Participate with the stakeholders in the activities described in this section.

(2) During budget hearings in 2008 and 2009, report to the Legislature regarding the implementation of this section and subdivision (c) of Section 14716.

(3) On or before July 1, 2008, establish the following, in consultation with stakeholders, including, but not limited to, the California Mental Health Directors Association, the California Alliance of Child and Family Services, and the County Welfare Directors Association of California:

(A) Informational materials that explain to foster care providers how to arrange for specialty mental health services on behalf of the beneficiary in their care.

(B) Informational materials that county child welfare agencies can access relevant to the provision of services to children in their care from the out-of-county local mental health plan that is responsible for providing those services, including, but not limited to, receiving a copy of the child's treatment plan within 60 days after requesting services.

(C) It is the intent of the Legislature to ensure that foster children who are adopted or placed permanently with relative guardians, and who move to a county outside their original county of residence, can access specialty mental health services in a timely manner. It is the intent of the Legislature to enact this section as a temporary means of ensuring access to these services, while the appropriate stakeholders pursue a long-term solution in the form of a change to the Medi-Cal Eligibility Data System that will allow these children to receive specialty mental health services through their new county of residence.

14718. (a) This section shall be limited to specialty mental health services reimbursed to a mental health plan that certifies public expenditures subject to cost settlement or specialty mental health services reimbursed through the department's fiscal intermediary.

(b) The following provisions shall apply to matters related to specialty mental health services provided under the approved Medi-Cal state plan and the Specialty Mental Health Services Waiver, including, but not limited to, reimbursement and claiming procedures, reviews and oversight, and appeal processes for mental health plans (MHPs) and MHP subcontractors.

(1) As determined by the department, the MHP shall submit claims for reimbursement to the Medi-Cal program for eligible services.

(2) The department may offset the amount of any federal ~~disallowance, audit exception, or overpayment against subsequent~~ claims from the MHP. The department may offset the amount of any state disallowance, or audit exception or overpayment against subsequent claims from the mental health plan, through the 2010-11 fiscal year. This offset may be done at any time, after the department has invoiced or otherwise notified the mental health plan about the audit exception, disallowance, or overpayment. The department shall determine the amount that may be withheld from each payment to the mental health plan. The maximum withheld amount shall be 25 percent of each payment as long as the department is able to comply with the federal requirements for repayment of federal financial participation pursuant to Section 1903(d)(2) of the federal Social Security Act (42 U.S.C. Sec. 1396b(d)(2)). The department may increase the maximum amount when necessary for compliance with federal laws and regulations.

(3) (A) Oversight by the department of the MHPs may include client record reviews of Early Periodic Screening Diagnosis and Treatment

(EPSDT) specialty mental health services rendered by MHPs and MHP subcontractors under the Medi-Cal specialty mental health services waiver in addition to other audits or reviews that are conducted.

(B) The department may contract with an independent, nongovernmental entity to conduct client record reviews. The contract awarded in connection with this section shall be on a competitive bid basis, pursuant to the Department of General Services contracting requirements, and shall meet both of the following additional requirements:

(i) Require the entity awarded the contract to comply with all federal and state privacy laws, including, but not limited to, the federal Health Insurance Portability and Accountability Act (HIPAA; 42 U.S.C. Sec. 1320d et seq.) and its implementing regulations, the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and Section 1798.81.5 of the Civil Code. The entity shall be subject to existing penalties for violation of these laws.

(ii) Prohibit the entity awarded the contract from using or disclosing client records or client information for a purpose other than the one for which the record was given.

(iii) Prohibit the entity awarded the contract from selling client records or client information.

(C) For purposes of this paragraph, the following terms shall have the following meanings:

(i) "Client record" means a medical record, chart, or similar file, as well as other documents containing information regarding an individual recipient of services, including, but not limited to, clinical information, dates and times of services, and other information relevant to the individual and services provided and that evidences compliance with legal requirements for Medi-Cal reimbursement.

(ii) "Client record review" means examination of the client record for a selected individual recipient for the purpose of confirming the existence of documents that verify compliance with legal requirements for claims submitted for Medi-Cal reimbursement.

(D) The department shall recover overpayments of federal financial participation from MHPs within the timeframes required by federal law and regulation for repayment to the federal Centers for Medicare and Medicaid Services.

(4) (A) The department, in consultation with mental health stakeholders, the California Mental Health Directors Association, and MHP subcontractor representatives, shall provide an appeals process that specifies a progressive process for resolution of disputes about ~~claims or recoupments relating to specialty mental health services~~ under the Medi-Cal specialty mental health services waiver.

(B) The department shall provide MHPs and MHP subcontractors the opportunity to directly appeal findings in accordance with procedures that are similar to those described in Article 1.5 (commencing with Section 51016) of Chapter 3 of Subdivision 1 of Division 3 of Title 22 of the California Code of Regulations, until new regulations for a progressive appeals process are promulgated. When an MHP subcontractor initiates an appeal, it shall give notice to the MHP. The department shall propose a rulemaking package consistent with the department's appeals process that is in effect on July 1, 2012 by no later than the end of the 2013-14 fiscal year. The reference in this subparagraph to the procedures described in Article 1.5 (commencing with Section 51016) of Chapter 3 of Subdivision 1 of Division 3 of Title 22 of the California Code of Regulations, shall only apply to those appeals addressed in this subparagraph.

(C) The department shall develop regulations as necessary to



implement this paragraph.

(5) The department shall conduct oversight of utilization controls as specified in Section 14133. The MHP shall include a requirement in any subcontracts that all inpatient subcontractors maintain necessary licensing and certification. MHPs shall require that services delivered by licensed staff are within their scope of practice. Nothing in this chapter shall prohibit the MHPs from establishing standards that are in addition to the federal and state requirements, provided that these standards do not violate federal and state requirements and guidelines.

(6) (A) Subject to federal approval and consistent with state requirements, the MHP may negotiate rates with providers of specialty mental health services.

(B) Any excess in the distribution of funds over the expenditures for services by the mental health plan shall be spent for the provision of specialty mental health services and related administrative costs.

(7) Nothing in this chapter shall limit the MHP from being reimbursed appropriate federal financial participation for any qualified services. To receive federal financial participation, the mental health plan shall certify its public expenditures for specialty mental health services to the department.

(8) Notwithstanding Section 14115, claims for federal reimbursement for service pursuant to this chapter shall be submitted by MHPs within the timeframes required by federal Medicaid requirements and the approved Medicaid state plan and waivers.

(9) The MHP shall use the fiscal intermediary of the Medi-Cal program of the State Department of Health Care Services for the processing of claims for inpatient psychiatric hospital services rendered in fee-for-service Medi-Cal hospitals. The department shall request the Controller to offset the distribution of funds to the counties from the Mental Health Subaccount, the Mental Health Equity Subaccount, or the Vehicle License Collection Account of the Local Revenue Fund, or funds from the Mental Health Account or the Behavioral Health Subaccount of the Local Revenue Fund 2011 for the nonfederal financial participation share for these claims.

(c) Counties may set aside funds for self-insurance, audit settlement, and statewide program risk pools. The counties shall assume all responsibility and liability for appropriate administration of the funds. Special consideration may be given to small counties with a population of less than 200,000. Nothing in the paragraph shall in any way make the state or department liable for mismanagement or loss of funds by the entity designated by counties under this subdivision.

