

File No. 231062

Committee Item No. 2

Board Item No. 11

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee
Board of Supervisors Meeting

Date November 8, 2023
Date November 14, 2023

Cmte Board

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- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
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- Public Correspondence

OTHER (Use back side if additional space is needed)

- DPH Statement on Retroactivity 11/2/2023
- DPH Presentation 11/8/2023
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Brent Jalipa Date November 2, 2023

Completed by: Brent Jalipa Date November 9, 2023

1 [Participation Agreement - Retroactive - California Department of Health Care Services -
2 County-Based Medi-Cal Administrative Activities - Anticipated Revenue to the City of
3 \$1,000,000 or More]

4 **Resolution retroactively authorizing the Department of Public Health to enter into a**
5 **Participation Agreement for County-based Medi-Cal Administrative Activities effective**
6 **July 1, 2019, that will remain in full force and effect until terminated by either the**
7 **Department of Public Health or the California Department of Health Care Services, with**
8 **anticipated revenue to the City of \$1,000,000 or more; and to authorize the Department**
9 **of Public Health to enter into amendments or modifications to the agreement prior to**
10 **its final execution by all parties that do not materially increase the obligations or**
11 **liabilities to the City and are necessary to effectuate the purposes of the agreement or**
12 **this Resolution.**

13
14 WHEREAS, The Department of Public Health (DPH) has an existing Participation
15 Agreement with the California Department of Health Care Services (DHCS) Contract 19-
16 96018 to conduct County-based Medi-Cal Administrative Activities; and

17 WHEREAS, San Francisco Charter, Section 9.118 requires contracts entered by a
18 department having anticipated revenue to the City of \$1,000,000 or more be approved by the
19 San Francisco Board of Supervisors by Resolution; and

20 WHEREAS, This Participation Agreement sets forth the scope of service and
21 requirements related to the provision of these services for San Francisco County; and

22 WHEREAS, DHCS is requiring the new Participation Agreement to retroactively remain
23 in full force and effect until terminated by either DPH or DHCS; and

24 WHEREAS, The Participation Agreement includes an Indemnity Clause that obligates
25 the City to defend, hold harmless, and indemnify DHCS, its officers, employees, and agents

1 from any and all claims liability, loss, or expense (including reasonable attorney fees) for
2 injuries or damage to any person or property which arise out of the terms and conditions of
3 this Participation Agreement and the negligent and intentional acts or omissions of the
4 County, its officers, employees, or agents; and

5 WHEREAS, The Participation Agreement includes a clause that obligates the City to
6 assume sole financial responsibility for any and all penalties and interest charged as a result
7 of a federal disallowance related to the rendering of services under the Participation
8 Agreement and the City must agree that all penalties and interest are payable on demand
9 from DHCS; and

10 WHEREAS, A draft of the Agreement is on file with the Clerk of the Board of
11 Supervisors in File No. 231062, which is hereby declared to be a part of this Resolution as if
12 set forth fully herein; now, therefore, be it

13 RESOLVED, That the Board of Supervisors hereby authorizes the Director of Health,
14 on behalf of the City and County of San Francisco, to enter into the DHCS County-based
15 Medi-Cal Administrative Activities retroactive Participation Agreement, remaining in full force
16 and effect until terminated by DPH or DHCS, having anticipated revenue to the City of
17 \$1,000,000 or more; and, be it

18 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes the Director
19 of Health to enter into any amendments or modifications to this agreement, prior to its final
20 execution by all parties, that the Department determines, in consultation with the City
21 Attorney, are in the best interests of the City, do not otherwise materially increase the
22 obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of
23 the agreement, and are in compliance with all applicable laws; and, be it

24
25

1 FURTHER RESOLVED, That within thirty (30) days of the Agreement being fully
2 executed by all parties, the Director of Health shall provide the final agreement to the Clerk of
3 the Board for inclusion in File No. 231062.

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RECOMMENDED:

 /s/

Dr. Grant Colfax
Director of Health

SF Department of Public Health

Medi-Cal Administrative Activities
Rowena Marania, Coordinator

SFBOS BUDGET AND FINANCE COMMITTEE
NOVEMBER 8, 2023

What is CMAA?

- ❖ **County Medi-Cal Administrative Activities (CMAA)** is a federal reimbursement program. The Centers for Medicare & Medicaid Services (CMS) reimburses counties for a portion of the expense of administering the Medi-Cal program.
- ❖ The CMAA program is administered at the state level by the CA Department of Health Care Services (DHCS) on behalf of CMS.
- ❖ SFDPH participants generate over \$13 million in CMAA revenue annually.
- ❖ CMAA is an important source of revenue for the City & County of San Francisco. Reimbursement helps pay for work that staff members already do, to keep our life-saving programs strong.

The CMAA Claiming Activities

- ❖ Medi-Cal Outreach
- ❖ Referral, Coordination and Monitoring of Medi-Cal Services
- ❖ Facilitating Medi-Cal Applications
- ❖ Contract Administration
- ❖ Policy Development and Program Planning
- ❖ MAA/TCM Implementation Training

Participation Agreement

- ❖ In prior years, City and County of San Francisco maintained a CMAA participation agreement with DHCS that renewed every 3 years. A maximum dollar amount for claiming was also stipulated in the agreement.
- ❖ DHCS has recently drafted a new participation agreement, which would replace the existing contract between the Department of Health Care Services (DHCS) and City and County of San Francisco going forward.
- ❖ This agreement would eliminate the need for renewals since it does not include an expiration date. It would remain in full force and effect until terminated by either DPH or DHCS.
- ❖ A maximum dollar amount for claiming will also no longer be required, therefore revenue would no longer be capped.
- ❖ This resolution is retroactive because DPH received amendments from the California Department of Healthcare Services (DHCS) to the participation agreement after the agreement start date. The amendments from DHCS stipulated that the agreement is retroactive to July 1, 2019.

