

**COUNTY OF MENDOCINO
STANDARD SERVICES AGREEMENT**

This Agreement is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the "COUNTY", and **Redwood Quality Management Company DBA Anchor Health Management, Inc.**, hereinafter referred to as the "CONTRACTOR".

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent contractors to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, COUNTY desires to obtain CONTRACTOR for its Administrative Services Organization for Mental Health Services in Mendocino County; and,

WHEREAS, CONTRACTOR is willing to provide such services on the terms and conditions set forth in this Agreement and is willing to provide same to COUNTY.

NOW, THEREFORE it is agreed that COUNTY does hereby retain CONTRACTOR to provide the services described in Exhibit A, and CONTRACTOR accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Exhibit B	Payment Terms
Exhibit C	Insurance Requirements
Exhibit D	Assurance of Compliance with Nondiscrimination in State and Federally Assisted Programs
Exhibit E	Deficit Reduction Act
Appendix A	Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Lower Tier Covered Transactions
Addendum A	Medi-Cal Data Privacy and Security Agreement
Addendum B	Business Associate Agreement
Attachment 1	Disclosure of Ownership & Control Interest
Attachment 2	Form 42 C.F.R. Part 2
Attachment 3	Medi-Cal SMHS Monthly Claim for Reimbursement

The term of this Agreement shall be from July 1, 2023 (the "Effective Date"), and shall continue through September 30, 2023.

The compensation payable to CONTRACTOR hereunder shall not exceed Nine Hundred Thousand Dollars (\$900,000) for the term of this Agreement.

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

By: [Signature]
Jenine Miller, Psy.D., BHRS Director

Date: 8/16/23

Budgeted: Yes
Budget Unit: 4050, 4051
Line Item: 86-3280
Org/Object Code: MH, MACSS
Grant: No
Grant No.: 'N/A'

COUNTY OF MENDOCINO

By: [Signature]
GLENN MCGOURTY, Chair
BOARD OF SUPERVISORS

Date: 07/25/2023

ATTEST:

DARCIE ANTLE, Clerk of said Board

By: [Signature]
Deputy 07/25/2023

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

DARCIE ANTLE, Clerk of said Board

By: [Signature]
Deputy 07/25/2023

INSURANCE REVIEW:

By: [Signature]
Risk Management

Date: 07/31/2023

CONTRACTOR/COMPANY NAME

By: [Signature] MFT
Camille Schraeder, Director
Tim Schraeder

Date: 08/16/2023

NAME AND ADDRESS OF CONTRACTOR:

Redwood Quality Management Company
DBA Anchor Health Management, Inc.
376 East Gobbi St. B
Ukiah, CA 95482
707-472-0350
camille@rqmc.org

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
County Counsel

By: [Signature]
Deputy

Date: 07/31/2023

EXECUTIVE OFFICE/FISCAL REVIEW:

By: [Signature]
Deputy CEO or Designee

Date: 07/31/2023

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors
Exception to Bid Process Required/Completed RFP# MH-20-006
Mendocino County Business License: Valid
Exempt Pursuant to MCC Section: Located within city limits in Mendocino County

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an Independent Contractor. CONTRACTOR is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and COUNTY laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the COUNTY agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, COUNTY may upon two (2) week's written notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** To the furthest extent permitted by law (including without limitation California Civil Code sections 2782 and 2782.8, if applicable),

CONTRACTOR shall assume the defense of, indemnify, and hold harmless the COUNTY, its officers, agents, and employees, from and against any and all claims, demands, damages, costs, liabilities, and losses whatsoever alleged to be occurring or resulting in connection with the CONTRACTOR's performance or its obligations under this Agreement, unless arising out of the sole negligence or willful misconduct of COUNTY. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

3. **INSURANCE AND BOND:** CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. **WORKERS' COMPENSATION:** CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

CONTRACTOR affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and CONTRACTOR further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONTRACTOR shall furnish to COUNTY certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONTRACTOR shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of subcontractors' employees.

5. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liability, fines, penalties and consequences from any of CONTRACTOR's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify Mendocino County Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to COUNTY a written report, in such form as may be required by

COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub-contractor, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.

- c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.

6. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit B hereto as funding permits.

If COUNTY over pays CONTRACTOR for any reason, CONTRACTOR agrees to return the amount of such overpayment to COUNTY, or at COUNTY's option, permit COUNTY to offset the amount of such overpayment against future payments owed to CONTRACTOR under this Agreement or any other Agreement.

In the event CONTRACTOR claims or receives payment from COUNTY for a service, reimbursement for which is later disallowed by COUNTY, State of California or the United States Government, the CONTRACTOR shall promptly refund the disallowance amount to COUNTY upon request, or at its option COUNTY may offset the amount disallowed from any payment due or that becomes due to CONTRACTOR under this Agreement or any other Agreement.

All invoices, receipts, or other requests for payment under this contract must be submitted by CONTRACTOR to COUNTY in a timely manner and consistent with the terms specified in Exhibit B. In no event shall COUNTY be obligated to pay any request for payment for which a written request for payment and all required documentation was first received more than six (6) months after this Agreement has terminated, or beyond such other time limit as may be set forth in Exhibit B.

7. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.
8. OWNERSHIP OF DOCUMENTS: CONTRACTOR hereby assigns the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONTRACTOR, the CONTRACTOR's subcontractors or third parties at the request of the CONTRACTOR (collectively, "Documents and

Materials”). This explicitly includes the electronic copies of all above stated documentation.

CONTRACTOR shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONTRACTOR agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONTRACTOR hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials. The COUNTY’s rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONTRACTOR’s services as set forth in Exhibit A of this Agreement have been fully performed or paid for.

The COUNTY’s rights under this Paragraph 8 shall not extend to any computer software used to create such Documents and Materials.

9. CONFLICT OF INTEREST: The CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.
10. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender’s account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient’s time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: COUNTY OF MENDOCINO
Behavioral Health and Recovery Services
1120 S. Dora St.
Ukiah, CA 95482
Attn: Jenine Miller

To CONTRACTOR: Redwood Quality Management Company DBA
Anchor Health Management, Inc.
376 East Gobbi St. B
Ukiah, CA 95482
Attn: Camille Schraeder

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

11. USE OF COUNTY PROPERTY: CONTRACTOR shall not use COUNTY property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
12. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: CONTRACTOR certifies that it will comply with all Federal, State, and local laws, rules and regulations pertaining to nondiscrimination in employment.
 - a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, pregnancy, disability, sex, sexual orientation, gender identity, ancestry, national origin, age, religion, Veteran's status, political affiliation, or any other factor prohibited by law.
 - b. CONTRACTOR shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
 - c. If requested to do so by the COUNTY, CONTRACTOR shall provide the COUNTY with access to copies of all of its records pertaining or relating to

its employment practices, except to the extent such records or portions of such records are confidential or privileged under State or Federal law.

- d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
 - e. The CONTRACTOR shall include the provisions set forth in this paragraph in each of its subcontracts.
13. **DRUG-FREE WORKPLACE:** CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR, within five days thereafter, shall notify the head of the COUNTY department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
14. **ENERGY CONSERVATION:** CONTRACTOR agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).
15. **COMPLIANCE WITH LICENSING REQUIREMENTS:** CONTRACTOR shall comply with all necessary licensing requirements and shall obtain appropriate licenses. To the extent required by law, CONTRACTOR shall display licenses in a location that is reasonably conspicuous. Upon COUNTY's request, CONTRACTOR shall file copies of same with the County Executive Office.

CONTRACTOR represents and warrants to COUNTY that CONTRACTOR and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

16. **SANCTIONED EMPLOYEE:** CONTRACTOR agrees that it shall not employ in any capacity, or retain as a subcontractor in any capacity, any individual or entity whose service is directly or indirectly, in whole or in part, payable by a Federal Healthcare Program (including Medicare and Medicaid) that is on any published Federal or State lists regarding the sanctioning, suspension, or exclusion of individuals or entities. At a minimum, the Office of Inspector General List of Excluded Individuals/Entities (LEIE), DHCS Medi-Cal List of Suspended or Ineligible Providers (LSIP), and System for Award Management (SAM) must be checked prior to employment and monthly thereafter, and the Social Security Death Master File must be checked prior to employment. In the event CONTRACTOR does employ such individual or entity, COUNTY must be notified immediately. CONTRACTOR agrees to assume full liability for any associated

penalties, sanctions, loss, or damage that may be imposed on COUNTY by Federal Health Care Programs.

17. **AUDITS; ACCESS TO RECORDS:** The CONTRACTOR shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONTRACTOR.

The CONTRACTOR shall maintain full and adequate records in accordance with COUNTY requirements to show the actual costs incurred by the CONTRACTOR in the performance of this Agreement. If such books and records are not kept and maintained by CONTRACTOR within the County of Mendocino, California, CONTRACTOR shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within County or CONTRACTOR shall pay to the COUNTY the reasonable, and necessary costs incurred by the COUNTY in inspecting CONTRACTOR's books and records, including, but not limited to, travel, lodging and subsistence costs. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine and reexamine said books, records and data during the ten (10) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for ten (10) years after the COUNTY makes the final or last payment or within ten (10) years after any pending issues between the COUNTY and CONTRACTOR with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** CONTRACTOR shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 8 of this Agreement. CONTRACTOR's obligations under the preceding sentence shall continue for ten (10) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for ten (10) years following the COUNTY's last payment to CONTRACTOR under this Agreement.
19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The COUNTY has and reserves the right to suspend, terminate or abandon the execution of any work by the CONTRACTOR without cause at

any time upon giving to the CONTRACTOR notice. Such notice shall be in writing and may be issued by any COUNTY officer authorized to execute or amend the contract, the County Chief Executive Officer, or any other person designated by the County Board of Supervisors. In the event that the COUNTY should abandon, terminate or suspend the CONTRACTOR's work, the CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for its services as outlined in Exhibit A shall not exceed \$900,000 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.

21. **NON APPROPRIATION:** If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, COUNTY may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONTRACTOR. Upon termination, COUNTY shall remit payment for all products and services delivered to COUNTY and all expenses incurred by CONTRACTOR prior to CONTRACTOR's receipt of the termination notice.
22. **CHOICE OF LAW:** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
23. **VENUE:** All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.
24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
25. **ADVERTISING OR PUBLICITY:** CONTRACTOR shall not use the name of COUNTY, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance.
26. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire Agreement between COUNTY and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous

understandings, and all other Agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties. In the event of a conflict between the body of this Agreement and any of the Exhibits, the provisions in the body of this Agreement shall control.

27. HEADINGS: Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
28. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual Agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. ASSURANCE OF PERFORMANCE: If at any time the COUNTY has good objective cause to believe CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. SUBCONTRACTING/ASSIGNMENT: CONTRACTOR shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any Agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Only the department head or his or her designee shall have the authority to approve subcontractor(s).
 - c. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any Agreement between CONTRACTOR and its subcontractors.
31. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 8), and Conflict of Interest (Paragraph 9), shall survive termination or expiration for two (2) years. The obligations regarding

payment for services per Exhibit B shall survive termination or expiration for ten (10) years, or in the event that CONTRACTOR has been notified that an audit or investigation of this contract has been commenced, until such time as the matter under audit or investigation has been resolved.

32. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. INTELLECTUAL PROPERTY WARRANTY: CONTRACTOR warrants and represents that it has secured all rights and licenses necessary for any and all materials, services, processes, software, or hardware ("CONTRACTOR PRODUCTS") to be provided by CONTRACTOR in the performance of this Agreement, including but not limited to any copyright, trademark, patent, trade secret, or right of publicity rights. CONTRACTOR hereby grants to COUNTY, or represents that it has secured from third parties, an irrevocable license (or sublicense) to reproduce, distribute, perform, display, prepare derivative works, make, use, sell, import, use in commerce, or otherwise utilize CONTRACTOR PRODUCTS to the extent reasonably necessary to use the CONTRACTOR PRODUCTS in the manner contemplated by this Agreement.

CONTRACTOR further warrants and represents that it knows of no allegations, claims, or threatened claims that the CONTRACTOR PRODUCTS provided to COUNTY under this Agreement infringe any patent, copyright, trademark or other proprietary right. In the event that any third party asserts a claim of infringement against the COUNTY relating to a CONTRACTOR PRODUCT, CONTRACTOR shall indemnify and defend the COUNTY pursuant to Paragraph 2 of this Agreement.