(d) The department shall consult with the California Mental Health Directors Association in February and September of each year to obtain data and methodology necessary to forecast future fiscal trends in the provision of specialty mental health services provided under the Medi-Cal specialty mental health services waiver, to estimate yearly specialty mental health services related costs, and to estimate the annual amount of federal funding participation to reimburse costs of specialty mental health services provided under the Medi-Cal specialty mental health services waiver. This shall include a separate presentation of the data and methodology necessary to forecast future fiscal trends in the provision of Early Periodic Screening, Diagnosis, and Treatment specialty mental health services provided under the Medi-Cal specialty mental health services waiver, to estimate annual EPSDT specialty mental health services related costs, and to estimate the annual amount of EPSDT specialty mental health services provided under the state Medi-Cal specialty mental

health services waiver, including federal funding participation to reimburse costs of EPSDT.

(e) When seeking federal approval for any federal Medicaid state plan amendment or waiver associated with Medi-Cal specialty mental health services, the department shall consult with staff of the Legislature, counties, providers, and other stakeholders in the development of the state plan amendment or waiver.

(f) This section shall become operative on July 1, 2012.

14718.5. Notwithstanding any other law, including subdivision (b) of Section 16310 of the Government Code, the Controller may use the moneys in the Mental Health Managed Care Deposit Fund for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. Interest shall be paid on all moneys loaned to the General Fund from the Mental Health Managed Care Deposit Fund. Interest payable shall be computed at a rate determined by the Pooled Money Investment Board to be the current earning rate of the fund from which loaned. This subdivision does not authorize any transfer that will interfere with the carrying out of the object for which the Mental Health Managed Care Deposit Fund was created.

14721. (a) This chapter shall only be implemented to the extent that the necessary federal waivers are obtained. The director shall execute a declaration, to be retained by the director, that a waiver necessary to implement any provision of this chapter has been obtained.

(b) This chapter shall become inoperative on the date that, and only if, the director executes a declaration, to be retained by the director, that more than 10 percent of all counties fail to become mental health plan contractors, and acceptable alternative contractors are not available, or if more than 10 percent of all funds allocated for Medi-Cal mental health services must be administered by the department because an acceptable plan is not available.

14722. (a) ~~Notwithstanding any other law, a mental health plan may enter into a contract for the provision of specialty mental health services for Medi-Cal beneficiaries with a hospital that provides for a per diem reimbursement rate for services that include room and board, routine hospital services, and all hospital-based ancillary services and that provides separately for the attending mental health professional's daily visit fee. The payment of these negotiated reimbursement rates to the hospital by the mental health plan shall be considered payment in full for each day of inpatient psychiatric and hospital care rendered to a Medi-Cal beneficiary, subject to third-party liability and patient share of costs, if any.~~

(b) This section shall not be construed to allow a hospital to interfere with, control, or otherwise direct the professional judgment of a physician and surgeon in a manner prohibited by Section 2400 of the Business and Professions Code or any other provision of law.

(c) For purposes of this section, "hospital" means a hospital that submits reimbursement claims for Medi-Cal psychiatric inpatient

hospital services through the Medi-Cal fiscal intermediary.

14723. (a) Each eligible public agency, as described in subdivision (b), may, in addition to reimbursement or other payments that the agency would otherwise receive for Medi-Cal specialty mental health services, receive supplemental Medi-Cal reimbursement to the extent provided for in this section.

(b) A public agency shall be eligible for supplemental reimbursement only if it is a county, city, or city and county and if, consistent with Section 14718 it provides as a mental health plan, or subcontracts for, specialty mental health services to Medi-Cal beneficiaries pursuant to the Medi-Cal Specialty Mental Health Consolidation Waiver (Number CA.17), as approved by the federal Centers for Medicare and Medicaid Services.

(c) (1) Subject to paragraph (2), an eligible public agency's supplemental reimbursement pursuant to this section shall be equal to the amount of federal financial participation received as a result of the claims submitted pursuant to paragraph (2) of subdivision (f).

(2) Notwithstanding paragraph (1), in computing an eligible public agency's reimbursement, in no instance shall the expenditures certified pursuant to paragraph (1) of subdivision (e), when combined with the amount received from other sources of payment and with reimbursement from the Medi-Cal program, including expenditures otherwise certified for purposes of claiming federal financial participation, exceed 100 percent of actual, allowable costs, as determined pursuant to California's Medicaid State Plan, for the specialty mental health services to which the expenditure relates. Supplemental payment may be made on an interim basis until the time when actual, allowable costs are finally determined.

(3) The supplemental Medi-Cal reimbursement provided by this section shall be distributed under a payment methodology based on specialty mental health services provided to Medi-Cal patients by each eligible public agency, on a per-visit basis, a per-procedure basis, a time basis, in one or more lump sums, or on any other federally permissible basis. The department shall seek approval from the federal Centers for Medicare and Medicaid Services for the payment methodology to be utilized, and shall not make any payment pursuant to this section prior to obtaining that federal approval.

(d) (1) It is the intent of the Legislature in enacting this section to provide the supplemental reimbursement described in this section without any expenditure from the General Fund. The department ~~may require an eligible public agency, as a condition of receiving~~ supplemental reimbursement pursuant to this section, to enter into, and maintain, an agreement with the department for the purposes of implementing this section and reimbursing the department for the costs of administering this section.

(2) Expenditures submitted to the department for purposes of claiming federal financial participation under this section shall have been paid only with funds from the public agencies described in subdivision (b) and certified to the state as provided in subdivision (e).

(e) An eligible public agency shall do all of the following:

(1) Certify, in conformity with the requirements of Section 433.51 of Title 42 of the Code of Federal Regulations, that the claimed expenditures for the specialty mental health services are eligible for federal financial participation.

(2) Provide evidence supporting the certification as specified by the department.

(3) Submit data as specified by the department to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation.

(4) Keep, maintain, and have readily retrievable, any records specified by the department to fully disclose reimbursement amounts to which the eligible public agency is entitled, and any other records required by the federal Centers for Medicare and Medicaid Services.

(f) (1) The department shall promptly seek any necessary federal approvals for the implementation of this section. If necessary to obtain federal approval, the program shall be limited to those costs that the federal Centers for Medicare and Medicaid Services determines to be allowable expenditures under Title XIX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code). If federal approval is not obtained for implementation of this section, this section shall not be implemented.

(2) The department shall submit claims for federal financial participation for the expenditures described in subdivision (e) related to specialty mental health services that are allowable expenditures under federal law.

(3) The department shall, on an annual basis, submit any necessary materials to the federal Centers for Medicare and Medicaid Services to provide assurances that claims for federal financial participation will include only those expenditures that are allowable under federal law.

(g) (1) The director may adopt regulations as are necessary to implement this section. The adoption, amendment, repeal, or readoption of a regulation authorized by this subdivision shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement that it describe specific facts showing the need for immediate action.

(2) As an alternative to the adoption of regulations pursuant to paragraph (1), and notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement and administer this article, in whole or in part, by means of provider bulletins or similar instructions, without taking regulatory action, provided that no bulletin or similar instruction shall remain in effect after June 30, 2011. It is the intent that regulations adopted pursuant to paragraph (1) shall be in place on or before June 30, 2011.