Proposed Contract Amendment

- ▶ DPH agrees with the new CMAA Participation Agreement.
- ▶ DPH requests approval of the proposed resolution.

Thank you!
Any questions?



MICHELLE BAASS
DIRECTOR

State of California—Health and Human Services Agency
Department of Health Care Services
County-based Medi-Cal Administrative Activities (CMAA)
Program Participation Agreement



GAVIN NEWSOM
GOVERNOR

County/City of: San Francisco

ARTICLE I – STATEMENT OF INTENT

The purpose of this Participation Agreement (PA) between the Department of Health Care Services (DHCS) and the County and City of San Francisco is to permit the Local Governmental Agency (LGA) to participate in the CMAA program under California's Medi-Cal program.

ARTICLE II – AUTHORITY

This PA is authorized pursuant to and in accordance with 2 Code of Federal Regulations, part 200 et seq.; 42 Code of Federal Regulations, part 433; Welfare and Institutions Code section 14132.47; DHCS issued policy and guidance, including but not limited to the CMAA Operational Plan, Policy and Procedure Letters (PPLs) published by the CMAA program; and any other applicable federal and state laws and regulations.

ARTICLE III – TERM AND TERMINATION OF THE AGREEMENT

1. This PA is effective as of July 1, 2019.
2. Upon the execution of this PA, both the LGA and DHCS agree to abandon and terminate the current Contract 19-96018.
3. This PA will remain in effect until terminated by either party pursuant to this article subject to the requirements and conditions set forth in this PA.
4. Termination Without Cause:

Either party may terminate this PA without cause by issuing a written notification to the other party of the intent to terminate the PA at least 30-days prior to the termination date. Termination shall result in the LGA's immediate withdrawal from the CMAA program on the termination date and exclusion from further participation in the CMAA program unless and until the LGA is reinstated by DHCS in the CMAA program. DHCS will continue to reimburse allowable claims for services provided prior to termination if they are accurate and complete. LGAs will remain responsible for any recoupments due to federal/state deferrals or disallowances for claims submitted prior to termination.

LGA CMAA Participation Agreement

County/City of: San Francisco

5. Termination With Cause:

DHCS may terminate this PA for cause, effective immediately, if the LGA fails to comply with any of the terms of this PA. Furthermore, DHCS may terminate this PA for cause, effective immediately, if DHCS determines that the LGA does not meet the requirements for participation in the CMAA program, the LGA has not submitted a valid reimbursement claim to the CMAA program, or the LGA is unable to certify that the claims are eligible for federal funds. Termination will result in the LGA's immediate withdrawal and exclusion from further participation in the CMAA program.

The conviction of an employee, subcontractor, or authorized agent of the LGA, or of an employee or authorized agent of a subcontractor, of any felony or of a misdemeanor involving fraud, abuse of any Medi-Cal applicant or beneficiary, or abuse of the Medi-Cal Program, shall result in the exclusion of that employee, agent, or subcontractor, or employee or agent of a subcontractor, from participation in the CMAA program. Failure of the LGA to exclude a convicted individual from participation in the CMAA program shall constitute a breach of contract and DHCS may terminate this PA with cause.

Finally, DHCS may terminate this PA with cause in the event that DHCS determines that the LGA, or any employee or contractor working with the LGA has violated the laws, regulations or rules governing the CMAA program. In cases where DHCS determines that the health and welfare of Medi-Cal beneficiaries or of the public is jeopardized by continuation of this PA, this PA shall be terminated effective the date that DHCS made this determination. After termination of the PA, any overpayment must be returned to DHCS pursuant to Welfare and Institutions Code sections 14176 and 14177.

ARTICLE IV – PROJECT REPRESENTATIVES

Matthew Jones, Chief
County-Based Medi-Cal Administrative Activities Unit
Local Governmental Financing Division
Department of Health Care Services
Telephone: (916) 345-7867
E-Mail: Matthew.Jones@dhcs.ca.gov

Direct all inquiries and notices to:

County-Based Claiming & Inmate Services Section
Tyler Shimizu, CMAA Analyst
1501 Capitol Ave., MS 4603
P.O. Box 997436
Sacramento, CA 95899-7436
Telephone: (916) 345-8692
E-Mail: Tyler.Shimizu@dhcs.ca.gov

LGA CMAA Participation Agreement

County/City of: San Francisco

County and City of San Francisco
Attn: Rowena Marania
San Francisco Department of Public Health
101 Grove Street, Room 404
San Francisco, CA 944102
Telephone: (415) 554-7500
E-Mail: Rowena.Marania@sfdph.org

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 Participation Agreement.