In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for COUNTY the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.

34. ELECTRONIC COPIES: The parties agree that an electronic copy, including facsimile copy, email, or scanned copy of the executed Agreement, shall be deemed, and shall have the same legal force and effect as, an original document.
35. COOPERATION WITH COUNTY: CONTRACTOR shall cooperate with COUNTY and COUNTY staff in the performance of all work hereunder.
36. PERFORMANCE STANDARD: CONTRACTOR shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in CONTRACTOR's profession. COUNTY has relied upon the professional ability and training of CONTRACTOR

as a material inducement to enter into this Agreement. CONTRACTOR hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable Federal, State, and local laws, it being understood that acceptance of CONTRACTOR's work by COUNTY shall not operate as a waiver or release. If COUNTY determines that any of CONTRACTOR's work is not in accordance with such level of competency and standard of care, COUNTY, in its sole discretion, shall have the right to do any or all of the following: (a) require CONTRACTOR to meet with COUNTY to review the quality of the work and resolve matters of concern; (b) require CONTRACTOR to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of paragraph 19 (Termination) or (d) pursue any and all other remedies at law or in equity.

37. ATTORNEYS' FEES: In any action to enforce or interpret the terms of this Agreement, including but not limited to any action for declaratory relief, each party shall be solely responsible for and bear its own attorneys' fees, regardless of which party prevails.
38. CONTRACTOR NOTIFICATION OF BREACH OR IMPROPER DISCLOSURES: The State Contract requires COUNTY to notify the state of any breach or improper disclosure of privacy and/or security of personal identifiable information (PII) and/or protected health information (PHI). CONTRACTOR shall, immediately upon discovery of a breach or improper disclosure of privacy and/or security of PII and/or PHI by CONTRACTOR, notify COUNTY's Privacy Officer of such breach or improper disclosure by telephone and either email or facsimile. In accordance with 45 CFR, upon COUNTY's knowledge of a material breach or violation by CONTRACTOR of the agreement between COUNTY and the CONTRACTOR, COUNTY shall:
 - a. Provide an opportunity for the CONTRACTOR to cure the breach or end the violation and terminate the agreement if the CONTRACTOR does not cure the breach or end the violation within the time specified by the Department; or
 - b. Immediately terminate the agreement if the CONTRACTOR has breached a material term of the agreement and cure is not possible.
 - c. In the event that the State Contract requires COUNTY to pay any costs associated with a breach of privacy and/or security of PII and/or PHI, including but not limited to the costs of notification, CONTRACTOR shall pay on COUNTY's behalf any and all such costs arising out of a breach of privacy and/or security of PII and/or PHI by CONTRACTOR.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

On behalf of the County of Mendocino, CONTRACTOR shall provide the services outlined in the Scope of Services defined in this contract and pursuant to the Payment Terms in Exhibit B.

CONTRACTOR shall ensure compliance with all applicable Medicaid laws, and regulations, including Department of Health Care Services Medi-Cal Specialty Mental Health regulations, County of Mendocino State Mental Health Plan (MHP) Agreement, and Behavioral Health and Recovery Services (BHRS) policies and procedures.

- I. The following SMHS duties and obligations have been delegated to CONTRACTOR. Compliance with the requirements of this Agreement shall be monitored by COUNTY on an ongoing basis.

A. Access to Care

1. CONTRACTOR shall be responsible for ensuring that beneficiaries have appropriate access to Specialty Mental Health Services through a No Wrong Door approach.
2. Contractor shall work with Tapestry Family Services (Tapestry), Mendocino County Hospitality Center (MCHC), and Mendocino County Youth Project (MCYP) to ensure services provided within the COUNTY provide following services:
 - a. MCHC provides serves to beneficiaries ages 18+ years old and shall provide the following services:
 - i. Assessment / Evaluation
 - ii. Plan Development
 - iii. Collateral
 - iv. Therapy – individual
 - v. Rehabilitation
 - vi. Targeted Case Management
 - b. MCYP provides serves to beneficiaries ages 1 – 26 years old and shall provide the following services:
 - i. Assessment Evaluation
 - ii. Plan Development
 - iii. Therapy- Individual/Family/Group
 - iv. Collateral
 - v. Rehabilitation
 - vi. Target Case Management
 - vii. Intensive Care Coordination
 - viii. Intensive Home-Based Services
 - ix. Therapeutic Behavioral Services

- c. Tapestry provides serves to beneficiaries ages 1 – 100 years old and shall provide the following services:
 - i. Assessment Evaluation
 - ii. Plan Development, Therapy- Individual/Family/Group,
 - iii. Collateral
 - iv. Rehabilitation
 - v. Target Case Management
 - vi. Intensive Care Coordination
 - vii. Intensive Home-Based Services
 - viii. Therapeutic Behavioral Services
 - ix. Therapeutic Foster Care
 3. Contractors shall also ensure that Tapestry, MCYP, and MCHC all provide or arrange for the following:
 - a. Appropriate client service referrals for lower level of care transitions.
 - b. Transportation Coordination with Managed Care Plan.
 - c. Coordination with primary care and co-occurring needs.
 - d. Coordination with community agencies and partners.

B. Billing Services

1. CONTRACTOR shall be responsible for billing reconciliation for MCHC, MCYP, AHM/RQMC, RCS, and Tapestry. CONTRACTOR shall submit Specialty Mental Health Services claims to COUNTY on behalf of providers in HIPAA compliant electronic files or other COUNTY approved form. All claims shall be within two weeks of the billable service.
2. CONTRACTOR shall contract with inpatient psychiatric hospitalizations, physician fees, and youth placement's mental health services. CONTRACTOR will track all and verify all inpatient psychiatric hospitalizations, physician fees, and youth placement's mental health services. CONTRACTOR shall provider inpatient psychiatric hospitalizations, physician fees, and youth placement's mental health services invoice to COUNTY for reimbursement. COUNTY shall reimburse CONTACTOR for allowable costs of inpatient psychiatric hospitalizations, physician fees, and youth placements mental health services.

C. Data Reports

1. CONTRACTOR shall provide data to COUNTY for Anchor Health Management (AHM/RQMC), MCHC, MCYP, RCS, and Tapestry on utilization of services, the capacity of service delivery, and accessibility of services to beneficiaries; this includes monitoring the number, type, and geographic distribution of mental health services. This information shall be provided to COUNTY and reported at Utilization Management meetings monthly.

2. CONTRACTOR shall complete all reporting of data and trends for AHM/RQMC, MCHC, MCYP, RCS and Tapestry activities as required by the COUNTY and described herein.
 - a. Number of individuals housed during services.
 - b. Number of individuals unhoused vs. housed in services.
 - c. Number of new beneficiaries' accessing services.
 - d. Number of services provided.
 - e. Number of services provided by provider type.
 - f. Type of services provided by provider type.
 - g. Number of beneficiaries who completed treatment and have not returned.
 - h. Number of beneficiaries currently in services accessing crisis services.
 - i. Improvement in beneficiaries CANS/ANSA scores.
 - j. Number of beneficiaries access services that needed a higher level of care, i.e. LPS.
 - k. Tracking of travel and documentation time.
 - l. CONTRACTOR will collaborate with the COUNTY in the collection and reporting of performance outcome data, including data relevant to Healthcare Effectiveness Data and Information Set (HEDIS®) measures, as required by DHCS. Measures relevant to this agreement are indicated below (check all that apply):
 - i. Adherence to Antipsychotic Medications for Individuals with Schizophrenia (BH Core Set measure SAA-AD)
 - ii. Antidepressant Medication Management (BH Core Set measure AMM-AD)
 - iii. Use of First-Line Psychosocial Care for Children and Adolescents on Antipsychotics (BH Core Set measure APP-CH)
 - iv. Follow-Up After Hospitalization for Mental Illness (BH Core Set measure FUH)
 - v. Percentage of clients offered timely initial appointments, and timely psychiatry appointments, by child and adult.
 - vi. Percentage of high-cost clients receiving case management services

- vii. Follow up After Emergency Department Visit for Mental Illness (FUM)
 - m. Additional reporting and evaluation activities as indicated by the Behavioral Health Director.
- 3. CONTRACTOR shall provide data to COUNTY for AHM/RQMC, MCHC, MCYP, RCS, and Tapestry on requirements for timely access to services. CONTRACTOR shall:
 - a. Provide data by providers on timely access to care and services, including the urgent and emergency need for services.
 - b. Establish mechanisms to ensure providers submit data demonstrating timely access requirements.
- 4. CONTRACTOR shall provide COUNTY with all required information and data to be in compliance with the Performance Improvement Projects (PIP) requirements, ensuring performance improvement activities meet the requirements as specified by DHCS and Specialty Mental Health Services requirements.
- 5. CONTRACTOR shall be responsible for providing data for AHM/RQMC, MCHC, MCYP, RCS, and Tapestry separated by Adult Services eighteen years and older (18+), Children's Services zero to seventeen (0-17), and Foster Care in the following categories:
 - I. Timeliness of initial request to first offered appointment
 - II. Timeliness of initial request to first kept appointment
 - III. Timeliness of initial request to first psychiatry appointment
 - IV. Timeliness of service request for urgent appointment to actual encounter
 - V. Timeliness of follow-up encounters post-psychiatric inpatient discharge
 - VI. Psychiatric readmission rates within thirty (30) days
 - VII. Psychiatrist and clinician no-show rates
 - VIII. Access to after-hours care
 - IX. Responsiveness of the crisis number
- 6. CONTRACTOR shall provide Behavioral Health Advisory Board, a Data Dashboard on a quarterly basis including, but not limited to the following items
 - 1. Persons Admitted to Outpatient services, Crisis Services, Unduplicated persons served, Unduplicated persons served Quarterly (QTR) and Fiscal Year to Date (YTD), Identified demographics: Gender (QTR & YTD) male, female, non-

- binary/Transgender; Ethnicity: White, African American, American Indian, Asian, Hispanic/Latinx, other, Undisclosed.
2. QTR & YTD Persons by location: Ukiah Area, Willits Area, North County, Anderson Valley, North Coast, South Coast, Out of County and/or Out of State (OOC/OOS).
 3. Homeless Services by those admitted to Outpatient (QTR & YTD), those seen in Crisis Services (QTR & YTD), Unduplicated homeless persons served (QTR & YTD), Count of crisis services provided (QTR & YTD), Count of Crisis Services Provided (QTR & YTD).
 4. Homeless Persons served in crisis by Insurance type (MC Medi-Cal, Indigent, other payor total) Number of Hospitalizations, YTD Count of Unduplicated Homeless Clients) and also by Crisis Assessment, Hospitalization, and Re-Hospitalization within 30 days (QTR & YTD for each).
 5. Crisis Services Total Number (QTR) Crisis Services Total Number (YTD) Reasons for Crisis Call YTD Increase: Increase in Symptoms, Phone Support, Information Only, Suicidal Ideation/Suicide Threat, Self-Injurious Behavior, Access to Services, Aggression towards Others, Resources/Linkages.
 6. Calls from Law Enforcement Organization (LEO) to Crisis by Agency (QTR & YTD) for all Mendocino County Law Enforcement entities (Mendocino County Sheriff's Office (MCSO), California Highway Patrol (CHP), Willits Police Department (WPD), Fort Bragg Police department (FBPD), Jail/Juvenile Hall, Ukiah Police Department (UPD), Mobile Crisis, and Total.
 7. Crisis Walk-Ins (QTR & YTD) Inland and Coastal.
 8. Crisis Contacts by time of Day (QTR & YTD) by Day 8 am - 5 pm and Night 5 pm – 8 am.
 9. Total Number of Emergency Crisis Assessments by QTR & YTD.
 10. Total number of Inpatient Hospitalizations by QTR & YTD.
 11. Rehospitalization data by QTR & YTD designated by Youth and Adult; 0-2 days in hospital number of admits and percent of admits; Days in the ER by day 0-5+, and by Hospital (Adventist Hospital Ukiah Valley (AHUV), Howard Memorial Hospital, and Mendocino Coast District Hospital).
 12. Rehospitalization data at Discharge by payor (Mendocino County Medi-Cal, Indigent, other payor) Discharged to

(Mendocino, Crisis Appointment, Declined Crisis Appt), QTR & YTD hospitalizations where discharge was out of county or unknown; QTR & YTD number who declined follow up appointment.