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14725. (a) The State Department of Health Care Services shall develop a quality assurance program to govern the delivery of Medi-Cal specialty mental health services, in order to assure quality patient care based on community standards of practice.

(b) The department shall issue standards and guidelines for local quality assurance activities. These standards and guidelines shall be reviewed and revised in consultation with the California Mental Health Directors Association as well as other stakeholders from the mental health community, including, but not limited to, individuals who receive services, family members, providers, mental health advocacy groups, and other interested parties. The standards and guidelines shall be based on federal Medicaid requirements.

(c) The standards and guidelines developed by the department shall reflect the special problems that small rural counties have in

undertaking comprehensive quality assurance systems.

14726. The department shall approve each local program's initial quality assurance plan, and shall thereafter review and approve each program's Medi-Cal specialty mental health services quality assurance plan whenever the plan is amended or changed.

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# WELFARE AND INSTITUTIONS CODE

## SECTION 5890-5899

5890. (a) The Mental Health Services Fund is hereby created in the State Treasury. The fund shall be administered by the state. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are, except as provided in subdivision (d) of Section 5892, continuously appropriated, without regard to fiscal years, for the purpose of funding the following programs and other related activities as designated by other provisions of this division:

(1) Part 3 (commencing with Section 5800), the Adult and Older Adult System of Care Act.

(2) Part 3.2 (commencing with Section 5830), Innovative Programs.

(3) Part 3.6 (commencing with Section 5840), Prevention and Early Intervention Programs.

(4) Part 4 (commencing with Section 5850), the Children's Mental Health Services Act.

(b) Nothing in the establishment of this fund, nor any other provisions of the act establishing it or the programs funded shall be construed to modify the obligation of health care service plans and disability insurance policies to provide coverage for mental health services, including those services required under Section 1374.72 of the Health and Safety Code and Section 10144.5 of the Insurance Code, related to mental health parity. Nothing in this act shall be construed to modify the oversight duties of the Department of Managed Health Care or the duties of the Department of Insurance with respect to enforcing these obligations of plans and insurance policies.

(c) Nothing in this act shall be construed to modify or reduce the existing authority or responsibility of the State Department of Health Care Services.

(d) The State Department of Health Care Services shall seek approval of all applicable federal Medicaid approvals to maximize the availability of federal funds and eligibility of participating children, adults, and seniors for medically necessary care.

(e) Share of costs for services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, shall be determined in accordance with the Uniform Method for Determining Ability to Pay applicable to other publicly funded mental health services, unless this Uniform Method is replaced by another method of determining co-payments, in which case the new method applicable to other mental health services shall be applicable to services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division.

5891. (a) The funding established pursuant to this act shall be utilized to expand mental health services. Except as provided in subdivision (j) of Section 5892 due to the state's fiscal crisis, these funds shall not be used to supplant existing state or county funds utilized to provide mental health services. The state shall continue to provide financial support for mental health programs with not less than the same entitlements, amounts of allocations from the

**42 U.S.C.**

United States Code, 1999 Edition

Title 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 6A - PUBLIC HEALTH SERVICE

SUBCHAPTER III-A - SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

Part C - Projects for Assistance in Transition From Homelessness

From the U.S. Government Printing Office, [www.gpo.gov](http://www.gpo.gov)

Sections 290cc-21 through 290cc-35

**PART C—PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS****§290cc-21. Formula grants to States**

For the purpose of carrying out section 290cc-22 of this title, the Secretary, acting through the Director of the Center for Mental Health Services, shall for each of the fiscal years 1991 through 1994 make an allotment for each State in an amount determined in accordance with section 290cc-24 of this title. The Secretary shall make payments, as grants, each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 290cc-29 of this title.

(July 1, 1944, ch. 373, title V, §521, as added Pub. L. 100-77, title VI, §611(3), July 22, 1987, 101 Stat. 516; amended Pub. L. 100-607, title VIII, §813(1), Nov. 4, 1988, 102 Stat. 3170; Pub. L. 100-628, title VI, §613(1), Nov. 7, 1988, 102 Stat. 3243; Pub. L. 101-93, §5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101-645, title V, §511, Nov. 29, 1990, 104 Stat. 4726; Pub. L. 102-321, title I §§162(1), 163(a)(1), July 10, 1992, 106 Stat. 375; Pub. L. 102-352, §2(b)(2), Aug. 26, 1992, 106 Stat. 939.)

**PRIOR PROVISIONS**

A prior section 521 of act July 1, 1944, was renumbered section 542 by section 611(2) of Pub. L. 100-77 and is classified to section 290dd-1 of this title.

**AMENDMENTS**

1992—Pub. L. 102-352 repealed Pub. L. 102-321, §163(a)(1), which directed the substitution of “Administrator of the Substance Abuse and Mental Health Services Administration” for “Director of the National Institute of Mental Health”.

Pub. L. 102-321, §162(1), substituted “Center for Mental Health Services” for “National Institute of Mental Health”.

1990—Pub. L. 101-645 amended section generally, substituting provisions relating to formula grants to States for provisions relating to establishment of block grant program for services to homeless individuals who are chronically mentally ill.

1989—Subsec. (a). Pub. L. 101-93 directed that subsec. (a) of this section as similarly amended by title VIII of Pub. L. 100-607 and title VI of Pub. L. 100-628 be amended to read as if the amendments made by title VI of Pub. L. 100-628 had not been enacted. See 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100-607 and Pub. L. 100-628 made identical amendments, amending first sentence generally. Prior to amendment, first sentence read as follows: “The Secretary shall for fiscal years 1987 and 1988 allot to each State an amount determined in accordance with sections 290cc-28 and 290cc-29 of this title.”

**EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102-321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102-321, set out as a note under section 236 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-628 effective Nov. 7, 1988, see section 631 of Pub. L. 100-628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100-607 effective Nov. 4, 1988, see section 831 of Pub. L. 100-607, set out as a note under section 254e of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290bb-31, 290cc-22, 290cc-23, 290cc-24, 290cc-25, 290cc-26, 290cc-27, 290cc-28, 290cc-29, 290cc-31, 290cc-32, 290cc-33, 290cc-35 of this title.

### §290cc-22. Purpose of grants

#### (a) In general

The Secretary may not make payments under section 290cc-21 of this title unless the State involved agrees that the payments will be expended solely for making grants to political subdivision of the State, and to nonprofit private entities (including community-based veterans organizations and other community organizations), for the purpose of providing the services specified in subsection (b) of this section to individuals who—

- (1)(A) are suffering from serious mental illness; or
- (B) are suffering from serious mental illness and from substance abuse; and
- (2) are homeless or at imminent risk of becoming homeless.