ARTICLE V – LGA RESPONSIBILITIES

1. The LGA shall comply with all provisions of the CMAA Operational Plan, the CMAA and Targeted Case Management (TCM) Time Survey Methodology, DHCS Policy and Procedure Letters (PPLs), state issued policy directives, 42 United States Code Section 1396 et seq., 42 Code of Federal Regulations part 400 et seq., 45 Code of Federal Regulations part 95 et seq., 2 Code of Federal Regulations part 200 et. seq., relevant portions of Welfare and Institutions Code, Chapter 7 (commencing with section 14000) and Chapter 8 (commencing with section 14200), and the relevant portions of the California Code of Regulations, title 22, section 50000 et seq., all as periodically amended.
2. The LGA shall adhere to the Business Associate Agreement (BAA) and its attachments, and any subsequent updates, which are incorporated herein as Exhibit A and made part of this PA by reference. The BAA may be updated periodically by DHCS, as required by program directives or changes in law or policy. Unless otherwise indicated, DHCS shall provide the LGA with copies of the BAA at the time or before the PA is presented to the LGA for review, acceptance, and signature and will require acknowledgement of receipt by the LGA. Periodic updates to the BAA that are not electronically accessible via the Internet, an extranet link, or other mechanism will be presented to the LGA under separate cover and acknowledgement of receipt will be required. DHCS will maintain a copy of the BAA referenced herein and any subsequent updates. Data released to LGAs per the BAA is to be used solely for the purpose of verifying the Medi-Cal eligibility, Federal Financial Participation eligibility, Managed Care Plan designations, and identifying beneficiaries with alternate format needs, if applicable. The data elements used are listed in Attachment A to the BAA.
3. The LGA must ensure all applicable state and federal requirements are met with regard to expense allowability and fiscal documentation.
 - A. The LGA must ensure that all claims submitted to DHCS for reimbursement include only allowable reimbursable activities as detailed in the CMAA Operational Plan.
 - B. CMAA invoices from the LGA submitted to and accepted by DHCS for payment, shall not be deemed evidence of an agreement of allowable costs.

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- C. Supporting documentation of all amounts invoiced shall be maintained for review and audit, and supplied to DHCS upon request, pursuant to this PA to permit a determination of expense allowability.
 - i. If the allowability or appropriateness of an expense cannot be determined by DHCS because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate, according to Generally Accepted Accounting Principles or practices, all questioned costs may be disallowed and payment may be withheld or recouped by DHCS. Upon receipt of adequate documentation supporting a disallowed or questioned expense, reimbursement may resume for the amount substantiated and deemed allowable reimbursement.
 - D. Federal regulations require that all records in support of allowable CMAA claims must be maintained for a minimum of three fiscal years after the end of the quarter in which the LGA receives reimbursement from DHCS for the last revised or corrected quarterly invoice, or later if required by DHCS directive or until a State or federal audit is completed.
4. LGA will ensure that deliverables developed and produced pursuant to this Agreement comply with federal and state laws, regulations or requirements regarding accessibility and effective communication, including the Americans with Disabilities Act (42 U.S.C. § 12101, et. seq.), which prohibits discrimination on the basis of disability, and section 508 of the Rehabilitation Act of 1973 as amended (29 U.S.C. § 794 (d)). Specifically, electronic and printed documents intended as public communications must be produced to ensure the visual-impaired, hearing-impaired, and other special needs audiences are provided material information in the formats needed to provide the most assistance in making informed choices. These formats include but are not limited to braille, large font, and audio.
 5. The LGA assures DHCS that it complies with the ADA, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
 6. As a condition of participation in the CMAA program, and in recognition of costs incurred administering the CMAA program, the LGAs shall pay an annual participation fee through a mechanism agreed to by DHCS and LGAs, or, if no agreement is reached by August 1 of each year, directly to DHCS.
 - A. The participation fee shall be used to cover the cost of administering the CMAA program, including, but not limited to, claims processing, technical assistance, and monitoring. DHCS shall determine and report staffing requirements upon which projected costs will be based.

LGA CMAA Participation Agreement

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- B. The amount of the participation fee shall be based upon the anticipated DHCS salaries, benefits, operating expenses, and equipment necessary to administer the CMAA program and other costs related to that process.
7. At times, the LGA may find it necessary to enter into subcontracts with other organizations, such as Community Benefit Organizations (CBOs), to perform CMAA. The LGA agrees that any subcontracts created for this purpose will comply with the following requirements. Additionally, the LGA agrees to ensure that elected subcontractors adhere to the same federal and state rules and regulations as the LGA.
 - A. Any and all subcontracts entered into to perform allowable CMAA activities must be made available for DHCS or federal review.
 - B. The LGA is responsible for the acts and omissions of its employees or subcontractors.
 - C. Contracts between the LGA and subcontractors must not include any employees who have been convicted of a felony or a misdemeanor involving fraud or abuse of any Medi-Cal applicant or beneficiary or abuse of the Medi-Cal program, as such employees are excluded from participation in the CMAA program. Failure of the LGA to exclude a convicted individual from participation in the Medi-Cal Administrative program shall constitute a breach and may subject this PA to termination pursuant to Article III, Provision 4.
 - i. An employee shall continue to be excluded from the CMAA program, regardless of any subsequent court order pursuant to section 1203.4 of the Penal Code allowing the employee to withdraw his or her plea of guilty and to enter a plea of guilty or not guilty, or setting aside the verdict of guilty or dismissing the accusation, information or indictment.
 - D. Contracts between the LGA and subcontractors must not include any employees of either party who have been suspended or excluded from participation in the Medi-Cal, Medicaid, or Medicare programs, as such employees are excluded from participation in the CMAA program. Failure of the LGA to exclude a suspended or excluded employee from participation in the CMAA program shall constitute a breach and may subject this PA to termination pursuant to Article III, Provision 4.
 - E. Any contracts between the LGA and subcontractors must not include any employees of either party whose license, certificate, or registration has been revoked, suspended, or restricted if the license, certificate, or registration is required for Medi-Cal administrative activities, as such employees are excluded from participation in the CMAA program. Failure of the LGA to exclude an individual whose license, certificate, or registration has been revoked, suspended, or restricted from the CMAA program may constitute a breach and subject this PA to termination pursuant to Article III, Provision 4.