13. Number of hospitalizations during the period from 1 to 6+, QTR & YTD count of unduplicated clients hospitalized clients.
14. YTD hospitalizations by location; YTD hospitalizations by detention criteria.
15. Total number of Full Service Partnerships Current (at time of QTR report); Total Number of Full Service Partners YTD.
16. Contract Usage by Date, Budgeted, QTR and YTD, by Medi-Cal in County, Medi-Cal Out of County Contracts, MHSA, Indigent AHM Out of County Contracts, Medication Management.
17. Services Provided by Whole System of Care by service type (Assessment, Case Management, Collateral, Crisis, Family Therapy, Group Rehab, Group Therapy, Intensive Care Coordination (ICC), In Home Behavioral Services (IHBS), Individual Rehab, Individual Therapy, Psychiatric Services, Plan Development, Therapeutic Behavioral Services (TBS), Therapeutic Foster Care (TFC), Total).
18. No Show Rate by QTR and YTD.
19. Average cost per beneficiary by age.
20. Count of Services by Area (Anderson Valley, North Coast, North County, South Coast, Ukiah, Willits).
21. Medication Management Services (Inland Unduplicated Clients, Coastal Unduplicated Clients, Inland Services, Coastal Services).

This data shall be reported to COUNTY on a monthly basis to the BHAB, Quality Improvement Committee, and reported through Client Services Information (CSI).

D. Electronic Health Record

- a. Contractor shall provide and maintain an electronic health record system for use by AHM/RQMC, MCHC, MCYP, RCS, and Tapestry. CONTRACTOR shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations, State and Federal laws, and other Mendocino County BHRS requirements for client confidentiality and record security. Client records shall be kept and maintained for ten (10) years after client discharge.

- b. CONTRACTOR shall ensure providers (MCHC, MCYP, and Tapestry) maintain client records. CONTRACTOR shall identify a compliance officer that is responsible for maintaining the integrity of clients' health care information. Records shall be organized in a systematic fashion and stored according to licensing/regulatory standards. Individual and aggregate records shall be accessible to clinicians, the Quality Management process, and Mendocino County BHRS. Records that are released to proper authorities, individuals, and others shall be released only with an appropriately signed Release of Information (ROI).

E. Full-Service Partnership (FSP)

- a. CONTRACTOR shall work with Tapestry and MCHC to ensure Community Services and Supports provided increase access to mental health services, facilitate, or expand an integrated and collaborative service experience for the consumer, and prioritize least restrictive care environments.
 - i. Tapestry; Full Service Partnerships including Behavioral Health Court FSPs;
 - ii. MCHC: Full Service Partnership including Behavioral Health Court FSPs.
 - iii. MCYP: Does not currently have FSPs.
- b. CONTRACTOR shall provide COUNTY the list of all FSPs on a monthly basis by age category and each provider (AHM/RQMC, MCHC, MCYP, Tapestry, and RCS) prior to billing.
- c. CONTRACTOR shall ensure that MHSa services provided by MCHC, MCYP, and Tapestry are focused on mental health wellness, recovery, and resilience. Services shall be consumer driven, and when desired by the consumer shall include family and other supports (friends, neighbors, spiritual leaders, etc.) as indicated by the client.
- d. Community Services and Supports (CSS) FSP programs shall serve each of the four (4) designated age groups: Child and youth ages zero to fifteen (0-15), Transition Age Youth ages sixteen to twenty-five (16-25), Adults ages twenty-six to fifty-nine (26-59), and Older Adults ages sixty years and older (60+). CONTRACTOR shall track and provide COUNTY with data on the services being provided, population being served, and demographics from MCHC, MCYP, and Tapestry.
 - i. CONTRACTOR shall ensure providers (MCHC, MCYP, and Tapestry) offer Assisted Outpatient Treatment (AOT) services to qualified clients. Providers shall participate in the

AOT Team meetings as requested by COUNTY, participate in the initial investigation of AOT referrals, providing known history on potential AOT clients, accept referrals for Biopsychosocial Assessment, assess client, determine if client has a qualifying diagnosis that meets medical necessity for Specialty Mental Health Services and AOT criteria, provide case management, testify in court when required regarding AOT qualifications, assessment, diagnosis, risk of client, and any other pertinent information to beneficiary. Providers shall understand that many AOT clients may be reluctant to participate in voluntary services, and repeated and unique attempts to engage client in services may be necessary.

- ii. AOT services requires completing any documents necessary for the AOT petition requested by the COUNTY or required by the Courts, which includes the Declaration stating that there is reason to believe AOT criteria are met according to Welfare and Institutions Code section 5346(b)(5)(B) within the timelines outlined in regulation.
 - iii. COUNTY shall provide triage and investigation of referrals for AOT. COUNTY shall provide notification of Counsel and Courts. COUNTY shall report data to Department of Health Care Services and other state reporting.
- e. Full Service Partnerships (FSP) are an intensive collaborative relationship between client, providers, and when appropriate the client's family and personal supports. Full Service Partnerships are designed to provide more intensive services to reduce likelihood of intensive, high cost urgent, and emergency mental health services and/or other forms of institutionalization.

F. Quality Assurance/Performance Improvement

- a. CONTRACTOR shall evaluate medical necessity appropriateness and efficiency of services provided to beneficiaries by MCHC, MCYP, and Tapestry.
- b. Outcome Measurement Tools: CONTRACTOR shall ensure MCHC, MCYP, and Tapestry providers use, based on client's age, the Adult Needs and Strengths Assessment (ANSA), the Child Assessment of Needs and Strengths 50 (CANS-50), and the Pediatric Symptom Checklist (PSC-35), to measure clients' functioning. The frequency and intensity of services shall be correlated with outcome measure data. Outcome measure data shall be collected at the beginning of treatment, every six (6) months following the first administration, and at the end of treatment to ensure that services maintain the appropriate level of intensity, frequency, and duration submitted to COUNTY electronically following DHCS data submission guidelines.

- c. CONTRACTOR shall work with MCHC, MCYP, and Tapestry providers to ensure providers submit the COUNTY and State required beneficiary/family satisfaction surveys and providers shall submit all surveys to COUNTY by the due date.
- d. CONTRACTOR shall establish processes to ensure that all MCHC, MCYP Tapestry remain in compliance with COUNTY and County of Mendocino State MHP Agreement requirements. If a provider is not in compliance, CONTRACTOR will notify COUNTY.
 - i. CONTRACTOR shall notify COUNTY of MCHC, MCYP, and Tapestry being out of compliance and COUNTY will provide MCHC, MCYP, AHM/RQMC, and Tapestry the corrective action request letter and a copy will be provided to CONTRACTOR.
 - ii. CONTRACTOR shall continue to work with MCHC, MCYP, AHM/RQMC, and Tapestry until provider is in compliance with requirements or provider services have been terminated.
 - iii. CONTRACTOR shall keep COUNTY informed throughout the corrective action processes.
- e. CONTRACTOR shall resolve any identified service delivery problems with MCHC, MCYP, and Tapestry and take effective action when improvement is required or desired.
 - i. COUNTY shall be notified by CONTRACTOR of any service delivery problem(s) and the steps being taken by CONTRACTOR to resolve the identified problem.
- f. CONTRACTOR shall provide performance data at COUNTY meetings, such as Quality Improvement/Quality Management, Behavioral Health Advisory Board (BHAB), Utilization Management, Administrative Services Organization (ASO) Care Coordination and Quality Improvement Committee meetings.
- g. CONTRACTOR shall participate in the Quality Improvement Committee meetings and provide performance data as requested by the COUNTY and in relation to the goals set in the Quality Improvement Work Plan.
- h. Quality Assessment and Performance Improvement Committees CONTRACTOR shall participate on the Quality Assessment and Performance Improvement (QAPI) Committee and attend all meetings.
- i. For MCHC, MCYP, and Tapestry, CONTRACTOR shall ensure MCHC, MCYP, and Tapestry adhere to COUNTY policies and procedures. If a provider does not maintain compliance CONTRACTOR shall notify COUNTY and COUNTY shall issue a

corrective action plan. COUNTY shall be notified when a provider subcontractor is failing to comply with requirements. COUNTY shall provide CONTRACTOR with a copy of the corrective action plan provided to provider. CONTRACTOR shall continue to work with provider until provider is in compliance with requirement or services have been terminated. CONTRACTOR shall keep COUNTY informed throughout the corrective action process.

- j. For MCHC, MCYP, and Tapestry, CONTRACTOR shall ensure that providers only use licensed, registered, or waived staff acting within their scope of practice for services which require a license, waiver, or registration. CONTRACTOR shall ensure that no provider is on a list excluding them from billing Medi-Cal, such as:
 - i. Office of General Inspector General List of Excluded Individuals/Entities (LEIE).
 - ii. DHCS Medi-Cal List of Suspended or Ineligible Subcontractors
 - iii. Excluded Parties List System (EPLS)
 - iv. Social Security Death Master List
 - v. Verification of licensure without restrictions
 - vi. National plan and subcontractor Enumeration System (NPPES) CONTRACTOR shall run monthly checks on the exclusion list sites, as directed by the COUNTY, and provide COUNTY monthly reports.
- k. CONTRACTOR shall have a protocol for MCHC, MCYP, and Tapestry to ensure their capacity and capability for meeting the full requirements of the County of Mendocino State MHP Agreement.
- l. CONTRACTOR shall participate in the following Audits:
 - i. Department of Health Care Services Triennial
 - ii. External Quality Review Organization
- m. CONTRACTOR shall have a Chief Psychiatrist (licensed psychiatrist) who will be available to provide medical consultation as needed.
- n. CONTRACTOR shall coordinate with COUNTY to ensure provider (MCHC, MCYP, and Tapestry) compliance with MHP Cultural Competency plan, annual cultural competency skills training for staff, data reports and efforts to eliminate disparities.
- o. CONTRACTOR shall ensure client rights: that the screening of a client for a treatment or service program shall not result in the client being deprived of any rights, privileges, or benefits which are

guaranteed to individuals by State or Federal law. CONTRACTOR shall ensure that services (MCHC, MCYP, and Tapestry) are provided in a safe, sanitary, least restrictive, and humane environment. All clients shall have the right to be treated with dignity and respect by CONTRACTOR. CONTRACTOR shall work with the COUNTY's Patient's Rights Advocate to ensure proper client interactions and interventions.

- p. Clients of MCHC, MCYP, and Tapestry shall be provided with required information pamphlets that include Client Rights, Notice of Privacy Practices, Grievance and Appeals Process Brochure, Advanced Directives Brochure, Early Periodic Screening, Diagnosis, and Treatment (EPSDT) Membership Handbook, Provider Directory, Mental Health Plan Beneficiary Handbook, and language taglines.

G. Point of Authorization/Treatment Authorization

- a. CONTRACTOR shall implement mechanisms to ensure authorization decision standards are met and are in compliance with COUNTY and DHCS requirements. CONTRACTOR shall adhere to County of Mendocino State MHP Agreement requirements for processing requests for initial, continuing, and concurrent authorizations of services. Authorization decisions shall be made within the timeframe set by Title 42, Code of Federal Regulations (C.F.R.) section 438.210(d).
 - i. CONTRACTOR shall have mechanisms in place to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider (MCHC, MCYP, Tapestry) when appropriate. CONTRACTOR shall authorize services based on medical necessity criteria and each client's level of service needs. Any decisions to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested shall be made by a professional who has appropriate clinical expertise in treating the client's condition or disease.
 - ii. CONTRACTOR shall issue Notices of Adverse Benefit Determination (NOABD) for Adverse Benefit Determinations from MCHC, MCYP, and Tapestry (COUNTY shall issue NOABDs for Adverse Benefit Determinations from RCS), per the County of Mendocino State MHP Agreement requirements, within the timeframe set forth in 42 C.F.R. section 438.404(c). A copy of every NOABD issued shall be provided to COUNTY. NOABDs shall be provided to the COUNTY monthly. COUNTY shall maintain NOABD logs.

- b. CONTRACTOR shall collaborate with COUNTY to act as the Point of Authorization (POA) for Specialty Mental Health Services for beneficiaries. At the same time, COUNTY shall retain authority as the official POA for all (MCHC, MCYP, AHM/RQMC, RCS, and Tapestry) mental health services and shall have the right to review, audit, and deny services based on County of Mendocino State MHP Agreement requirements. All denials shall be reviewed with CONTRACTOR. CONTRACTOR has the right to appeal decisions to the Behavioral Health Director or designee.