#### (b) Specification of services

The services referred to in subsection (a) of this section are—

- (1) outreach services;
- (2) screening and diagnostic treatment services;
- (3) habilitation and rehabilitation services;
- (4) community mental health services;
- (5) alcohol or drug treatment services;
- (6) staff training, including the training of individuals who work in shelters, mental health clinics, substance abuse programs, and other sites where homeless individuals require services;
- (7) case management services, including—
  - (A) preparing a plan for the provision of community mental health services to the eligible homeless individual involved, and reviewing such plan not less than once every 3 months;
  - (B) providing assistance in obtaining and coordinating social and maintenance services for the eligible homeless individuals, including services relating to daily living activities, personal financial planning, transportation services, and habilitation and rehabilitation services, prevocational and vocational services, and housing services;
  - (C) providing assistance to the eligible homeless individual in obtaining income support services, including housing assistance, food stamps, and supplemental security income benefits
  - (D) referring the eligible homeless individual for such other services as may be appropriate; and
  - (E) providing representative payee services in accordance with section 1631(a)(2) of the Social Security Act [42 U.S.C. 1383(a)(2)] if the eligible homeless individual is receiving aid under title XVI of such act [42 U.S.C. 1381 et seq.] and if the applicant is designated by the



Secretary to provide such services;

- (8) supportive and supervisory services in residential settings;
- (9) referrals for primary health services, job training, educational services, and relevant housing services;
- (10) subject to subsection (h)(1) of this section—
  - (A) minor renovation, expansion, and repair of housing;
  - (B) planning of housing;
  - (C) technical assistance in applying for housing assistance;
  - (D) improving the coordination of housing services;
  - (E) security deposits;
  - (F) the costs associated with matching eligible homeless individuals with appropriate housing situations; and
  - (G) 1-time rental payments to prevent eviction; and
- (11) other appropriate services, as determined by the Secretary.

**(c) Coordination**

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees to make grants pursuant to subsection (a) of this section only to entities that have the capacity to provide, directly or through arrangements, the services specified in subsection (b) of this section, including coordinating the provision of services in order to meet the needs of eligible homeless individuals who are both mentally ill and suffering from substance abuse.

**(d) Special consideration regarding veterans**

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that, in making grants to entities pursuant to subsection (a) of this section, the State will give special consideration to entities with a demonstrated effectiveness in serving homeless veterans.

**(e) Special rules**

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that grants pursuant to subsection (a) of this section will not be made to any entity that—

- (1) has a policy of excluding individuals from mental health services due to the existence or suspicion of substance abuse; or
- (2) has a policy of excluding individuals from substance abuse services due to the existence or suspicion of mental illness.

**(f) Administrative expenses**

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that not more than 4 percent of the payments will be expended for administrative expenses regarding the payments.

**(g) Maintenance of effort**

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that the State will maintain State expenditures for services specified in subsection (1) of this section at a level that is not less than the average level of such expenditures maintained by the

State for the 2-year period preceding the fiscal year for which the State is applying to receive such payments.

**(h) Restrictions on use of funds**

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that—

- (1) not more than 20 percent of the payments will be expended for housing services under subsection (b)(10) of this section; and
- (2) the payments will not be expended—
  - (A) to support emergency shelters or construction of housing facilities;
  - (B) for inpatient psychiatric treatment costs or inpatient substance abuse treatment costs; or
  - (C) to make cash payments to intended recipients of mental health or substance abuse services.

(July 1, 1944, ch. 373, title V, §522, as added Pub. L. 100–77, title VI, §611(3), July 22, 1987, 101 Stat. 516; amended Pub. L. 101–645, title V, §511, Nov. 29, 1990, 104 Stat. 4726.)

**REFERENCES IN TEXT**

The Social Security Act, referred to in subsec. (b)(7)(E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVI of the Act is classified generally to subchapter XVI (§1381 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

**PRIOR PROVISIONS**

A prior section 522 of act July 1, 1944, was renumbered section 543 by section 611(2) of Pub. L. 100–77 and is classified to section 290dd–2 of this title.

**AMENDMENTS**

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to purpose of grants for provisions relating to requirement of submission of application containing certain agreements.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 290cc–21, 290cc–23, 290cc–25, 290cc–27, 290cc–31, 290cc–34, 290cc–35 of this title.

**§290cc–23. Requirement of matching funds**

**(a) In general**

The Secretary may not make payments under section 290cc–21 of this title unless, with respect to the costs of providing services pursuant to section 290cc–22 of this title, the State involved agrees to make available, directly or through donations from public or private entities, non-Federal contributions toward such costs in an amount that is not less than \$1 for each \$3 of Federal funds provided in such payments.

**(b) Determination of amount**

Non-Federal contributions required in subsection (a) of this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, shall not be included in determining the amount of such non-Federal contributions.

**(c) Limitation regarding grants by States**

The Secretary may not make payments under section 290cc–21 of this title unless the State

involved agrees that the State will not require the entities to which grants are provided pursuant to section 290cc-22(a) of this title to provide non-Federal contributions in excess of the non-Federal contributions described in subsection (a) of this section.

(July 1, 1944, ch. 373, title V, §523, as added Pub. L. 100-77, title VI, §611(3), July 22, 1987, 101 Stat. 517; amended Pub. L. 101-645, title V, §511, Nov. 29, 1990, 104 Stat. 4728.)

#### PRIOR PROVISIONS

A prior section 523 of act July 1, 1944, was renumbered section 544 by section 611(2) of Pub. L. 100-77 and is classified to section 290dd-3 of this title.

#### AMENDMENTS

1990—Pub. L. 101-645 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), general requirements; and in subsec. (b), determination of amount of non-Federal contribution.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290cc-26 of this title.

### **§290cc-24. Determination of amount of allotment**

#### **(a) Minimum allotment**

The allotment for a State under section 290cc-21 of this title for a fiscal year shall be the greater of—

- (1) \$300,000 for each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, and \$50,000 for each of Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands; and
- (2) an amount determined in accordance with subsection (b) of this section.

#### **(b) Determination under formula**

The amount referred to in subsection (a)(2) of this section is the product of—

- (1) an amount equal to the amount appropriated under section 290cc-35(a) of this title for the fiscal year; and
- (2) a percentage equal to the quotient of—
  - (A) an amount equal to the population living in urbanized areas of the State involved, as indicated by the most recent data collected by the Bureau of the Census; and
  - (B) an amount equal to the population living in urbanized areas of the United States, as indicated by the sum of the respective amounts determined for the States under subparagraph (A).

(July 1, 1944, ch. 373, title V, §524, as added Pub. L. 100-77, title VI, §611(3), July 22, 1987, 101 Stat. 517; amended Pub. L. 101-645, title V, §511, Nov. 29, 1990, 104 Stat. 4728.)

#### PRIOR PROVISIONS

A prior section 524 of act July 1, 1944, was renumbered section 545 by section 611(2) of Pub. L. 100-77 and is classified to section 290ee of this title.

#### AMENDMENTS

1990—Pub. L. 101-645 amended section generally, substituting provisions relating to determination of amount of allotment for provisions relating to requiring provision of certain mental health services.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290cc–21, 290cc–35 of this title.

### **§290cc–25. Conversion to categorical program in event of failure of State regarding expenditure of grants**

#### **(a) In general**

Subject to subsection (c) of this section, the Secretary shall, from the amounts specified in subsection (b) of this section, make grants to public and nonprofit private entities for the purpose of providing to eligible homeless individuals the services specified in section 290cc–22(b) of this title.