LGA CMAA Participation Agreement

County/City of: San Francisco

ARTICLE VI – DHCS RESPONSIBILITIES

- 1. DHCS will remit payment to the LGA for eligible activities performed in accordance with the CMAA program and billed in accordance with applicable claim submission requirements found in the CMAA Operational Plan and PPLs issued by the CMAA program. In addition, DHCS will provide time survey training and invoice training to the LGA coordinators.

ARTICLE VII – FISCAL PROVISIONS

- 1. The LGA will be reimbursed for actual quarterly CMAA expenditures incurred in accordance with the allowable costs specified herein pursuant to the certified public expenditure provisions and the CMAA Invoice provisions of the CMAA Operational Plan, quarterly time survey results based on the CMAA/TCM Time Survey Methodology, and PPLs issued by the CMAA program.
- 2. CMAA invoices shall include this agreement number and shall be submitted quarterly on a schedule established by DHCS. Invoices shall be submitted to DHCS electronically through the DHCS Secure File Transfer drop site.
- 3. Payments due to DHCS must be submitted to:

U.S. Mail

Tyler Shimizu
 Department of Health Care Services
 Local Governmental Financing Division
 County-Based Claiming and Inmate
 Services Section
 MS 2826
 PO Box 997436
 Sacramento, CA 95899-7436

Overnight Mail

Tyler Shimizu
 Department of Health Care Services
 Local Governmental Financing Division
 County-Based Claiming and Inmate
 Services Section
 MS 2826
 1501 Capitol Avenue
 Sacramento, CA 95814-5005

- 4. LGAs and their subcontractors are considered contractors solely for the purposes of U.S. Office of Management and Budget Uniform Guidance (2 C.F.R. § 200, and, specifically, 2 C.F.R. § 200.330). Consequently, as contractors, and distinguished from subrecipients, a Dun and Bradstreet Universal Numbering System (DUNS) number is not required.
- 5. Submission of a falsified CMAA invoice by an LGA shall constitute a breach and grounds for termination of this PA pursuant to Article III, Provision 4. Submission of a CMAA invoice without supporting documentation by an LGA may constitute a breach and grounds for termination of this PA pursuant to Article III, Provision 4.

ARTICLE VIII – BUDGET CONTINGENCY CLAUSE

- 1. It is mutually agreed that if the State Budget Act of the current State Fiscal Year (SFY) and any subsequent SFYs covered under this PA does not provide sufficient funds for the CMAA

LGA CMAA Participation Agreement

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program, this PA shall be of no further force and effect. In such event, DHCS shall unequivocally have no liability to pay any funds to the LGA or to furnish any other considerations under the PA and the LGA shall not be obligated to perform any provisions of this PA.

2. If funding for any SFY is reduced or deleted by the State Budget Act for purposes of the CMAA program, DHCS shall have the option to either cancel this PA, with no liability to DHCS; or offer the LGA an amendment to the PA that reflects the reduced amount.

ARTICLE IX – LIMITATION OF STATE LIABILITY

1. In the event of a federal audit disallowance, the LGA shall cooperate with DHCS in replying to and complying with any federal audit exception related to the CMAA program. The LGA shall assume sole financial responsibility for any and all federal audit disallowances related to the rendering of services under this PA. The LGA shall assume sole financial responsibility for any and all penalties and interest charged as a result of a federal audit disallowance related to the rendering of services under this PA. The amount of the federal audit disallowance, plus interest and penalties, shall be payable on demand from DHCS.
2. If the LGA fails to remit payment, including any interest and penalties, pursuant to a federal audit disallowance following a demand for such payment from DHCS; DHCS has the option to terminate this PA, withhold future payments to the LGA for services rendered, or recoup payments made to the LGA for services rendered under the CMAA program.

ARTICLE X – AMENDMENT

1. This PA and any exhibits attached hereto shall constitute the entire agreement among the parties regarding the CMAA program and supersedes any prior or contemporaneous understanding or agreement with respect to the CMAA program and may be amended only by a written amendment to this PA.
2. Changes to the project representatives may be made via written communication including email by either party and shall not constitute a formal amendment to the PA.

ARTICLE XI – GENERAL PROVISIONS

1. None of the provisions of this PA are or shall be construed as for the benefit of, or enforceable by, any person not a party to this PA.
2. The interpretation and performance of this PA shall be governed by the State of California. The venue shall lie only in counties in which the California Attorney General maintains an office.