H. Utilization Management & Review

- a. CONTRACTOR shall provide utilization review of the activities listed below. CONTRACTOR shall monitor and measure System Performance on a monthly basis to include, but not be limited to, the following:
 - i. Inpatient hospitalizations (MCHC, MCYP, AHM/RQMC, RCS, and Tapestry)
 - ii. Timely access to outpatient and psychiatric services (MCHC, MCYP, AHM/RQMC, RCS, and Tapestry)
 - iii. No shows (MCHC, MCYP, AHM/RQMC, RCS, and Tapestry)
 - iv. Client outcomes (MCHC, MCYP, AHM/RQMC, RCS, and Tapestry)
 - v. Client satisfaction (MCHC, MCYP, and Tapestry)
- b. CONTRACTOR shall track patterns, trends, outlier data, and monitor post care outcomes to assess effectiveness of care and services (MCHC, MCYP, AHM/RQMC, RCS, and Tapestry). This information shall be provided to COUNTY and reported at Utilization Management meetings monthly.
- c. CONTRACTOR shall participate in COUNTY Utilization Management meetings and provide to COUNTY all requested information and data for each meeting (MCHC, MCYP, AHM/RQMC, RCS, and Tapestry). CONTRACTOR shall provide data for the whole system, but shall only represent MCHC, MCYP, and Tapestry at this meeting.
- d. CONTRACTOR shall provide utilization review as directed by COUNTY. CONTRACTOR shall provide the following administrative services:
 - i. Provider capacity and network adequacy reported to COUNTY (MCHC, MCYP, AHM/RQMC, RCS, and Tapestry).

- ii. Community relations defined as sharing data for MCHC, MCYP, and Tapestry, replying to community requests for information, but not speaking on behalf of COUNTY.
 - iii. Client eligibility verification for MCHC, MCYP, and Tapestry.
 - iv. Medical necessity and access determination for MCHC, MCYP, and Tapestry.
 - v. Service authorization for MCHC, MCYP, and Tapestry.
 - vi. Lockouts for MCHC, MCYP, and Tapestry.
 - vii. Quality/outcome management for MCHC, MCYP, and Tapestry.
- e. CONTRACTOR and COUNTY shall conduct performance-monitoring activities throughout MCHC, MCYP, and Tapestry provider operations. These activities shall include, but are not limited to, client system outcomes, credentialing, and monitoring.
- f. Utilization Management Definitions:
- i. Utilization Management (UM) defined as ongoing monitoring of anticipated number of clients and services relative to available services; tracking under and over utilization of services; review of appropriateness, efficiency, accessibility, and necessity of services provided; ensuring appropriate access and actively eliminating barriers to access; review performance outcomes to ensure performance indicators show improvement of beneficiaries; and monitor data over time for trends, outliers, and outcome data for continuous system improvement.
 - ii. Provider Performance defined as evaluating performance of individual providers related to metrics captured including but not limited to client outcomes, timeliness metrics, and quality metrics.
 - iii. Client Services defined as Specialty Mental Health and Mental Health Services Act services provided directly to beneficiaries for the purpose of reducing symptoms contributing to medical necessity, coordinating care towards ensuring the least restrictive necessary level of care is utilized, and clients are transitioned with warm hand offs throughout the specialty and non specialty mental health system as appropriate. Services will include those listed in each individual service.
 - iv. Risk Management defined as activities intended to prevent Medi-Cal fraud, waste, and/or abuse and including but not limited to activities such as site certification, monitoring

provider credentialing and exclusion lists, monitoring network adequacy to ensure timely access to care, and addressing quality concern issues or other corrective action processes.

- v. Quality of Care defined as timely, effective, client driven, least restrictive, medically necessary, care where outcomes are monitored for opportunities for improvement to ensure benefit to the beneficiary and concerns and complaints are responded to in order to address opportunities for improvement in care.
- vi. Utilization Review defined as retrospective review of actual number of clients and services relative to anticipated; tracking under and over utilization of services; review of appropriateness, efficiency, accessibility, and necessity of services provided; ensuring appropriate access and actively eliminating barriers to access; review performance outcomes to ensure performance indicators show improvement of beneficiaries; and monitor data over time for trends, outliers, and outcome data for ongoing system improvement.

I. Care Coordination and Training

- a. CONTRACTOR shall ensure MCHC, MCYP, and Tapestry providers are trained in cultural responsiveness and utilize bilingual staff and/or translation in consumer preferred languages.
 - i. Direct services shall be provided in the client's preferred language or American Sign Language (ASL), if required. Language assistance, if needed, will be provided through the use of competent bilingual staff, staff interpreters, contractors, or formal arrangements with organizations providing interpretation or translation services. Language taglines shall be attached to vital documents, which shall be provided in current threshold languages. Accommodations to support access to vital documents shall be made for those beneficiaries with disabilities.
- b. COUNTY shall facilitate an ASO Care Coordination Meeting that reviews the system of care. CONTRACTOR shall only represent MCHC, MCYP, and Tapestry at this meeting.
- c. CONTRACTOR shall facilitate care coordination meetings and activities for MCHC, MCYP, and Tapestry to include training, coordination between agencies, CalAIM implementation monitoring, general check ins, supported housing collaboration including Coordinated Entry prioritizations of specialty mental health clients, and high utilizer coordination.

J. Transition Plan

- a. CONTRACTOR shall work with COUNTY to develop a Transition Plan.
 - i. Activities in the Transition Plan shall be completed by the termination of this Agreement.
 - ii. The Transition Plan shall include each service/assignment title, description, time frame for transition, responsible party, date of activity/assignment transfer completion and or status of activity/assignment transfer.
- b. The Transition plan shall include, but not be limited to, transition of the following services:
 - i. Data Collection (Monthly, Quarterly, Annual, and as requested; QAPI, QIC, BHAB, Measure B, MHSA, EQRO, DHCS/Triennial, etc.)
 - ii. Care Coordination and High Utilization Meetings (AOT, ACT, BHC, etc.)
 - iii. Training and Capacity Management Meetings (MACC, Partner Care Coordination, MDT, ADT, Supported Housing Providers etc.)
 - iv. Access functions provided by CONTRACTOR (single referral form, etc.)
 - v. Quality Assurance functions
 - vi. EHR Maintenance and Data Monitoring
 - vii. Full Service Partnership assignment, Capacity Management, and criteria approval
 - viii. Client & Public Notification of changes
 - ix. Record Retention plan

II. Communication Plan

CONTRACTOR shall notify COUNTY of all communications with Media, including, but not limited to, press releases, interviews, articles, etc. CONTRACTOR shall not speak on behalf of COUNTY in any communications with Media but is encouraged to describe the services it provides and respond to questions about those services. CONTRACTOR is also encouraged, where appropriate, to provide timely and factual responses to public concerns.

- III. CONTRACTOR covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. CONTRACTOR further covenants that in the

performance of this Agreement, no person having any such interests shall be employed. In addition, if requested to do so by COUNTY, CONTRACTOR with 5% or more direct or indirect ownership interest shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Disclosure of Ownership & Control Interest" (Attachment 1) with COUNTY disclosing CONTRACTOR's or such other person's financial interests. Additionally, a background check, including fingerprinting, may be required for said persons if it is determined there is a "high" risk to the Medi-Cal program. Furthermore, CONTRACTOR shall ensure that all subcontracts include the Disclosure of Ownership requirement, and that Disclosure of Ownership Forms will be submitted directly to the COUNTY.

IV. CONTRACTOR Notification of Breach or Improper Disclosures

The State Contract requires COUNTY to notify the state of any breach or improper disclosure of privacy and/or security of personal identifiable information (PII) and/or protected health information (PHI). CONTRACTOR shall, immediately upon discovery of a breach or improper disclosure of privacy and/or security of PII and/or PHI by CONTRACTOR, notify COUNTY of such breach or improper disclosure by telephone and either email or facsimile. In accordance with 45 CFR, upon COUNTY's knowledge of a material breach or violation by CONTRACTOR of the agreement between COUNTY and the CONTRACTOR, COUNTY shall:

- A. Provide an opportunity for the CONTRACTOR to cure the breach or end the violation and terminate the agreement if the CONTRACTOR does not cure the breach or end the violation within the time specified by the Department; or immediately terminate the agreement if the CONTRACTOR has breached a material term of the agreement and cure is not possible.
- B. In the event that the State Contract requires COUNTY to pay any costs associated with a breach of privacy and/or security of PII and/or PHI, including but not limited to the costs of notification, CONTRACTOR shall pay on COUNTY's behalf any and all such costs arising out of a breach of privacy and/or security of PII and/or PHI by CONTRACTOR.

[END OF DEFINITION OF SERVICES]

EXHIBIT B

PAYMENT TERMS

COUNTY shall reimburse CONTRACTOR for Administrative Services, Utilization Review Services, Quality Assurance and Performance Improvement Services required for the appropriate administration of the County of Mendocino Mental Health Plan (MHP) Agreement with the State of California, as defined in the Definition of Services, Exhibit A. COUNTY shall also reimburse CONTRACTOR for inpatient psychiatric hospitalizations, physician fees, and foster youth placements mental health services cost.

- I. CONTRACTOR shall provide the following services:
 - A. Data, billing, E.H.R., access, FSP, POA / TARS, QA, UR, Training, Care Coordination, and transition plan, as directed by the Mendocino County Behavioral Health Director and in compliance with the County of Mendocino MHP Agreement with the State of California.
- II. CONTRACTOR shall ensure providers meet the following standards for billing specialty mental health Medi-Cal:
 - A. Billing for services shall be completed as per instructions in the DHCS Mental Health Services Division Medi-Cal Billing Manual, and the Mendocino County Mental Health Policy and Procedure, "Claims Processing and Payment to contract provider under the Mental Health Medi-Cal Managed Care Plan".
 - B. In no event shall COUNTY be obligated to pay for any Short-Doyle/Medi-Cal claims, where payment has been denied, disallowed by State or Federal authorities. Should such denials or disallowances occur, COUNTY may, at their discretion, deduct the value of the disallowances from future payments to subcontractors.
 - C. In no event shall COUNTY be obligated to pay providers for any Short-Doyle/Medi-Cal claims for clients with other coverage where provider has not billed for reimbursement or denial of benefits in accordance with coordination of coverage requirements. Coordination of Benefits (COB) information shall be provided to COUNTY at the time of submission, or the claim will be denied. Per California Welfare and Institutions Code Section 14124.795, all other forms of coverage must pay their portion of a claim before Medi-Cal pays its portion. Medi-Cal is always the payer of last resort.
 - D. Services provided to clients eligible for benefits under both Medicare (Federal) and Medi-Cal (CA) plans must be billed and adjudicated by Medicare before the claim can be submitted to COUNTY. Claims for reimbursement of Medicare-eligible services performed by Medicare-certified providers in a Medicare-certified

facility must be submitted to Medicare before being submitted to Medi-Cal. Medicare Coordination of Benefits (COB) information shall be provided to COUNTY at the time of submission or the claim will be denied. The following specialty mental health services do not require Medicare COB as specified in Information Notices 09-09 and 10-11: T1017 Targeted Case Management, H2011 Crisis Intervention, H2013 Psychiatric Health Facility, H2012 Day Treatment Intensive / Day Rehabilitation H2019 Therapeutic Behavioral Services, 0101 Inpatient Hospitalization Administrative Day Services, S5145 Therapeutic Foster Care Services.

- E. Services billed by providers must adhere to the rates and classifications outlined in their respective contracts.
- F. Some clients may have what is known as Medi-Cal Share of Cost (SOC). The SOC is similar to a deductible based on the fact that the client must meet a specified dollar amount for medical expenses before the COUNTY will pay claims for services provided over and above the amount of the SOC in that month. The SOC is usually determined by the County Department of Social Services and is based upon the client or family income.

III. Compensation payable to CONTRACTOR shall be dependent on CONTRACTOR compliance with all requirements of the County of Mendocino MHP Agreement with the State of California; direction(s) from the Behavioral Health Director and all policies, procedures, letters, and notices of the County of Mendocino and/or the California DHCS.

COUNTY shall pay CONTRACTOR a fee for meeting deliverables in the following areas, as outlined in the chart below, in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) for FY 2023 – 24.