#### **(b) Specification of funds**

The amounts referred to in subsection (a) of this section are any amounts made available in appropriations Acts for allotments under section 290cc–21 of this title that are not paid to a State as result of—

- (A) the failure of the State to submit an application under section 290cc–29 of this title;
- (B) the failure of the State, in the determination of the Secretary, to prepare the application in accordance with such section or to submit the application within a reasonable period of time; or
- (C) the State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

#### **(c) Requirement of provision of services in State involved**

With respect to grants under subsection (a) of this section, amounts made available under subsection (b) of this section as a result of the State involved shall be available only for grants to provide services in such State.

(July 1, 1944, ch. 373, title V, §525, as added Pub. L. 100–77, title VI, §611(3), July 22, 1987, 101 Stat. 518; amended Pub. L. 101–645, title V, §511, Nov. 29, 1990, 104 Stat. 4729.)

#### **PRIOR PROVISIONS**

A prior section 525 of act July 1, 1944, was renumbered section 546 by section 611(2) of Pub. L. 100–77 and is classified to section 290ee–1 of this title.

#### **AMENDMENTS**

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to conversion to categorical program in event of failure of State regarding expenditure of grants for provisions relating to restrictions on use of payments.

### **§290cc–26. Provision of certain information from State**

The Secretary may not make payments under section 290cc–21 of this title to a State unless, as part of the application required in section 290cc–29 of this title, the State submits to the Secretary a statement—

- (1) identifying existing programs providing services and housing to eligible homeless individuals and identify gaps in the delivery systems of such programs;
- (2) containing a plan for providing services and housing to eligible homeless individuals, which plan—
  - (A) describes the coordinated and comprehensive means of providing services and housing to homeless individuals; and

(B) includes documentation that suitable housing for eligible homeless individuals will accompany the provision of services to such individuals;

(3) describes the source of the non-Federal contributions described in section 290cc-23 of this title;

(4) contains assurances that the non-Federal contributions described in section 290cc-23 of this title will be available at the beginning of the grant period;

(5) describe any voucher system that may be used to carry out this part; and

(6) contain such other information or assurances as the Secretary may reasonably require.

(July 1, 1944, ch. 373, title V, §526, as added Pub. L. 100-77, title VI, §611(3), July 22, 1987, 101 Stat. 519; amended Pub. L. 101-645, title V, §511, Nov. 29, 1990, 104 Stat. 4729.)

#### PRIOR PROVISIONS

A prior section 526 of act July 1, 1944, was renumbered section 547 by section 611(2) of Pub. L. 100-77 and is classified to section 290ee-2 of this title.

#### AMENDMENTS

1990—Pub. L. 101-645 amended section generally, substituting provisions relating to providing certain information from State for provisions relating to requirement of submission of description of intended use of block grant.

### **§290cc-27. Description of intended expenditures of grant**

#### **(a) In general**

The Secretary may not make payments under section 290cc-21 of this title unless—

(1) as part of the application required in section 290cc-29 of this title, the State involved submits to the Secretary a description of the intended use for the fiscal year of the amounts for which the State is applying pursuant to such section;

(2) such description identifies the geographic areas within the State in which the greatest numbers of homeless individuals with a need for mental health, substance abuse, and housing services are located;

(3) such description provides information relating to the programs and activities to be supported and services to be provided, including information relating to coordinating such programs and activities with any similar programs and activities of public and private entities; and

(4) the State agrees that such description will be revised throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State pursuant to section 290cc-22 of this title.

#### **(b) Opportunity for public comment**

The Secretary may not make payments under section 290cc-21 of this title unless the State involved agrees that, in developing and carrying out the description required in subsection (a) of this section, the State will provide public notice with respect to the description (including any revisions) and such opportunities as may be necessary to provide interested persons, such as family members, consumers, and mental health, substance abuse, and housing agencies, an opportunity to present comments and recommendations with respect to the description.

#### **(c) Relationship to State comprehensive mental health services plan**

##### **(1) In general**

The Secretary may not make payments under section 290cc-21 of this title unless the services to be provided pursuant to the description required in subsection (a) of this section are consistent with the State comprehensive mental health services plan required in subpart 2<sup>1</sup> of part B of subchapter XVII of this chapter.

**(2) Special rule**

The Secretary may not make payments under section 290cc-21 of this title unless the services to be provided pursuant to the description required in subsection (a) of this section have been considered in the preparation of, have been included in, and are consistent with, the State comprehensive mental health services plan referred to in paragraph (1).

(July 1, 1944, ch. 373, title V, §527, as added Pub. L. 100-77, title VI, §611(3), July 22, 1987, 101 Stat. 520; amended Pub. L. 101-645, title V, §511, Nov. 29, 1990, 104 Stat. 4730.)

**REFERENCES IN TEXT**

Subpart 2 of part B of subchapter XVII of this chapter, referred to in subsec. (c)(1), which related to State comprehensive mental health services plans and which was classified to section 300x-10 et seq. of this title, was repealed by Pub. L. 102-321, title II, §201(2), July 10, 1992, 106 Stat. 378, and a new subpart 2 of part B of subchapter XVII of this chapter, relating to block grants for prevention and treatment of substance abuse, was added by section 202 of Pub. L. 102-321 and classified to section 300x-21 et seq. of this title.

**PRIOR PROVISIONS**

A prior section 527 of act July 1, 1944, was renumbered section 548 by section 611(2) of Pub. L. 100-77 and is classified to section 290ee-3 of this title.

**AMENDMENTS**

1990—Pub. L. 101-645 amended section generally, substituting provisions relating to description of intended expenditures of grant for provisions relating to requirement of reports by States.

<sup>1</sup> See References in Text note below.

**§290cc-28. Requirement of reports by States**

**(a) In general**

The Secretary may not make payments under section 290cc-21 of this title unless the State involved agrees that, by not later than January 31 of each fiscal year, the State will prepare and submit to the Secretary a report in such form and containing such information as the Secretary determines (after consultation with the Administrator of the Substance Abuse and Mental Health Services Administration) to be necessary for—

(1) securing a record and a description of the purposes for which amounts received under section 290cc-21 of this title were expended during the preceding fiscal year and of the recipients of such amounts; and

(2) determining whether such amounts were expended in accordance with the provisions of this part.

**(b) Availability to public of reports**

The Secretary may not make payments under section 290cc-21 of this title unless the State involved agrees to make copies of the reports described in subsection (a) of this section available for public inspection.

**(c) Evaluations**

The Administrator of the Substance Abuse and Mental Health Services Administration shall evaluate at least once every 3 years the expenditures of grants under this part by eligible entities in order to ensure that expenditures are consistent with the provisions of this part, and shall include in such evaluation recommendations regarding changes needed in program design or operations.

(July 1, 1944, ch. 373, title V, §528, as added Pub. L. 100-77, title VI, §611(3), July 22, 1987, 101 Stat. 520; amended Pub. L. 100-607, title VIII, §812(b), Nov. 4, 1988, 102 Stat. 3170; Pub. L. 100-628, title VI, §612(b), Nov. 7, 1988, 102 Stat. 3243; Pub. L. 100-690, title II, §2614(a), Nov. 18, 1988, 102 Stat. 4239; Pub. L. 101-93, §5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101-645, title V, §511, Nov. 29, 1990, 104 Stat. 4730; Pub. L. 102-321, title I, §163(a)(1), formerly §163(a)(2), July 10, 1992, 106 Stat. 375, renumbered §163(a)(1), Pub. L. 102-352, §2(b)(2), Aug. 26, 1992, 106 Stat. 939; Pub. L. 104-316, title I, §122(c), Oct. 19, 1996, 110 Stat. 3836.)