LGA CMAA Participation Agreement

County/City of: San Francisco

ARTICLE XII – INDEMNIFICATION

1. It is agreed that the LGA shall defend, hold harmless, and indemnify DHCS, its officers, employees, and agents from any and all claims liability, loss or expense (including reasonable attorney fees) for injuries or damage to any person or property which arise out of the terms and conditions of this PA and the negligent and intentional acts or omissions of the LGA, its officers, employees, or agents.

ARTICLE XIII – AVOIDANCE OF CONFLICTS OF INTEREST

1. The LGA is subject to compliance with the Medi-Cal Conflict of Interest Law, as applicable and set forth in Welfare and Institutions Code section 14022, and Article 1.6 (commencing with Welfare and Institutions Code section 14047), and implemented pursuant to California Code of Regulations, title 22, section 51466.

LGA CMAA Participation Agreement

County/City of: San Francisco

The signatories to this PA warrant that they have full and binding authority to the commitments contained herein on behalf of their respective entities.

LGA Name: _____

Name of Authorized Representative
(Person legally authorized to bind contracts for the LGA)

Title of Authorized Representative

Signature of Authorized
Representative

Date

STATE OF CALIFORNIA – DEPARTMENT OF HEALTH CARE SERVICES

Signature of the DHCS Authorized Representative

Brian Fitzgerald, Chief, Local Governmental Financing Division

Typed or Printed Name/Title of the DHCS Authorized Representative

Date

DEPARTMENT OF HEALTH CARE SERVICES

HIPAA Business Associate Addendum

Attachment A

The following data files will be provided pursuant to this Agreement:

Local Government Agency (LGA)

LGAs will receive the following data elements from DHCS through the MOVEit eTransfer System for client data uploaded into LGAs' MOVEit accounts:

1. Social Security Number
2. Last Name
3. First Name
4. Middle Initials
5. Date of Birth (CCYYMMDD)
6. CMAA Match Indicator
7. CMAA Rec Eligibility Indicator
8. Current Month CMAA Eligibility Indicator
9. 23 Prior Months CMAA Eligibility Indicators
10. MEDS Current Renewal Date
11. Fee For Service or Managed Care Indicator
12. Current HCP Plan Code
13. Federal Financial Participation Qualified Status Indicator
14. Alternate Format Selection Description

Business Associate Addendum

1. This Agreement has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (HIPAA) and its implementing privacy and security regulations at 45 Code of Federal Regulations, (CFR) Parts 160 and 164 (collectively, and as used in this Agreement)
2. The term “Agreement” as used in this document refers to and includes both this Business Associate Addendum and the contract to which this Business Associate Agreement is attached as an exhibit, if any.
3. For purposes of this Agreement, the term “Business Associate” shall have the same meaning as set forth in 45 CFR section 160.103.
4. The Department of Health Care Services (DHCS) intends that Business Associate may create, receive, maintain, transmit or aggregate certain information pursuant to the terms of this Agreement, some of which information may constitute Protected Health Information (PHI) and/or confidential information protected by Federal and/or state laws.
 - 4.1 As used in this Agreement and unless otherwise stated, the term “PHI” refers to and includes both “PHI” as defined at 45 CFR section 160.103 and Personal Information (PI) as defined in the Information Practices Act (IPA) at California Civil Code section 1798.3(a). PHI includes information in any form, including paper, oral, and electronic.
 - 4.2 As used in this Agreement, the term “confidential information” refers to information not otherwise defined as PHI in Section 4.1 of this Agreement, but to which state and/or federal privacy and/or security protections apply.
5. Contractor (however named elsewhere in this Agreement) is the Business Associate of DHCS acting on DHCS's behalf and provides services or arranges, performs or assists in the performance of functions or activities on behalf of DHCS, and may create, receive, maintain, transmit, aggregate, use or disclose PHI (collectively, “use or disclose PHI”) in order to fulfill Business Associate’s obligations under this Agreement. DHCS and Business Associate are each a party to this Agreement and are collectively referred to as the “parties.”
6. The terms used in this Agreement, but not otherwise defined, shall have the same meanings as those terms in HIPAA and/or the IPA. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

7. Permitted Uses and Disclosures of PHI by Business Associate

Except as otherwise indicated in this Agreement, Business Associate may use or disclose PHI, inclusive of de-identified data derived from such PHI, only to perform functions, activities or services specified in this Agreement on behalf of DHCS, provided that such use or disclosure would not violate HIPAA or other applicable laws if done by DHCS.

7.1 Specific Use and Disclosure Provisions

Except as otherwise indicated in this Agreement, Business Associate may use and disclose PHI if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Business Associate may disclose PHI for this purpose if the disclosure is required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person. The person shall notify the Business Associate of any instances of which the person is aware that the confidentiality of the information has been breached, unless such person is a treatment provider not acting as a business associate of Business Associate.

8. Compliance with Other Applicable Law

8.1 To the extent that other state and/or federal laws provide additional, stricter and/or more protective (collectively, more protective) privacy and/or security protections to PHI or other confidential information covered under this Agreement beyond those provided through HIPAA, Business Associate agrees:

8.1.1 To comply with the more protective of the privacy and security standards set forth in applicable state or federal laws to the extent such standards provide a greater degree of protection and security than HIPAA or are otherwise more favorable to the individuals whose information is concerned; and

8.1.2 To treat any violation of such additional and/or more protective standards as a breach or security incident, as appropriate, pursuant to Section 18. of this Agreement.