Deliverable Category	Total Allocation	Maximum Monthly Allocation
Access	\$ 25,000.00	\$ 8,333.33
Billing	\$ 12,500.00	\$ 4,166.67
Care Coord.	\$ 31,250.00	\$ 10,416.67
Data	\$ 37,500.00	\$ 12,500.00
E.H.R.	\$ 7,500.00	\$ 2,500.00
FSP	\$ 25,000.00	\$ 8,333.33
POA / TARS	\$ 18,750.00	\$ 6,250.00
QA	\$ 50,000.00	\$ 16,666.67
Training	\$ 13,750.00	\$ 4,583.33
Transition	\$ 75,000.00	\$ 6,250.00
UR	\$ 10,000.00	\$ 3,333.33

CONTRACTOR shall submit a monthly invoice to COUNTY detailing the work that they completed in the respective month to meet the above deliverables. The

determination of whether CONTRACTOR meet a specific deliverable in a given month shall reside with the Director of Behavioral Health. Should it be determined that CONTRACTOR failed to meet one or more deliverable(s), a reduction amount in the Maximum Monthly Allocation will be made at the discretion of the Director of Behavioral Health.

For inpatient psychiatric hospitalizations, physician fees, and youth placements mental health services, COUNTY shall reimburse CONTRACTOR for allowable costs of inpatient psychiatric hospitalizations, physician fees, and youth placements mental health services, not to exceed Six Hundred Fifty Thousand Dollars (\$650,000). Reimbursement shall be based on actual claims for inpatient psychiatric hospitalization, physician fees, and youth placements. CONTRACTOR shall submit copies of placement invoicing along with CONTRACTOR's invoice.

- IV. CONTRACTOR shall submit Specialty Mental Health Services claims to COUNTY on behalf of providers in HIPAA compliant electronic files or other COUNTY approved form as expeditiously as possible. For in-county providers, claims are due no later than sixty (60) days after the end of the month during which services were rendered (i.e., billing for services rendered in July are due no later than September 30). For out-of-county providers, claims are due no later than ninety (90) days after the end of the month during which services were rendered (i.e., billing for services rendered in July are due no later than October 15).
- V. Claims submitted by CONTRACTOR in excess of one hundred fifty (150) days from date of service must be accompanied with justification (i.e., explanation of benefits) for the late submission or services may be denied. Late claims will be reviewed with the Behavioral Health Director and Behavioral Health Fiscal Manager for approval regarding late submission. COUNTY is aware that some services may require a late submission. If CONTRACTOR and Behavioral Health Fiscal Manager are unable to come to an agreement regarding late submission, the Behavioral Health Director shall make the final determination as to whether payment is to be remitted to CONTRACTOR. If late submission is not approved, CONTRACTOR shall be responsible for payment to any providers owed reimbursement for services subject to such late billing.
- VI. COUNTY is responsible for the submission of Specialty Mental Health Services received from the providers for Short-Doyle/Medi-Cal services to the State. All services that do not meet medical necessity and are not sufficient to achieve the purpose for which the services are furnished, shall be disallowed. COUNTY shall be reimbursed by providers for the total claimed amount of all services disallowed (by State and/or County) audit and/or review, within thirty (30) days of the notice of disallowance.
 - A. CONTRACTOR shall submit to COUNTY, the following documents:
 1. Monthly – by the 10th of the month, the previous month's Invoices related to Specialty Mental Health Services.

2. End of Year, by October 15th General Ledger Expenditure Reports that details placement cost.
3. Quarterly Expenditure Summary Actual Reports

B. Quarterly Reporting Schedule:

1. October 31, 2023
2. January 31, 2024
3. April 30, 2024
4. July 31, 2024

C. If CONTRACTOR is out of compliance with the monthly or quarterly report submissions, CONTRACTOR agrees that funds to be distributed under the terms of this agreement shall be withheld until such time as CONTRACTOR submits acceptable monthly or quarterly documents.

- VII. CONTRACTOR shall comply with all requirements of the County of Mendocino MHP Agreement with the State of California; direction(s) from the Behavioral Health Director and all policies, procedures, letters, and notices of the County of Mendocino and/or the California DHCS.
- VIII. CONTRACTOR is responsible for the submission of final claims reconciliation of all providers for FY 2023-24 no later than October 15, 2024.
- IX. The compensation payable to CONTRACTOR shall be dependent on CONTRACTOR satisfying all components of this Agreement, the County of Mendocino MHP Agreement with the State of California, and all direction from the Behavioral Health Director.
- X. The compensation payable to CONTRACTOR for Specialty Mental Health Services and Indigent Mental Health Services (which services are addressed in the Definition of Services, Exhibit A) shall not exceed Nine Hundred Thousand Dollars (\$900,000) for the term of this Agreement.

[END OF PAYMENT TERMS]

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude COUNTY from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law. Insurance requirements shall be in addition to, and not in lieu of, CONTRACTOR's indemnity obligations under Paragraph 2 of this Agreement.

CONTRACTOR shall obtain and maintain insurance coverage as follows:

- a. Combined single limit bodily injury liability and property damage liability - \$3,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

CONTRACTOR shall furnish to COUNTY certificates of insurance evidencing the minimum levels described above.

[END OF INSURANCE REQUIREMENTS]

EXHIBIT D
CONTRACTOR ASSURANCE OF COMPLIANCE WITH
MENDOCINO COUNTY
Behavioral Health and Recovery Services
NONDISCRIMINATION IN STATE
AND FEDERALLY ASSISTED PROGRAMS

NAME OF CONTRACTOR: **Redwood Quality Management Company DBA Anchor Health Management, Inc.**

HEREBY AGREES THAT it will comply with Federal Law Requirements:

1. Title VI of the Civil Rights Act of 1964, Section 2000d, as amended, prohibiting discrimination based on race, color, or national origin in federally funded programs.
2. Title VIII of the Civil Rights Act of 1968 (42 USC 3601 et seq.) prohibiting discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin in the sale or rental of housing.
3. Age Discrimination Act of 1975 (45 CFR Part 90), as amended (42 USC Sections 6101 – 6107), which prohibits discrimination on the basis of age.
4. Age Discrimination in Employment Act (29 CFR Part 1625).
5. Title I of the Americans with Disabilities Act (29 CFR Part 1630) prohibiting discrimination against the disabled in employment.
6. Title II of the Americans with Disabilities Act (28 CFR Part 35) prohibiting discrimination against the disabled by public entities.
7. Title III of the Americans with Disabilities Act (28 CFR Part 36) regarding access.
8. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC Section 794), prohibiting discrimination on the basis of individuals with disabilities.
9. Executive Order 11246, 42 USC 2000e et seq., and 41 CFR Part 60 regarding nondiscrimination in employment under federal contracts and construction contracts greater than \$10,000 funded by federal financial assistance.
10. Executive Order 13166 (67 FR 41455) to improve access to federal services for those with limited English proficiency.
11. The Drug Abuse Office and Treatment Act of 1972, as amended, relating to nondiscrimination on the basis of drug abuse.
12. Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2, Subparts A – E).
13. Title 42, United States Code (USC), Section 300 x-24, Requirements regarding tuberculosis and human immunodeficiency virus
14. Title 45, United States Code (USC), Section 96.128 Requirements regarding human immunodeficiency virus
15. 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91 Nondiscrimination Under Programs Receiving Federal Assistance, including handicap or age
16. Title 28, United States Code (USC), part 42, Nondiscrimination and Equal Employment
17. Title 7, United States Code (USC), part 15, Nondiscrimination Under Programs Receiving Assistance from the Department of Agriculture
18. Food Stamp Act of 1977, as amended and in particular section 272.6
19. Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996
20. 22 U.S.C. 7104 section 106 - Trafficking Victims Protection Act of 2000
21. Title 45, United States Code (USC), Section 96.131 - Admission Priority and Interim Services for Pregnant Women

22. CLAS (Culturally and Linguistically Appropriate Services National Standards); Civil Rights, Division 21 and ADA as amended
23. Title 42, CFR, Part 54 - Charitable Choice

As well as comply with State Law Requirements:

1. Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (2 CCR 7285.0 et seq.).
2. Title 2, Division 3, Article 9.5 of the Government Code, commencing with Section 11135-1119.5 as amended.
3. Title 9, Division 4, Chapter 8 of the CCR, commencing with Section 13000.
4. No state, federal, or County Realignment funds shall be used by the Contractor or its subcontractors for sectarian worship, instruction, or proselytization. No state funds shall be used by the Contractor or its subcontractors to provide direct, immediate, or substantial support to any religious activity.
5. Noncompliance with the requirements of nondiscrimination in services shall constitute grounds for DHCS to withhold payments under this Contract or terminate all, or any type, of funding provided hereunder.
6. Title 1, Division 5 Chapter 7, of the Government Code, Section 4450 Access to Public Buildings by Physically Handicapped Persons
7. Title 22, Division 8 of the California Code of Regulations, Sections 98000-98413
8. California Civil Code Section 51 et seq., which is the Unruh Civil Rights Act
9. California Government Code section 12940 - California Fair Employment
10. California Government Code section 4450 -Access to Public Buildings
11. California Government Code Section 7290-7299.8 - the Dymally-Alatorre Bilingual Services Act

AND HEREBY GIVE ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE CONTRACTOR HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, CONTRACTOR agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code section 10605, or Government Code section 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on CONTRACTOR directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

08/16/2023
 Date
376 East Gobbi St. B, Ukiah, CA 95482
 Address of CONTRACTOR

T B Johnson MFT
 CONTRACTOR Signature

EXHIBIT E

DEFICIT REDUCTION ACT – OBLIGATIONS OF COUNTY

In accordance with Section 1902(a) of the Social Security Act, the County provides the following detailed information about the Federal False Claims Act and the California False Claims Act.

THE FEDERAL FALSE CLAIMS ACT

The Federal False Claims Act (“FCA”) helps the federal government combat fraud and recover losses resulting from fraud in federal programs, purchases, or contracts. 31 U.S. Code sections 3729-3733.

Actions that violate the FCA include:

- Knowingly submitting (or causing to be submitted) a false claim to the Government or the Armed Forces of the United States (the “Armed Forces”) for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by the Government;
- Conspiring to get a false claim allowed or paid by the Government;
- Delivering (or causing to be delivered) less property than the amount of the receipt, where the person with possession or control of the Government money or property intends to deceive the agency or conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to defraud the Government;
- Knowingly buying or receiving public property from an officer or employee of the Government or a member of the Armed Forces who has no legal right to sell or pledge the property; or
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the Government.

“Knowing” and “Knowingly” means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

“Claim” includes any request or demand for money or property (including those made under contract) to the Government or to a contractor, grantee, or other recipient, if any

portion of the requested money or property is funded by or will be reimbursed by the Government.

A person or organization may be liable for:

- A civil penalty \$5,500 to \$11,000 for each false claim;
- Three times the amount of damages sustained by the Government due to the violations; and
- The costs of a civil suit for recovery penalties or damages.

The court may reduce the treble damages if:

- The person committing the violation voluntarily disclosed all information known to him or her to the U.S. officials responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with any Government investigation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

Actions by Private Persons or *Qui Tam* Plaintiffs

An individual also has the right to file a civil suit for him or herself and for the Government. The suit must be filed in the name of the Government. The suit is filed and served on the Government. The suit and all information are filed under seal, and most remain under seal for at least sixty days. The suit may be dismissed only if the court and the Attorney General consent to the dismissal in writing.

If a *qui tam* plaintiff alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Government. Once the action is filed, no person other than the Government is allowed to intervene or file a lawsuit based on the same facts.

Rights of the Parties to *Qui tam* Actions

If the Government decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations. If the Government decides not to file a civil suit, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The Government can intervene later upon a showing of good cause.

Award to *Qui tam* Plaintiff

If the Government prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. If the case is based primarily on information other than the disclosures of the *qui tam* plaintiff, the award cannot be more than 10 percent of the recovery.

If the Government decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney's fees and costs.

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the *qui tam* plaintiff is convicted of criminal conduct, he or she will be dismissed from the lawsuit and will not receive any monetary award.

If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees.

Certain Actions Barred

An individual cannot bring a *qui tam* action against a member of Congress, a member of the judiciary, or a senior executive branch official based on evidence already known to the Government.

An individual cannot bring a *qui tam* suit based on allegations in a civil suit or an administrative proceeding in which the Government is already a party.

An individual cannot bring a *qui tam* action based on the public disclosure of allegations unless he or she is the original source (e.g., an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the Government before filing a civil action). Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in a congressional, administrative, or GAO report, hearing, audit, or investigation; or from the news media.