**AMENDMENTS**

1996—Subsec. (a). Pub. L. 104-316, §122(c)(1), struck out “the Comptroller General of the United States, and” after “(after consultation with”.

Subsec. (c). Pub. L. 104-316, §122(c)(2), struck out “Comptroller General of the United States in cooperation with the” before “Administrator” and struck out comma after “Administration”.

1992—Subsec. (a). Pub. L. 102-321, §163(a)(1)(A), as renumbered by Pub. L. 102-352, substituted “and the Administrator of the Substance Abuse and Mental Health Services Administration” for “the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse”.

Subsec. (c). Pub. L. 102-321, §163(a)(1)(B), as renumbered by Pub. L. 102-352, substituted “Administrator of the Substance Abuse and Mental Health Services Administration” for “National Institute of Mental Health”.

1990—Pub. L. 101-645 amended section generally, substituting provisions relating to requirement of reports by States for provisions relating to determination of amount of allotments.

1989—Subsec. (a)(1). Pub. L. 101-93 directed that subsec. (a)(1) of this section as similarly amended by title VIII of Pub. L. 100-607 and title VI of Pub. L. 100-628 be amended to read as if the amendments made by title VI of Pub. L. 100-628 had not been enacted. See 1988 Amendment note below.

1988—Subsec. (a)(1). Pub. L. 100-690 substituted “the Commonwealth of the Northern Mariana Islands” for “the Northern Mariana Islands”.

Pub. L. 100-607 and Pub. L. 100-628 made identical amendments, amending par. (1) generally. Prior to amendment, par. (1) read as follows: “\$275,000; and”.

**EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102-321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102-321, set out as a note under section 236 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENTS**

Amendment by Pub. L. 100-690 effective immediately after enactment of Pub. L. 100-607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100-690, set out as a note under section 242m of this title.

Amendment by Pub. L. 100-628 effective Nov. 7, 1988, see section 631 of Pub. L. 100-628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100-607 effective Nov. 4, 1988, see section 831 of Pub. L. 100-607, set out as a note under section 254e of this title.

**§290cc-29. Requirement of application**

The Secretary may not make payments under section 290cc-21 of this title unless the State

involved—

- (1) submits to the Secretary an application for the payments containing agreements and information in accordance with this part;
- (2) the agreements are made through certification from the chief executive officer of the State; and
- (3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(July 1, 1944, ch. 373, title V, §529, as added Pub. L. 100–77, title VI, §611(3), July 22, 1987, 101 Stat. 520; amended Pub. L. 100–607, title VIII, §811(b), Nov. 4, 1988, 102 Stat. 3170; Pub. L. 100–628, title VI, §611(b), Nov. 7, 1988, 102 Stat. 3243; Pub. L. 101–93, §5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101–645, title V, §511, Nov. 29, 1990, 104 Stat. 4731.)

#### AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to requirement of application for provisions relating to conversion to State categorical program in event of failure of State with respect to expending allotment.

1989—Pub. L. 101–93 directed that this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, amending section generally by substituting present provisions for provisions which had related to: in subsec. (a), additional allotments for certain States; in subsec. (b), description of funds; and in subsec. (c), determination of amount of allotment.

#### EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 254e of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290cc–21, 290cc–25, 290cc–26, 290cc–27, 290cc–31 of this title.

### §290cc–30. Technical assistance

The Secretary, through the agencies of the Administration, shall provide technical assistance to eligible entities in developing planning and operating programs in accordance with the provisions of this part.

(July 1, 1944, ch. 373, title V, §530, as added Pub. L. 100–77, title VI, §611(3), July 22, 1987, 101 Stat. 521; amended Pub. L. 101–645, title V, §511, Nov. 29, 1990, 104 Stat. 4731; Pub. L. 102–321, title I, §§162(2), 163(a)(3), July 10, 1992, 106 Stat. 375; Pub. L. 102–352, §2(b)(2), Aug. 26, 1992, 106 Stat. 939.)

#### AMENDMENTS

1992—Pub. L. 102–352 repealed Pub. L. 102–321, §163(a)(3), which directed the substitution of “the Administrator of the Substance Abuse and Mental Health Services Administration” for “the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse”.

Pub. L. 102–321, §162(2), which directed the substitution of “through the agencies of the Administration” for “through the National” and all that follows through “Abuse”, was executed by making the substitution for



“through the National Institute of Mental Health, the National Institute of Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse” to reflect the probable intent of Congress.

1990—Pub. L. 101–645 amended section generally, substituting provision relating to technical assistance for provision relating to disbursement and availability of funds.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

### **§290cc–31. Failure to comply with agreements**

#### **(a) Repayment of payments**

(1) The Secretary may, subject to subsection (c) of this section, require a State to repay any payments received by the State under section 290cc–21 of this title that the Secretary determines were not expended by the State in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 290cc–29 of this title.

(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 290cc–21 of this title.

#### **(b) Withholding of payments**

(1) The Secretary may, subject to subsection (c) of this section, withhold payments due under section 290cc–21 of this title if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 290cc–29 of this title.

(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under section 290cc–21 of this title in accordance with the agreements referred to in such paragraph.

(3) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the agreements referred to in such paragraph.

#### **(c) Opportunity for hearing**

Before requiring repayment of payments under subsection (a)(1) of this section, or withholding payments under subsection (b)(1) of this section, the Secretary shall provide to the State an opportunity for a hearing.

#### **(d) Rule of construction**

Notwithstanding any other provision of this part, a State receiving payments under section 290cc–21 of this title may not, with respect to any agreements required to be contained in the application submitted under section 290cc–29 of this title, be considered to be in violation of any such agreements by reason of the fact that the State, in the regular course of providing services under section 290cc–22(b) of this title to eligible homeless individuals, incidentally provides services to homeless individuals who are not eligible homeless individuals.

(July 1, 1944, ch. 373, title V, §531, as added Pub. L. 100–77, title VI, §611(3), July 22, 1987, 101 Stat. 521; amended Pub. L. 101–645, title V, §511, Nov. 29, 1990, 104 Stat. 4731.)

#### AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to failure to comply with agreements for provision relating to technical assistance.

## **§290cc–32. Prohibition against certain false statements**

### **(a) In general**

(1) A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 290cc–21 of this title.

(2) A person with knowledge of the occurrence of any event affecting the right of the person to receive any amounts from payments made to the State under section 290cc–21 of this title may not conceal or fail to disclose any such event with the intent of securing such an amount that the person is not authorized to receive or securing such an amount in an amount greater than the amount the person is authorized to receive.

### **(b) Criminal penalty for violation of prohibition**

Any person who violates a prohibition established in subsection (a) of this section may for each violation be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(July 1, 1944, ch. 373, title V, §532, as added Pub. L. 100–77, title VI, §611(3), July 22, 1987, 101 Stat. 521; amended Pub. L. 101–645, title V, §511, Nov. 29, 1990, 104 Stat. 4732.)

#### **AMENDMENTS**

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to prohibition against certain false statements for provisions relating to failure to comply with agreements.