8.2 Examples of laws that provide additional and/or stricter privacy protections to certain types of PHI and/or confidential information, as defined in Section 4. of this Agreement, include, but are not limited to the Information Practices Act, California Civil Code sections 1798-1798.78, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, Welfare and Institutions Code section 5328, and California Health and Safety Code section 11845.5.

- 8.3** If Business Associate is a Qualified Service Organization (QSO) as defined in 42 CFR section 2.11, Business Associate agrees to be bound by and comply with subdivisions (2)(i) and (2)(ii) under the definition of QSO in 42 CFR section 2.11.

9. Additional Responsibilities of Business Associate

9.1 Nondisclosure

- 9.1.1** Business Associate shall not use or disclose PHI or other confidential information other than as permitted or required by this Agreement or as required by law.

9.2 Safeguards and Security

- 9.2.1** Business Associate shall use safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and other confidential data and comply, where applicable, with subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the information other than as provided for by this Agreement. Such safeguards shall be based on applicable Federal Information Processing Standards (FIPS) Publication 199 protection levels.
- 9.2.2** Business Associate shall, at a minimum, utilize a National Institute of Standards and Technology Special Publication (NIST SP) 800-53 compliant security framework when selecting and implementing its security controls and shall maintain continuous compliance with NIST SP 800-53 as it may be updated from time to time. The current version of [NIST SP 800-53, Revision 5](#), is available online at; updates will be available online through the [Computer Security Resource Center website](#).
- 9.2.3** Business Associate shall employ FIPS 140-2 validated encryption of PHI at rest and in motion unless Business Associate determines it is not reasonable and appropriate to do so based upon a risk assessment, and equivalent alternative measures are in place and documented as such. FIPS 140-2 validation can be determined online through the [Cryptographic Module Validation Program Search](#), with information about the [Cryptographic Module Validation Program under FIPS 140-2](#). In addition, Business Associate shall maintain, at a minimum, the most current industry standards for transmission and storage of PHI and other confidential information.
- 9.2.4** Business Associate shall apply security patches and upgrades, and keep virus software up-to-date, on all systems on which PHI and other confidential information may be used.

9.2.5 Business Associate shall ensure that all members of its workforce with access to PHI and/or other confidential information sign a confidentiality statement prior to access to such data. The statement must be renewed annually.

9.2.6 Business Associate shall identify the security official who is responsible for the development and implementation of the policies and procedures required by 45 CFR Part 164, Subpart C.

9.3 Business Associate's Agent

Business Associate shall ensure that any agents, subcontractors, subawardees, vendors or others (collectively, "agents") that use or disclose PHI and/or confidential information on behalf of Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI and/or confidential information.

10. Mitigation of Harmful Effects

Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI and other confidential information in violation of the requirements of this Agreement.

11. Access to PHI

Business Associate shall make PHI available in accordance with 45 CFR section 164.524.

12. Amendment of PHI

Business Associate shall make PHI available for amendment and incorporate any amendments to protected health information in accordance with 45 CFR section 164.526.

13. Accounting for Disclosures

Business Associate shall make available the information required to provide an accounting of disclosures in accordance with 45 CFR section 164.528.

14. Compliance with DHCS Obligations

To the extent Business Associate is to carry out an obligation of DHCS under 45 CFR Part 164, Subpart E, comply with the requirements of the subpart that apply to DHCS in the performance of such obligation.

15. Access to Practices, Books and Records

Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI on behalf of DHCS available to DHCS upon reasonable request, and to the federal Secretary of Health and Human Services for purposes of determining DHCS' compliance with 45 CFR Part 164, Subpart E.

16. Return or Destroy PHI on Termination; Survival

At termination of this Agreement, if feasible, Business Associate shall return or destroy all PHI and other confidential information received from, or created or received by Business Associate on behalf of, DHCS that Business Associate still maintains in any form and retain no copies of such information. If return or destruction is not feasible, Business Associate shall notify DHCS of the conditions that make the return or destruction infeasible, and DHCS and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. If such return or destruction is not feasible, Business Associate shall extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

17. Special Provision for SSA Data

If Business Associate receives data from or on behalf of DHCS that was verified by or provided by the Social Security Administration (SSA data) and is subject to an agreement between DHCS and SSA, Business Associate shall provide, upon request by DHCS, a list of all employees and agents and employees who have access to such data, including employees and agents of its agents, to DHCS.

18. Breaches and Security Incidents

Business Associate shall implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and take the following steps:

18.1 Notice to DHCS

- 18.1.1** Business Associate shall notify DHCS immediately upon the discovery of a suspected breach or security incident that involves SSA data. This notification will be provided by email upon discovery of the breach. If Business Associate is unable to provide notification by email, then Business Associate shall provide notice by telephone to DHCS.

18.1.2 Business Associate shall notify DHCS within 24 hours by email (or by telephone if Business Associate is unable to email DHCS) of the discovery of the following, unless attributable to a treatment provider that is not acting as a business associate of Business Associate:

18.1.2.1 Unsecured PHI if the PHI is reasonably believed to have been accessed or acquired by an unauthorized person;

18.1.2.2 Any suspected security incident which risks unauthorized access to PHI and/or other confidential information;

18.1.2.3 Any intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement; or

18.1.2.4 Potential loss of confidential information affecting this Agreement.

18.1.3 Notice shall be provided to the DHCS Program Contract Manager (as applicable), the DHCS Privacy Office, and the DHCS Information Security Office (collectively, "DHCS Contacts") using the DHCS Contact Information in Section 18.6.