Whistleblower Protection

An employee who has been discharged, demoted, suspended, threatened, harassed, or in any way discriminated against by his or her employer because of involvement in a false claims disclosure is entitled to all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had but for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination (including litigation costs and reasonable attorney's fees).
- The protected false claims activities include investigation for, initiation of, testimony for, or assistance in a false claims action that has been or will be filed. An employee is entitled to bring an action in the district court for such relief.

THE CALIFORNIA FALSE CLAIMS ACT

The California False Claims Act ("CFCA") applies to fraud involving state, city, county or other local government funds. The CFCA encourages voluntary disclosure of fraudulent activities by rewarding individuals who report fraud and allowing courts to waive

penalties for organizations that voluntarily disclose false claims. California Government Code sections 12650-12655.

Actions that violate the CFCA include:

- Knowingly submitting (or causing to be submitted) a false claim for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved;
- Conspiring to get a false claim allowed or paid by the state or by any political subdivision;
- Benefiting from an inadvertent submission of a false claim, subsequently discovering the falsity of the claim, and failing to disclose to the state or political subdivision within a reasonable time after discovery;
- Delivering less property than the amount of the receipt, where the person has possession or control of public property;
- Knowingly making or delivering a false receipt, where the person is authorized to deliver a document;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from any person who has no legal right to sell or pledge the property; or
- Knowingly making or using a record to conceal, avoid, or decrease an obligation to pay money or transmit property to the state or local government.

“Knowingly” means the person or organization:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information. Proof of specific intent to defraud is not required.

“Claim” includes any request for money, property, or services made to the state or any political subdivision (or to any contractor, grantee, or other recipient), where any portion of the money, property, or services requested was funded by the state or any political subdivision.

The maximum civil penalty is \$10,000, per claim. Persons who violate the CFCA may be liable to the state for three times the amount of damages that the state sustains because of the violation. The court can waive penalties and reduce damages for CFCA violations if the false claims are voluntarily disclosed.

The CFCA does not apply to false claims of less than \$500. Lawsuits must be filed within three years after the violation was discovered by the state or local official who is responsible for investigating the false claim (but no more than ten years after the violation was committed).

Private or *Qui Tam* Actions/Whistleblower Provisions

Individuals (or *qui tam* plaintiffs) can sue for violations of the CFCA. Individuals who bring an action under the CFCA receive between 15 and 33 percent of the amount recovered (plus reasonable costs and attorney's fees) if the state prosecutes the case, and between 25 and 50 percent (plus reasonable costs and attorney's fees) if the *qui tam* plaintiff litigates the case on his or her own.

An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.

The CFCA bars employers from interfering with an employee's disclosure of false claims. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except for the discrimination, (3) compensation for any costs or damages they have incurred, and (4) punitive damages, if appropriate.

Liability to the State or Political Subdivision

A person or organization will be liable to the state or political subdivision for:

- Three times the amount of damages that the state or local government sustains because of the false claims violations;
- The costs of a civil suit for recovery of damages; and
- A civil penalty of up to \$10,000 for each false claim.

Certain Actions Barred

An individual cannot bring a *qui tam* suit based on allegations in a civil suit or an administrative proceeding in which the state or political subdivision is already a party. An individual cannot file a lawsuit based on the public disclosure of allegations unless he or she is the original source (e.g., an individual with direct and independent knowledge of the information on which the allegations are based). Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in an investigation, report, hearing, or audit conducted by or at the request of the Senate, Assembly, auditor, or governing body of a political subdivision; or by the news media.

Awards

If the state or political subdivision prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff receives between 15 and 33 percent of the recovery (plus reasonable costs and attorney's fees), depending on his or her contribution to the case. If the state or political subdivision decides not to file a lawsuit and the *qui tam* plaintiff successfully litigates the action, the *qui tam* plaintiff receives between 25 and 50 percent of the award or settlement. Employees who participated in fraudulent activities are not guaranteed any recovery. If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees.

Whistleblower Protection

Employers are prohibited from:

- Making or enforcing any type of rule or policy that prevents an employee from disclosing information to a government or law enforcement agency, or from investigating, initiating, testifying, or otherwise assisting in a false claims action; or
- Discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action.

Liability of Employer

- An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:
 - Reinstatement with the same seniority status that the employee would have had except for the discrimination;
 - Two times the amount of back pay plus interest;
 - Compensation for any special damage sustained as a result of the discrimination; and punitive damages where appropriate.

Limitations on Eligibility of Employees for Damages

If an employee's conduct has resulted in a false claim being submitted to the state or a political subdivision, and the employee has been discriminated against by his or her employer, he or she is entitled to remedies only if he or she voluntarily disclosed information to a government or law enforcement agency or assisted in a false claims action; and was coerced (either through harassment, threats of termination demotion, or other coercive actions) by the employer or its management into committing the fraudulent activity in the first place.

Appendix A
CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, and OTHER RESPONSIBILITY MATTERS
LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

- (1) The primary principal certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency:
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment tendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsifications or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification, and
 - (d) Have not, within a three-year period preceding this application/proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the primary principal is unable to certify to any of the statements in this certification, such principal shall attach an explanation.

Tim Schraeder
~~Gamille Schraeder~~
 (Type Name)

Redwood Quality Management Company
DBA Anchor Health Management, Inc.
 (Organization Name)

Director CEO
 (Title)

376 East Gobbi St., B
Ukiah, CA 95482
 (Organization Address)

TB Schraeder MFT
 (Signature)

08/16/2023
 (Date)

Addendum A

Medi-Cal Data Privacy and Security Agreement

The California Department of Health Care Services (DHCS) and the County of Mendocino Health and Human Services Agency (MC-HHSA) have entered into a Medi-Cal Data Privacy and Security Agreement in order to ensure the privacy and security of Medi-Cal Personally Identifiable Information (PII).

Medi-Cal PII is information directly obtained in the course of performing an administrative function on behalf of Medi-Cal, such as determining Medi-Cal eligibility or conducting IHSS operations, that can be used alone, or in conjunction with any other information, to identify a specific individual. PII includes any information that can be used to search for or identify individuals, or can be used to access their files, such as name, social security number, date of birth, driver's license number or identification number. PII may be electronic or paper.

AGREEMENTS

NOW THEREFORE, County and the Contractor mutually agree as follows:

I. Privacy and Confidentiality

- A. Contractors may use or disclose Medi-Cal PII only to perform functions, activities or services directly related to the administration of the Medi-Cal program in accordance with Welfare and Institutions Code section 14100.2 and 42 Code of Federal Regulations section 431.300 et.seq, or as required by law.

Disclosures which are required by law, such as a court order, or which are made with the explicit written authorization of the Medi-Cal client, are allowable. Any other use or disclosure of Medi-Cal PII requires the express approval in writing of DHCS. Contractor shall not duplicate, disseminate or disclose Medi-Cal PII except as allowed in the Agreement.

- B. Access to Medi-Cal PII shall be restricted to only contractor personnel who need the Medi-Cal PII to perform their official duties in connection with the administration of the Medi-Cal program.
- C. Contractor and/or their personnel who access, disclose or use Medi-Cal PII in a manner or for a purpose not authorized by this Agreement may be subject to civil and criminal sanctions contained in applicable Federal and State statutes.

II. Employee Training and Discipline

Contractor agrees to advise its personnel who have access to Medi-Cal PII of the confidentiality of the information, the safeguards required to protect the information, and the civil and criminal sanctions for non-compliance contained in applicable Federal and State laws. Contractor shall:

Addendum A – Page 2

- A. Train and use reasonable measures to ensure compliance with the requirements of this Agreement by their personnel who assist in the administration of the Medi-Cal program and use or disclose Medi-Cal PII; and take corrective action against such personnel who intentionally violate any provisions of this Agreement, up to and including by termination of employment. New employees will receive privacy and security awareness training from Contractor within 30 days of employment and receive regular reminders throughout their employment. This information will be recorded in employee records with dates of each training/reminder. These records are to be retained and available for inspection for a period of three years after completion of the training/reminders.

III. Management Oversight and Monitoring

The Contractor agrees to establish and maintain ongoing management oversight and quality assurance for monitoring workforce compliance with the privacy and security safeguards in this Agreement when using or disclosing Medi-Cal PII and ensure that ongoing management oversight includes periodic self-assessments.

IV. Confidentiality Statement

Contractor agrees to ensure that all contractor personnel who assist in the administration of the Medi-Cal program and use or disclose Medi-Cal PII sign a confidentiality statement. The statement shall include at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement shall be signed by the Contractor and their personnel prior to access to Medi-Cal PII.

V. Physical Security

Contractor shall ensure that Medi-Cal PII is used and stored in an area that is physically safe from access by unauthorized persons during working hours and non-working hours. Contractor agrees to safeguard Medi-Cal PII from loss, theft or inadvertent disclosure and, therefore, agrees to:

- A. Secure all areas of Contractor facilities where personnel assist in the administration of the Medi-Cal program and use or disclose Medi-Cal PII. The Contractor shall ensure that these secure areas are only accessed by authorized individuals with properly coded key cards, authorized door keys or access authorization; and access to premises is by official identification.
- B. Ensure that there are security guards or a monitored alarm system with or without security cameras 24 hours a day, 7 days a week at Contractor facilities and leased facilities where a large volume of Medi-Cal PII is stored.
- C. Issue Contractor personnel who assist in the administration of the Medi-Cal program identification badges and require County Workers to wear the identification badges at facilities where Medi-Cal PII is stored or used.

Addendum A – Page 3

- D. Store paper records with Medi-Cal PII in locked spaces, such as locked file cabinets, locked file rooms, locked desks or locked offices in facilities which are multi-use (meaning that there are personnel other than contractor personnel using common areas that are not securely segregated from each other.) The contractor shall have policies which indicate that Contractor and their personnel are not to leave records with Medi-Cal PII unattended at any time in vehicles or airplanes and not to check such records in baggage on commercial airlines.
- E. Use all reasonable measures to prevent non-authorized personnel and visitors from having access to, control of, or viewing Medi-Cal PII.

VI. Computer Security Safeguards

The Contractor agrees to comply with the general computer security safeguards, system security controls, and audit controls in this section. In order to comply with the following general computer security safeguards, the Contractor agrees to:

- A. Encrypt portable computer devices, such as laptops and notebook computers that process and/or store Medi-Cal PII, with a solution using a vendor product that is recognized as an industry leader in meeting the needs for the intended solution. One source of recommended solutions is specified on the California Strategic Sourced Initiative (CSSI) located at the following link: www.pd.dgs.ca.gov/masters/EncryptionSoftware.html. The Contractor shall use an encryption solution that is full-disk unless otherwise approved by DHCS.
- B. Encrypt workstations where Medi-Cal PII is stored using a vendor product that is recognized as an industry leader in meeting the needs for the intended solution, such as products specified on the CSSI.
- C. Ensure that only the minimum necessary amount of Medi-Cal PII is downloaded to a laptop or hard drive when absolutely necessary for current business purposes.
- D. Encrypt all electronic files that contain Medi-Cal PII when the file is stored on any removable media type device (i.e. USB thumb drives, floppies, CD/DVD, etc.) using a vendor product that is recognized as an industry leader in meeting the needs for the intended solution, such as products specified on the CSSI.
- E. Ensure that all emails sent outside the Contractor's e-mail environment that include Medi-Cal PII are sent via an encrypted method using a vendor product that is recognized as an industry leader in meeting the needs for the intended solution, such as products specified on the CSSI.
- F. Ensure that all workstations, laptops and other systems that process and/or store Medi-Cal PII have a commercial third-party anti-virus software solution and are updated when a new anti-virus definition/software release is available.

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- G. Ensure that all workstations, laptops and other systems that process and/or store Medi-Cal PII have current security patches applied and up-to-date.
- H. Ensure that all Medi-Cal PII is wiped from systems when the data is no longer legally required. The Contractor shall ensure that the wipe method conforms to Department of Defense standards for data destruction.
- I. Ensure that any remote access to Medi-Cal PII is established over an encrypted session protocol using a vendor product that is recognized as an industry leader in meeting the needs for the intended solution, such as products specified on the CSSI. The Contractor shall ensure that all remote access is limited to minimum necessary and least privilege principles.