## **§290cc–33. Nondiscrimination**

### **(a) In general**

#### **(1) Rule of construction regarding certain civil rights laws**

For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under section 290cc–21 of this title shall be considered to be programs and activities receiving Federal financial assistance.

#### **(2) Prohibition**

No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under section 290cc–21 of this title.

### **(b) Enforcement**

#### **(1) Referrals to Attorney General after notice**

Whenever the Secretary finds that a State, or an entity that has received a payment pursuant to section 290cc–21 of this title, has failed to comply with a provision of law referred to in

subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(B) exercise the powers and functions provided by the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], as may be applicable; or

(C) take such other actions as may be authorized by law.

## (2) Authority of Attorney General

When a matter is referred to the Attorney General pursuant to paragraph (1)(A), or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(July 1, 1944, ch. 373, title V, §533, as added Pub. L. 100–77, title VI, §611(3), July 22, 1987, 101 Stat. 522; amended Pub. L. 101–645, title V, §511, Nov. 29, 1990, 104 Stat. 4732.)

### REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1) and (b)(1)(B), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1001 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

### AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to nondiscrimination for provision relating to establishment of prohibition against making certain false statements.

## §290cc–34. Definitions

For purposes of this part:

### (1) Eligible homeless individual

The term “eligible homeless individual” means an individual described in section 290cc–22(a) of this title.

### (2) Homeless individual

The term “homeless individual” has the meaning given such term in section 256(r)<sup>1</sup> of this title

**(3) State**

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**(4) Substance abuse**

The term “substance abuse” means the abuse of alcohol or other drugs.

(July 1, 1944, ch. 373, title V, §534, as added Pub. L. 100–77, title VI, §611(3), July 22, 1987, 101 Stat. 522; amended Pub. L. 101–645, title V, §511, Nov. 29, 1990, 104 Stat. 4733.)

**REFERENCES IN TEXT**

Section 256 of this title, referred to in par. (2), was repealed by Pub. L. 104–299, §4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

**AMENDMENTS**

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to definitions for provisions relating to nondiscrimination.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 254b of this title.

<sup>1</sup> See References in Text note below.

**§290cc–35. Funding**

**(a) Authorization of appropriations**

For the purpose of carrying out this part, there is authorized to be appropriated \$75,000,000 for each of the fiscal years 1991 through 1994.

**(b) Effect of insufficient appropriations for minimum allotments**

**(1) In general**

If the amounts made available under subsection (a) of this section for a fiscal year are insufficient for providing each State with an allotment under section 290cc–21 of this title of not less than the applicable amount under section 290cc–24(a)(1) of this title, the Secretary shall, from such amounts as are made available under such subsection, make grants to the States for providing to eligible homeless individuals the services specified in section 290cc–22(b) of this title.

**(2) Rule of construction**

Paragraph (1) may not be construed to require the Secretary to make a grant under such paragraph to each State.

(July 1, 1944, ch. 373, title V, §535, as added Pub. L. 100–77, title VI, §611(3), July 22, 1987, 101 Stat. 523; amended Pub. L. 100–607, title VIII, §811(a), Nov. 4, 1988, 102 Stat. 3169; Pub. L. 100–628, title VI, §611(a), Nov. 7, 1988, 102 Stat. 3242; Pub. L. 101–93, §5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101–645, title V, §511, Nov. 29, 1990, 104 Stat. 4733.)

**PRIOR PROVISIONS**

A prior section 290cc–36, act July 1, 1944, ch. 373, title V, §536, as added July 22, 1987, Pub. L. 100–77,

title VI, §611(3), 101 Stat. 523, and amended Nov. 4, 1988, Pub. L. 100-607, title VIII, §§802(b)(3), 812(a), 102 Stat. 3169, 3170; Nov. 7, 1988, Pub. L. 100-628, title VI, §§602(b)(3), 612(a), 102 Stat. 3242, 3243; Nov. 18, 1988, Pub. L. 100-690, title II, §2614(b), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101-93, §5(t)(1), 103 Stat. 615, defined terms used in this part, prior to the general revision of this part by Pub. L. 101-645.

#### AMENDMENTS

1990—Pub. L. 101-645 amended section generally, substituting present provisions for similar provisions authorizing appropriations and providing for minimum allotments.

1989—Pub. L. 101-93 directed that this section as similarly amended by title VIII of Pub. L. 100-607 and title VI of Pub. L. 100-628 be amended to read as if the amendments made by title VI of Pub. L. 100-628 had not been enacted. See 1988 Amendment note below.

1988—Pub. L. 100-607 and Pub. L. 100-628 made identical amendments, amending section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to carry out this part \$35,000,000 for fiscal year 1987 and such sums as may be necessary for fiscal year 1988."

#### EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-628 effective Nov. 7, 1988, see section 631 of Pub. L. 100-628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100-607 effective Nov. 4, 1988, see section 831 of Pub. L. 100-607, set out as a note under section 254e of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290cc-24 of this title.

# WELFARE AND INSTITUTIONS CODE

## SECTION 5650-5667

5650. (a) The board of supervisors of each county, or boards of supervisors of counties acting jointly, shall adopt, and submit to the Director of Health Care Services in the form and according to the procedures specified by the director, a proposed annual county mental health services performance contract for mental health services in the county or counties.

(b) The State Department of Health Care Services shall develop and implement the requirements, format, procedure, and submission dates for the preparation and submission of the proposed performance contract.

5650.5. Any other provision of law referring to the county Short-Doyle plan shall be construed as referring to the county mental health services performance contract described in this chapter.

5651. The proposed annual county mental health services performance contract shall include all of the following:

(a) The following assurances:

(1) That the county is in compliance with the expenditure requirements of Section 17608.05.

(2) That the county shall provide services to persons receiving involuntary treatment as required by Part 1 (commencing with Section 5000) and Part 1.5 (commencing with Section 5585).

(3) That the county shall comply with all requirements necessary for Medi-Cal reimbursement for mental health treatment services and case management programs provided to Medi-Cal eligible individuals, including, but not limited to, the provisions set forth in Chapter 3 (commencing with Section 5700), and that the county shall submit cost reports and other data to the department in the form and manner determined by the State Department of Health Care Services.

(4) That the local mental health advisory board has reviewed and approved procedures ensuring citizen and professional involvement at all stages of the planning process pursuant to Section 5604.2.

(5) That the county shall comply with all provisions and requirements in law pertaining to patient rights.

(6) That the county shall comply with all requirements in federal law and regulation pertaining to federally funded mental health programs.

(7) That the county shall provide all data and information set forth in Sections 5610 and 5664.

(8) That the county, if it elects to provide the services described in Chapter 2.5 (commencing with Section 5670), shall comply with guidelines established for program initiatives outlined in that chapter.

(9) Assurances that the county shall comply with all applicable laws and regulations for all services delivered, including all laws, regulations, and guidelines of the Mental Health Services Act.

(b) Any contractual requirements needed for any program



**WELFARE AND INSTITUTIONS CODE - WIC**

**DIVISION 5. COMMUNITY MENTAL HEALTH SERVICES [5000 - 5912]** (*Division 5 repealed and added by Stats. 1967, Ch. 1667.*)

**PART 3.7. OVERSIGHT AND ACCOUNTABILITY [5845 - 5848]** (*Part 3.7 added November 2, 2004, by initiative Proposition 63, Sec. 10.*)

Integrated Plans for Prevention, Innovation, and System of Care Services.