Notice shall be made using the current DHCS "Privacy Incident Reporting Form" ("PIR Form"; the initial notice of a security incident or breach that is submitted is referred to as an "Initial PIR Form") and shall include all information known at the time the incident is reported. The form is available online [here](#) at the DHCS Data Privacy webpage.

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

18.1.3.1 Prompt action to mitigate any risks or damages involved with the security incident or breach; and

18.1.3.2 Any action pertaining to such unauthorized disclosure required by applicable Federal and State law.

18.2 Investigation

Business Associate shall immediately investigate such security incident or breach.

18.3 Complete Report

To provide a complete report of the investigation to the DHCS contacts within ten (10) working days of the discovery of the security incident or breach. This “Final PIR” must include any applicable additional information not included in the Initial Form. The Final PIR Form shall include an assessment of all known factors relevant to a determination of whether a breach occurred under HIPAA and other applicable federal and state laws. The report shall also include a full, detailed corrective action plan, including its implementation date and information on mitigation measures taken to halt and/or contain the improper use or disclosure. If DHCS requests information in addition to that requested through the PIR form, Business Associate shall make reasonable efforts to provide DHCS with such information. A “Supplemental PIR” may be used to submit revised or additional information after the Final PIR is submitted. DHCS will review and approve or disapprove Business Associate’s determination of whether a breach occurred, whether the security incident or breach is reportable to the appropriate entities, if individual notifications are required, and Business Associate’s corrective action plan.

18.3.1 If Business Associate does not complete a Final PIR within the ten (10) working day timeframe, Business Associate shall request approval from DHCS within the ten (10) working day timeframe of a new submission timeframe for the Final PIR.

18.4 Notification of Individuals

If the cause of a breach is attributable to Business Associate or its agents, other than when attributable to a treatment provider that is not acting as a business associate of Business Associate, Business Associate shall notify individuals accordingly and shall pay all costs of such notifications, as well as all costs associated with the breach. The notifications shall comply with applicable federal and state law. DHCS shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.

18.5 Responsibility for Reporting of Breaches to Entities Other than DHCS

If the cause of a breach of PHI is attributable to Business Associate or its agents, other than when attributable to a treatment provider that is not acting as a business associate of Business Associate, Business Associate is responsible for all required reporting of the breach as required by applicable federal and state law.

18.6 DHCS Contact Information

To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated here. DHCS reserves the right to make changes to the contact information below by giving written notice to Business Associate. These changes shall not require an amendment to this Agreement.

18.6.1 DHCS Program Contract Manager

See the Scope of Work exhibit for Program Contract Manager information. If this Business Associate Agreement is not attached as an exhibit to a contract, contact the DHCS signatory to this Agreement.

18.6.2 DHCS Privacy Office

Privacy Office
c/o: Office of HIPAA Compliance
Department of Health Care Services
P.O. Box 997413, MS 4722
Sacramento, CA 95899-7413

Email: incidents@dhcs.ca.gov

Telephone: (916) 445-4646

18.6.3 DHCS Information Security Office

Information Security Office
DHCS Information Security Office
P.O. Box 997413, MS 6400
Sacramento, CA 95899-7413

Email: incidents@dhcs.ca.gov

19. Responsibility of DHCS

DHCS agrees to not request the Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA and/or other applicable federal and/or state law.

20. Audits, Inspection and Enforcement

20.1 From time to time, DHCS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. Business Associate shall promptly remedy any violation of this Agreement and shall certify the same to the DHCS Privacy Officer in writing. Whether or how DHCS exercises this provision shall not in any respect relieve Business Associate of its responsibility to comply with this Agreement.

20.2 If Business Associate is the subject of an audit, compliance review, investigation or any proceeding that is related to the performance of its obligations pursuant to this Agreement, or is the subject of any judicial or administrative proceeding alleging a violation of HIPAA, Business Associate shall promptly notify DHCS unless it is legally prohibited from doing so.

21. Termination

21.1 Termination for Cause

Upon DHCS' knowledge of a violation of this Agreement by Business Associate, DHCS may in its discretion:

21.1.1 Provide an opportunity for Business Associate to cure the violation and terminate this Agreement if Business Associate does not do so within the time specified by DHCS; or

21.1.2 Terminate this Agreement if Business Associate has violated a material term of this Agreement.

21.2 Judicial or Administrative Proceedings

DHCS may terminate this Agreement if Business Associate is found to have violated HIPAA, or stipulates or consents to any such conclusion, in any judicial or administrative proceeding.

22. Miscellaneous Provisions

22.1 Disclaimer

DHCS makes no warranty or representation that compliance by Business Associate with this Agreement will satisfy Business Associate's business needs or compliance obligations. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI and other confidential information.

22.2 Amendment

22.2.1 Any provision of this Agreement which is in conflict with current or future applicable Federal or State laws is hereby amended to conform to the provisions of those laws. Such amendment of this Agreement shall be effective on the effective date of the laws necessitating it, and shall be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.

22.2.2 Failure by Business Associate to take necessary actions required by amendments to this Agreement under Section 22.2.1 shall constitute a material violation of this Agreement.