VII. System Security Controls

In order to comply with the following system security controls, the Contractor agrees to:

- A. Ensure that all Contractor systems containing Medi-Cal PII provide an automatic timeout after no more than 20 minutes of inactivity.
- B. Ensure that all Contractor systems containing Medi-Cal PII display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. User shall be directed to log off the system if they do not agree with these requirements.
- C. Ensure that all Contractor systems containing Medi-Cal PII log successes and failures of user authentication and authorizations granted. The system shall log all data changes and system accesses conducted by all users (including all levels of users, system administrators, developers, and auditors). The system shall have the capability to record data access for specified users when requested by authorized management personnel. A log of all system changes shall be maintained and be available for review by authorized management personnel.
- D. Ensure that all Contractor systems containing Medi-Cal PII use role based access controls for all user authentication, enforcing the principle of least privilege.
- E. Ensure that all Contractor data transmissions over networks outside of the Contractor's control are encrypted end-to-end using a vendor product that is recognized as an industry leader in meeting the needs for the intended solution, such as products specified on the CSSI, when transmitting Medi-Cal PII. The Contractor shall encrypt Medi-Cal PII at the minimum of 128 bit AES or 3DES (Triple DES) if AES is unavailable.
- F. Ensure that all Contractor systems that are accessible via the Internet or store Medi-Cal PII actively use either a comprehensive third-party real-time host based intrusion detection and prevention program or be protected at the perimeter by a network based IDS/IPS solution.

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VIII. Audit Controls

Contractor agrees to an annual system security review by the County to assure that systems processing and/or storing Medi-Cal PII are secure. This includes audits and keeping records for a period of at least three (3) years. A routine procedure for system review to catch unauthorized access to Medi-Cal PII shall be established by the Contractor.

IX. Paper Document Controls

In order to comply with the following paper document controls, the Contractor agrees to:

- A. Dispose of Medi-Cal PII in paper form through confidential means, such as crosscut shredding and pulverizing.
- B. Not remove Medi-Cal PII from the premises of the Contractor except for identified routine business purposes or with express written permission of DHCS.
- C. Not leave faxes containing Medi-Cal PII unattended and keep fax machines in secure areas. The Contractor shall ensure that faxes contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Contractor personnel shall verify fax numbers with the intended recipient before sending.
- D. Use a secure, bonded courier with signature of receipt when sending large volumes of Medi-Cal PII. The Contractor shall ensure that disks and other transportable media sent through the mail are encrypted using a vendor product that is recognized as an industry leader in meeting the needs for the intended solution, such as products specified on the CSSI.

X. Notification and Investigation of Breaches

The Contractor agrees to notify John Martire, Chief Welfare Investigator, at 467-5856.

XI. Assessments and Reviews

In order to enforce this Agreement and ensure compliance with its provisions, the Contractor agrees to inspections of its facilities, systems, books and records, with reasonable notice from the County, in order to perform assessments and reviews.

XII. Assistance in Litigation or Administrative Proceedings

In the event of litigation or administrative proceedings involving DHCS based upon claimed violations, the Contractor shall make all reasonable effort to make itself and its personnel who assist in the administration of the Medi-Cal program and using or disclosing Medi-Cal PII available to DHCS at no cost to DHCS to testify as witnesses.

Signature Page

Tim Schraeder

~~Gamille Schraeder~~

Contractor Name (printed)

Tim Schraeder MFT

Contractor Signature

~~Director~~ CEO

Contractor Title

Redwood Quality Management Company
DBA Anchor Health Management, Inc.

Contractor's Agency Name

08/16/2023

Date

Addendum B

Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered into effective July 1, 2023 (the "Effective Date"), by and between **Redwood Quality Management Company DBA Anchor Health Management, Inc.**, ("Business Associate/Qualified Service Organization") and **Mendocino County Behavioral Health and Recovery Services** (the "Covered Entity").

Business Associate and Covered Entity have a business relationship ("Agreement") in which Business Associate may perform functions or activities on behalf of Covered Entity involving the use and/or disclosure of protected health information received from, or created or received by, Business Associate on behalf of Covered Entity. ("PHI"). Therefore, if Business Associate is functioning as a Business Associate to Covered Entity, Business Associate agrees to the following terms and conditions set forth in this HIPAA Business Associate Agreement.

- 1. Definitions.** For purposes of this Agreement, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996, and any amendments or implementing regulations ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009), and any amendments or implementing regulations ("HITECH").
- 2. Compliance with Applicable Law.** The parties acknowledge and agree that, beginning with the relevant effective dates, Business Associate shall comply with its obligations under this Agreement and with all obligations of a Business Associate under HIPAA, HITECH and other related laws, as they exist at the time this Agreement is executed and as they are amended, for so long as this Agreement is in place.
- 3. Permissible Use and Disclosure of Protected Health Information.** Business Associate may use and disclose PHI to carry out its duties to Covered Entity pursuant to the terms of the Relationship. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.
- 4. Limitations on Uses and Disclosures of PHI.** Business Associate shall not, and shall ensure that its directors, officers, employees, and agents do not, use or disclose PHI in any manner that is not permitted or required by the Relationship, this Agreement, or required by law. All uses and disclosures of, and requests by Business Associate/Qualified Service Organization, for PHI are subject to the minimum necessary rule of the Privacy Standards and shall be limited to the information contained in a limited data set, to the extent practical, unless additional information is needed to accomplish the intended purpose, or

as otherwise permitted in accordance with Section 13405(b) of HITECH and any implementing regulations.

5. **Required Safeguards To Protect PHI.** Business Associate agrees that it will implement appropriate safeguards in accordance with the Privacy Standards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement.
6. **Reporting of Improper Use and Disclosures of PHI.** Business Associate shall report within 24 business hours to Covered Entity a use or disclosure of PHI not provided for in this Agreement by Business Associate/Qualified Service Organization, its officers, directors, employees, or agents, or by a third party to whom Business Associate disclosed PHI. Business Associate shall also report within 24 business hours to Covered Entity a breach of unsecured PHI, in accordance with 45 C.F.R. §§ 164.400-414, and any security incident of which it becomes aware. Report should be made to:

Compliance Officer
1-866-791-9337

7. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements. Business Associate shall cooperate with Covered Entity's breach notification and mitigation activities, and shall be responsible for all costs incurred by Covered Entity for those activities.
8. **Agreements by Third Parties.** Business Associate shall enter into an agreement with any agent or subcontractor of Business Associate that will have access to PHI. Pursuant to such agreement, the agent or subcontractor shall agree to be bound by the same restrictions, terms, and conditions that apply to Business Associate under this Agreement with respect to such PHI.
9. **Access to Information.** Within five (5) days of a request by Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. § 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within two (2) days forward such request to Covered Entity.
10. **Availability of PHI for Amendment.** Within five (5) days of receipt of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. § 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within two (2) days forward such request to Covered Entity.
11. **Documentation of Disclosures.** Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to

respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

12. **Accounting of Disclosures.** Within five (5) days of notice by Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, Business Associate shall make available to Covered Entity information to permit Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. § 164.528. In the case of an electronic health record maintained or hosted by Business Associate on behalf of Covered Entity, the accounting period shall be three (3) years and the accounting shall include disclosures for treatment, payment and healthcare operations, in accordance with the applicable effective date of Section 13402(a) of HITECH. In the event the request for an accounting is delivered directly to Business Associate/Qualified Service Organization, Business Associate shall within two (2) days forward such request to Covered Entity.
13. **Electronic PHI.** To the extent that Business Associate creates, receives, maintains or transmits electronic PHI on behalf of Covered Entity, Business Associate shall:
 - (a) Comply with 45 C.F.R. §§164.308, 301, 312, and 316 in the same manner as such sections apply to Covered Entity, pursuant to Section 13401(a) of HITECH, and otherwise implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI;
 - (b) Ensure that any agent to whom Business Associate provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect it; and
 - (c) Report to Covered Entity any security incident of which Business Associate becomes aware.
14. **Judicial and Administrative Proceedings.** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Covered Entity shall have the right to control Business Associate/Qualified Service Organization's response to such request. Business Associate shall notify Covered Entity of the request as soon as reasonably practicable, but in any event within two (2) days of receipt of such request.
15. **Availability of Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure and privacy protection of PHI received from Covered Entity, or created, maintained or received by Business Associate on behalf of the Covered Entity, available to the Covered Entity, the State of California, and the Secretary of the Department of Health and Human Services, in the time and manner designated by the Covered Entity, State or Secretary, for purposes of determining Covered Entity's compliance with the Privacy Standards. Business Associate shall notify the Covered Entity upon receipt of such a request for access by the State or Secretary, and shall provide the Covered Entity with a copy of the request as well as a copy of all materials disclosed.

16. **Breach of Contract by Business Associate.** In addition to any other rights Covered Entity may have in the Relationship, this Agreement or by operation of law or in equity, Covered Entity may i) immediately terminate the Relationship if Covered Entity determines that Business Associate has violated a material term of this Agreement, or ii) at Covered Entity's option, permit Business Associate to cure or end any such violation within the time specified by Covered Entity. Covered Entity's option to have cured a breach of this Agreement shall not be construed as a waiver of any other rights Covered Entity has in the Relationship, this Agreement or by operation of law or in equity.
17. **Effect of Termination of Relationship.** Upon the termination of the Relationship or this Agreement for any reason, Business Associate shall return to Covered Entity or, at Covered Entity's direction, destroy all PHI received from Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system, unless said information has been de-identified and is no longer PHI. This provision shall apply to PHI that is in the possession of Business Associate/Qualified Service Organizations or agents of Business Associate/Qualified Service Organization. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Agreement, even after termination of the Relationship or the Agreement, until such time as all PHI has been returned, de-identified or otherwise destroyed as provided in this Section.
18. **Injunctive Relief.** Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Agreement would cause irreparable harm to Covered Entity, and in such event, Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.
19. **Indemnification.** Business Associate shall indemnify and hold harmless Covered Entity and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by Covered Entity arising from a violation by Business Associate of its obligations under this Agreement.
20. **Exclusion from Limitation of Liability.** To the extent that Business Associate has limited its liability under the terms of the Relationship, whether with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, all limitations shall exclude any damages to Covered Entity arising from Business Associate/Qualified Service Organization's breach of its obligations relating to the use and disclosure of PHI.
21. **Owner of PHI.** Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI used or disclosed by or to Business Associate by Covered Entity.
22. **Third Party Rights.** The terms of this Agreement do not grant any rights to any parties other than Business Associate and Covered Entity.
23. **Independent Contractor Status.** For the purposes of this Agreement, Business Associate is an independent contractor of Covered Entity, and shall not be considered an agent of Covered Entity.

24. **Changes in the Law.** The parties shall amend this Agreement to conform to any new or revised legislation, rules and regulations to which Covered Entity is subject now or in the future including, without limitation, HIPAA, HITECH, the Privacy Standards, Security Standards or Transactions Standards.

IN WITNESS WHEREOF, each Party hereby executes this Agreement as of the Effective Date.


**Redwood Quality Management Company DBA
Anchor Health Management, Inc.**

By: TB Schraeder MFT

Name: ~~Camille Schraeder~~ Tim Schraeder

Title: ~~Director~~ CEO

Mendocino County

By: 

Name: Jenine Miller, Psy.D.

Title: Behavioral Health and Recovery Services Director



Attachment 1

Behavioral Health and Recovery Services **Jenine Miller ♦ Behavioral Health Director** *Providing Behavioral Health Services*

Ukiah Offices: Mental Health • 1120 S. Dora St. • Ukiah • CA • 95482 • (707) 463-4303 • FAX (707) 463-6395
Fort Bragg Offices: Mental Health • Avila Center • 790-B S. Franklin St. • Fort Bragg • CA • (707) 964-4747 • FAX (707) 961-2698
Willits Integrated Services Center: Mental Health • 747 E. Valley St. • Willits • CA • 95490 • (707) 456-3850 • FAX (707) 456-3808

Disclosure of Ownership & Control Interests

Pursuant to 42 C.F.R §§ 455.104 et seq., and the Mendocino County Mental Health Plan Contract Number 12-89375, all: 1) Administrative Service Organizations (ASO), 2) all subcontractors (including both subcontractors with the ASOs who, themselves subcontract with other service providers as well as subcontractors who provide services directly to clients, whether they have contracted with ASOs, the ASOs subcontractors, or have entered into their contracts for services with the County), and 3) all client service network providers – are required to provide complete *Disclosure of Ownership & Control Interest* information on all of the following areas. These disclosures serve as a condition precedent to maintaining your right to continue serving, and being reimbursed for serving, the population of clients whom federal Medicaid/Medi-Cal and/or Medicare dollars ultimately fund.