- 5847. (a) Each county mental health program shall prepare and submit a three-year program and expenditure plan, and annual updates, adopted by the county board of supervisors, to the Mental Health Services Oversight and Accountability Commission within 30 days after adoption.
- (b) The three-year program and expenditure plan shall be based on available unspent funds and estimated revenue allocations provided by the state and in accordance with established stakeholder engagement and planning requirements as required in Section 5848. The three-year program and expenditure plan and annual updates shall include all of the following:
  - (1) A program for prevention and early intervention in accordance with Part 3.6 (commencing with Section 5840).
  - (2) A program for services to children in accordance with Part 4 (commencing with Section 5850), to include a program pursuant to Chapter 4 (commencing with Section 18250) of Part 6 of Division 9 or provide substantial evidence that it is not feasible to establish a wraparound program in that county.
  - (3) A program for services to adults and seniors in accordance with Part 3 (commencing with Section 5800).
  - (4) A program for innovations in accordance with Part 3.2 (commencing with Section 5830).
  - (5) A program for technological needs and capital facilities needed to provide services pursuant to Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850). All plans for proposed facilities with restrictive settings shall demonstrate that the needs of the people to be served cannot be met in a less restrictive or more integrated setting.
  - (6) Identification of shortages in personnel to provide services pursuant to the above programs and the additional assistance needed from the education and training programs established pursuant to Part 3.1 (commencing with Section 5820).
  - (7) Establishment and maintenance of a prudent reserve to ensure the county program will continue to be able to serve children, adults, and seniors that it is currently serving pursuant to Part 3 (commencing with Section 5800), the Adult and Older Adult Mental Health System of Care Act, Part 3.6 (commencing with Section 5840), Prevention and Early Intervention Programs, and Part 4 (commencing with Section 5850), the Children's Mental Health Services Act, during years in which revenues for the Mental Health Services Fund are below recent averages adjusted by changes in the state population and the California Consumer Price Index.
  - (8) Certification by the county mental health director, which ensures that the county has complied with all pertinent regulations, laws, and statutes of the Mental Health Services Act, including stakeholder participation and nonsupplantation requirements.

(9) Certification by the county mental health director and by the county auditor-controller that the county has complied with any fiscal accountability requirements as directed by the State Department of Health Care Services, and that all expenditures are consistent with the requirements of the Mental Health Services Act.

(c) The programs established pursuant to paragraphs (2) and (3) of subdivision (b) shall include services to address the needs of transition age youth ages 16 to 25. In implementing this subdivision, county mental health programs shall consider the needs of transition age foster youth.

(d) Each year, the State Department of Health Care Services shall inform the California Mental Health Directors Association and the Mental Health Services Oversight and Accountability Commission of the methodology used for revenue allocation to the counties.

(e) Each county mental health program shall prepare expenditure plans pursuant to Part 3 (commencing with Section 5800) for adults and seniors, Part 3.2 (commencing with Section 5830) for innovative programs, Part 3.6 (commencing with Section 5840) for prevention and early intervention programs, and Part 4 (commencing with Section 5850) for services for children, and updates to the plans developed pursuant to this section. Each expenditure update shall indicate the number of children, adults, and seniors to be served pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850), and the cost per person. The expenditure update shall include utilization of unspent funds allocated in the previous year and the proposed expenditure for the same purpose.

(f) A county mental health program shall include an allocation of funds from a reserve established pursuant to paragraph (7) of subdivision (b) for services pursuant to paragraphs (2) and (3) of subdivision (b) in years in which the allocation of funds for services pursuant to subdivision (e) are not adequate to continue to serve the same number of individuals as the county had been serving in the previous fiscal year.

*(Amended by Stats. 2012, Ch. 23, Sec. 62. Effective June 27, 2012. Note: This section was added on Nov. 2, 2004, by initiative Prop. 63.)*



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Title 9. Rehabilitative and Developmental Services

Division 1. Department of Mental Health

Chapter 14. Mental Health Services Act

Article 3. General Requirements

9 CCR § 3310

**§ 3310. The Three-Year Program and Expenditure Plan.**

(a) To receive Mental Health Services Act (MHSA) funds under this Chapter, the County shall submit a Three-Year Program and Expenditure Plan or update; comply with all other applicable requirements; obtain the necessary approvals in accordance with Welfare and Institutions Code Sections 5830, 5846, and 5847; and enter into a valid MHSA Performance Contract with the Department.

(1) A City-operated program, created pursuant to Welfare and Institutions Code Section 5701.5, may submit a Three-Year Program and Expenditure Plan separate from the County in which it is located. Plans of both the County and the City shall be developed in collaboration with one another to minimize gaps in the provision of mental health services and supports.

(b) Three-Year Program and Expenditure Plans shall address each of the following components:

(1) Community Services and Supports, for:

(A) Children and Youth, as defined in Section 3200.030.

(B) Transition Age Youth, as defined in Section 3200.280.

(C) Adults, as defined in Section 3200.010.

(D) Older Adults, as defined in Section 3200.230.

(2) Capital Facilities and Technological Needs.

(3) Workforce Education and Training.

(4) Prevention and Early Intervention.

(5) Innovative Programs.

(c) The County shall update Three-Year Program and Expenditure Plans at least annually.

(d) The County shall develop the Three-Year Program and Expenditure Plans and updates in collaboration with stakeholders, through the Community Program Planning Process, as specified in Section 3300.

(1) County programs and/or services shall only be funded if the Community Program Planning Process set forth in these regulations was followed.

(e) The Three-Year Program and Expenditure Plans and updates shall include a statement explaining how the requirements of Section 3300 were met.

(f) As part of the Three-Year Program and Expenditure Plans or updates, the County shall submit documentation of the local review process, as required by Section 3315.

Note: Authority cited: Section 5898, Welfare and Institutions Code. Reference: Sections 5820, 5830, 5846, 5847, 5848, 5892 and 5897, Welfare and Institutions Code.

**HISTORY**

1. New article 3 (section 3310) and section filed 12-30-2005 as an emergency; operative 12-30-2005 (Register 2005, No. 52). This filing is deemed an emergency, is exempt from OAL review, and shall remain in effect for no more than one year pursuant to Welfare

and Institutions Code section 5898.

2. Repealer of former article 3 and repealer and new section filed 12-29-2006 as an emergency; operative 12-29-2006 (Register 2006, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-30-2007 or emergency language will be repealed by operation of law on the following day.

3. Repealer of former article 3 (section 3310) and repealer and new section refiled 5-1-2007 as an emergency; operative 5-1-2007 (Register 2007, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2007 or emergency language will be repealed by operation of law on the following day.

4. Repealer of former article 3 (section 3310) and repealer and new section refiled 8-23-2007 as an emergency; operative 8-30-2007 (Register 2007, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-28-2007 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 8-23-2007 order, including amendment of subsection (a), transmitted to OAL 12-28-2007 and filed 2-13-2008 (Register 2008, No. 7).

6. Amendment of subsection (b)(3) and Note filed 11-4-2009; operative 12-4-2009 (Register 2009, No. 45).

7. Editorial correction removing extraneous subsection (b) (Register 2011, No. 4).

This database is current through 9/5/14 Register 2014, No. 36

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