22.3 Assistance in Litigation or Administrative Proceedings

Business Associate shall make itself and its employees and agents available to DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, its directors, officers and/or employees based upon claimed violation of HIPAA, which involve inactions or actions by the Business Associate.

22.4 No Third-Party Beneficiaries

Nothing in this Agreement is intended to or shall confer, upon any third person any rights or remedies whatsoever.

22.5 Interpretation

The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and other applicable laws.

22.6 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.

From: [Neukrug, Sarah \(DPH\)](#)
To: [Chan, Connie \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#)
Cc: [Jalipa, Brent \(BOS\)](#); [Hsieh, Frances \(BOS\)](#); [Hajee, Zahra \(BOS\)](#); [Chung, Lauren \(BOS\)](#); [Marania, Rowena \(DPH\)](#); [Validzic, Ana \(DPH\)](#); [Ruggels, Michelle \(DPH\)](#); [Hiramoto, Kelly \(DPH\)](#); [Patil, Sneha \(DPH\)](#); [Altman, Claire \(DPH\)](#)
Subject: 11/8 Budget & Finance Committee: DPH Retroactive Item
Date: Thursday, November 2, 2023 3:30:15 PM

Hello Supervisors Chan, Mandelman and Safai,

The Department of Public Health (DPH) will request approval for one (1) retroactive item at the November 8th Budget & Finance Committee meeting. We've provided a description of the item and our DPH representative. Please let us know if you have any questions.

File 231062 - Participation Agreement - Retroactive - California Department of Health Care Services - County-Based Medi-Cal Administrative Activities - Anticipated Revenue to the City of \$1,000,000 or More - Resolution retroactively authorizing the Department of Public Health to enter into a Participation Agreement for County-based Medi-Cal Administrative Activities effective July 1, 2019, that will remain in full force and effect until terminated by either the Department of Public Health or the California Department of Health Care Services, with anticipated revenue to the City of \$1,000,000 or more; and to authorize the Department of Public Health to enter into amendments or modifications to the agreement prior to its final execution by all parties that do not materially increase the obligations or liabilities to the City and are necessary to effectuate the purposes of the agreement or this Resolution.

- **Description:** This resolution authorizes an agreement between the California Department of Health Care Services (DHCS) and the San Francisco Department of Public Health. The agreement allows San Francisco Department of Public Health to claim federal reimbursement for the cost of some of the administrative activities that support the Medi-Cal program.
- **Reason for Retroactivity:** This resolution is retroactive because DPH received amendments from the California Department of Healthcare Services (DHCS) to the participation agreement after the agreement start date. DPH received notice of the amendments DHCS on November 15, 2022. The amendments from DHCS stipulated that the agreement is retroactive to July 1, 2019. DHCS added several clauses to the participation agreement: an indemnity clause, a financial liability clause, and a clause stating that the agreement will remain in full force and effect until terminated by either DPH or DHCS. With the addition of these clauses, the amended participation agreement required review and approval by Compliance, IT Security, DPH Contracts Office and the City Attorney's Office. DPH received final sign-off from the City Attorney's Office on October 13, 2023. DPH submitted the participation agreement to the Board of Supervisors for introduction on October 24, 2023. We respectfully request approval to retroactively authorize this agreement.
- **DPH Representative:** Rowena Mariana | Medi-Cal Administrative Activities Coordinator,

San Francisco Department of Public Health | email: rowena.maranja@sfdph.org

Thank you for your time and consideration,

Sarah Neukrug

Sarah Neukrug, MPH

Program Planner, Office of Policy and Planning

San Francisco Department of Public Health

sarah.neukrug@sfdph.org | 415-401-8912

Preferred Pronouns: she/her/hers



City and County of San Francisco
London N. Breed, Mayor

San Francisco Department of Public Health

Grant Colfax, MD
Director of Health

October 13, 2023

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Dear Ms. Calvillo:

Please find attached a proposed resolution for Board of Supervisors approval of a Participation Agreement for the Medi-Cal Administrative Activities Program between the Department of Public Health and the Department of Health Care Services, for anticipated revenue in the amount of \$1,000,000 or more.

San Francisco Charter Section 9.118 requires contracts entered by a department having anticipated revenue to the City of \$1,000,000 or more be approved by the San Francisco Board of Supervisors by Resolution.

The following is a list of accompanying documents:

- Proposed Resolution
- Proposed Participation Agreement

For questions on this matter, please contact me at (415) 255-3492, kelly.hiramoto@sfdph.org.

Thank you for your time and consideration.

Sincerely,

Kelly Hiramoto

Kelly Hiramoto
Acting Supervisor
Office of Contracts Management and Compliance
DPH Business Office

cc: Dr. Grant Colfax, Director of Health
Greg Wagner, Chief Operating Officer
Robert Longhitano, Director, DPH Contracts Office

The mission of the San Francisco Department of Public Health is to protect and promote the health of all San Franciscans.

We shall ~ Assess and research the health of the community ~ Develop and enforce health policy ~ Prevent disease and injury ~

~ Educate the public and train health care providers ~ Provide quality, comprehensive, culturally proficient health services ~ Ensure equal access to all ~

kelly.hiramoto@sfdph.org – office 415-255-3492 – fax 415 252-3088

1380 Howard Street, Room 419B, San Francisco, CA 94103