Should you need additional space to be able to fully answer any of these areas of disclosure, please fill out the additional information on a separate page and reference the specific item you are addressing with the same numbers which appear on the form below. Please note that a memorandum explaining the Federal and State legal bases for individual items that make up this mandatory disclosures form is available upon request.

Owing to the sensitive nature of the information gathered on this form, it is a policy of the County of Mendocino that the County protect the security of this form; ensure that the form is only used for the purposes for which this information was gathered; and protect the integrity of that information by taking steps to make sure that it is not modified, changed, or deleted. Specifically, the County, through its Compliance Officer, will make certain that the originals of this form be kept in a secure, locked location to which only the Behavioral Health Director and his/her designee have a key, or have the combination. No hard copies will be made of these originals, which will remain under lock and key until such time as their production is required by the California Department of Health Care Services and/or Center for Medicare/Medicaid Services personnel for whom the statutory and regulatory scheme governing this process intends their contents. Finally, to guarantee the integrity of the originals, the County will scan the disclosure forms using a secure encryption system, and will then save the encrypted electronic

copies on a network drive to which only the Mental Health Director and his/her designee have access. The Compliance Officer, as the person charged with collecting the disclosure forms, will be responsible for making make sure that these steps are followed. Nevertheless, this form is discoverable under the California Public Records Act (California Government Code, Title 1, Division 7, §§ 6250 through 6276.48), however, sensitive information such as date of birth and Social Security number will be redacted prior to discovery.

Thank you in advance for your full cooperation with this effort.

(1)(i) The names and addresses of any and all “persons,” whether individuals or corporations, who have any ownership or control interest of any of the following, whether that interest meets or exceeds a 5% ownership/control or not:

- An ASO which contracts with the County of Mendocino
- Any subcontractor of such an ASO which either provides services directly or contracts those services out (to sub-subcontractors);
- Any direct provider of services who contracts with the County, whether operation as a sole practitioner, or as any organized group of providers

Name: _____

Address: _____

(1)(ii) The date of birth and social security number for every individual who fits paragraph (1)(i)’s definition of being a “person” with any ownership or control interest in any of the organizations described in that same paragraph, whether that interest meets or exceeds a 5% ownership/control interest or not:

(Name) Date of Birth, Social Security
Number: _____

(1)(iii) The tax identification number(s) for any corporation(s) which fit(s) paragraph (1)(i)’s definition of being “person” with any ownership or control interest in any of the organizations described in that same paragraph, whether that interest meets or exceeds a 5% ownership/control interest or not AND the tax identification number (s) for any corporation(s) whose businesses have at least a 5% ownership or control interest in any of their subcontractors, and/or any of their subcontractors’ subcontractors:

Tax Identification

Number(s): _____

(2)(i) For any “person” who has any ownership or control interest in any of the organizations described in paragraph (1)(i), whether that interest meets or exceeds a 5% ownership/control interest or not, please disclose whether you are related to anyone else – as a spouse, parent, child, or sibling – who also has such an interest, whether it meets or exceeds a 5% interest or not. Please make this series of disclosures by providing that related person’s name, their exact familial tie to you, and the organization/entity which you share in common.

Related individual’s name, relationship, and organization/entity in common:

(2)(ii) For any “person,” individual or corporate, who has any interest in an organization/entity that, itself, has a 5% or greater interest in any subcontractor, or in any other organization/entity which either contracts to provide services, which itself provides such services, please disclose whether you are related to anyone else – as a spouse, parent, child, or sibling – who has any interest in that other organization/entity. An example will help clarify what might otherwise be the potential for confusion in this section of the disclosure form.

Example: Mr. Jones has an ownership or control interest in ASO X; and ASO X does business with Subcontractor Y, in which ASO X has at least a 5% interest. Mr. Jones’ wife has an ownership or control interest in Subcontractor Y even if her interest is less than 5%. Under these circumstances, Mr. Jones must disclose the he and ASO X do business with a subcontracting firm in which he as a spousal relationship.

Related individual’s name, relationship and organization(s) in common:

(3) If any “person,” individual or corporate, who has any ownership or control interest in more than one organization/entity (whether those multiple interests meet or exceed 5% with any particular organization/entity or not), they must disclose all of those interests so that it is readily apparent “how many interests?” and “with whom?”

Individual’s name, and the organization(s)/entity(s) in which they have any ownership or control interest(s):

(4) The name, address, date of birth and social security number for any “managing employee” of any ASO, subcontractor, subcontractor’s subcontractor, or provider:

(5) The identity of any person who is a “managing employee” of any ASO, subcontractor, subcontractor’s subcontractor, or provider, who has been convicted of a crime related to federal health care programs (i.e. fraud):

The State has asked that the following disclosures related to business transactions be included:¹

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

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

By signing below, I certify all information is true and correct to the best of my knowledge:

¹ While the language of (6)(a) and (6)(b) for disclosure (from the State) may not be as precise as that which appears in the federal regulations which drives the rest of the disclosure items in this form, it would appear that what the State is looking for in these two requests is information pertaining to who owns the business – whether subcontractors or suppliers – with whom the contractors (either ASOs or ASO subcontractors who, themselves, enter into subcontracts for services or supplies) are doing a significant amount of business, with “significant” being defined as totaling more than \$25,000 in any particular 12 month period.

Attachment 2

Title 42: Public Health

PART 2—CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS

Section Contents

Subpart A—Introduction

- § 2.1 Statutory authority for confidentiality of drug abuse patient records.
- § 2.2 Statutory authority for confidentiality of alcohol abuse patient records.
- § 2.3 Purpose and effect.
- § 2.4 Criminal penalty for violation.
- § 2.5 Reports of violations.

Subpart B—General Provisions

- § 2.11 Definitions.
- § 2.12 Applicability.
- § 2.13 Confidentiality restrictions.
- § 2.14 Minor patients.
- § 2.15 Incompetent and deceased patients.
- § 2.16 Security for written records.
- § 2.17 Undercover agents and informants.
- § 2.18 Restrictions on the use of identification cards.
- § 2.19 Disposition of records by discontinued programs.
- § 2.20 Relationship to State laws.
- § 2.21 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.
- § 2.22 Notice to patients of Federal confidentiality requirements.
- § 2.23 Patient access and restrictions on use.

Subpart C—Disclosures With Patient's Consent

- § 2.31 Form of written consent.
- § 2.32 Prohibition on redisclosure.
- § 2.33 Disclosures permitted with written consent.
- § 2.34 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs.
- § 2.35 Disclosures to elements of the criminal justice system which have referred patients.

Subpart D—Disclosures Without Patient Consent

- § 2.51 Medical emergencies.
- § 2.52 Research activities.
- § 2.53 Audit and evaluation activities.

Subpart E—Court Orders Authorizing Disclosure and Use

- § 2.61 Legal effect of order.
- § 2.62 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.

- § 2.63 Confidential communications.
- § 2.64 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.
- § 2.65 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.
- § 2.66 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute a program or the person holding the records.
- § 2.67 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of a program.

Authority: Sec. 408 of Pub. L. 92–255, 86 Stat. 79, as amended by sec. 303 (a), (b) of Pub L. 93–282, 83 Stat. 137, 138; sec. 4(c)(5)(A) of Pub. L. 94–237, 90 Stat. 244; sec. 111(c)(3) of Pub. L. 94–581, 90 Stat. 2852; sec. 509 of Pub. L. 96–88, 93 Stat. 695; sec. 973(d) of Pub. L. 97–35, 95 Stat. 598; and transferred to sec. 527 of the Public Health Service Act by sec. 2(b)(16)(B) of Pub. L. 98–24, 97 Stat. 182 and as amended by sec. 106 of Pub. L. 99–401, 100 Stat. 907 (42 U.S.C. 290ee–3) and sec. 333 of Pub. L. 91–616, 84 Stat. 1853, as amended by sec. 122(a) of Pub. L. 93–282, 88 Stat. 131; and sec. 111(c)(4) of Pub. L. 94–581, 90 Stat. 2852 and transferred to sec. 523 of the Public Health Service Act by sec. 2(b)(13) of Pub. L. 98–24, 97 Stat. 181 and as amended by sec. 106 of Pub. L. 99–401, 100 Stat. 907 (42 U.S.C. 290dd–3), as amended by sec. 131 of Pub. L. 102–321, 106 Stat. 368, (42 U.S.C. 290dd–2).

Source: 52 FR 21809, June 9, 1987, unless otherwise noted.

Subpart A—Introduction

§ 2.1 Statutory authority for confidentiality of drug abuse patient records.

The restrictions of these regulations upon the disclosure and use of drug abuse patient records were initially authorized by section 408 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. 1175). That section as amended was transferred by Pub. L. 98–24 to section 527 of the Public Health Service Act which is codified at 42 U.S.C. 290ee–3. The amended statutory authority is set forth below:

§290ee–3. Confidentiality of patient records.

(a) Disclosure authorization

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Purposes and circumstances of disclosure affecting consenting patient and patient regardless of consent

(1) The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Prohibition against use of record in making criminal charges or investigation of patient

Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Continuing prohibition against disclosure irrespective of status as patient

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) Armed Forces and Veterans' Administration; interchange of records; report of suspected child abuse and neglect to State or local authorities

The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Penalty for first and subsequent offenses

Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

(g) Regulations; interagency consultations; definitions, safeguards, and procedures, including procedures and criteria for issuance and scope of orders

Except as provided in subsection (h) of this section, the Secretary, after consultation with the Administrator of Veterans' Affairs and the heads of other Federal departments and agencies substantially affected thereby, shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(Subsection (h) was superseded by section 111(c)(3) of Pub. L. 94–581. The responsibility of the Administrator of Veterans' Affairs to write regulations to provide for confidentiality of drug abuse patient records under Title 38 was moved from 21 U.S.C. 1175 to 38 U.S.C. 4134.)

§ 2.2 Statutory authority for confidentiality of alcohol abuse patient records.

The restrictions of these regulations upon the disclosure and use of alcohol abuse patient records were initially authorized by section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4582). The section as amended was transferred by Pub. L. 98–24 to section 523 of the Public Health Service Act which is codified at 42 U.S.C. 290dd–3. The amended statutory authority is set forth below:

§290dd–3. Confidentiality of patient records

(a) Disclosure authorization

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Purposes and circumstances of disclosure affecting consenting patient and patient regardless of consent

(1) The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Prohibition against use of record in making criminal charges or investigation of patient

Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Continuing prohibition against disclosure irrespective of status as patient

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) Armed Forces and Veterans' Administration; interchange of record of suspected child abuse and neglect to State or local authorities

The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Penalty for first and subsequent offenses

Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

(g) Regulations of Secretary; definitions, safeguards, and procedures, including procedures and criteria for issuance and scope of orders

Except as provided in subsection (h) of this section, the Secretary shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection(b)(2)(C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(Subsection (h) was superseded by section 111(c)(4) of Pub. L. 94-581. The responsibility of the Administrator of Veterans' Affairs to write regulations to provide for confidentiality of alcohol abuse patient records under Title 38 was moved from 42 U.S.C. 4582 to 38 U.S.C. 4134.)

§ 2.3 Purpose and effect.

(a) *Purpose.* Under the statutory provisions quoted in §§2.1 and 2.2, these regulations impose restrictions upon the disclosure and use of alcohol and drug abuse patient records which are maintained in connection with the performance of any federally assisted alcohol and drug abuse program. The regulations specify:

(1) Definitions, applicability, and general restrictions in subpart B (definitions applicable to §2.34 only appear in that section);

(2) Disclosures which may be made with written patient consent and the form of the written consent in subpart C;

(3) Disclosures which may be made without written patient consent or an authorizing court order in subpart D; and

(4) Disclosures and uses of patient records which may be made with an authorizing court order and the procedures and criteria for the entry and scope of those orders in subpart E.

(b) *Effect.* (1) These regulations prohibit the disclosure and use of patient records unless certain circumstances exist. If any circumstance exists under which disclosure is permitted, that circumstance acts to remove the prohibition on disclosure but it does not compel disclosure. Thus, the regulations do not require disclosure under any circumstances.

(2) These regulations are not intended to direct the manner in which substantive functions such as research, treatment, and evaluation are carried out. They are intended to insure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment.

(3) Because there is a criminal penalty (a fine—see 42 U.S.C. 290ee–3(f), 42 U.S.C. 290dd–3(f) and 42 CFR 2.4) for violating the regulations, they are to be construed strictly in favor of the potential violator in the same manner as a criminal statute (see *M. Kraus & Brothers v. United States*, 327 U.S. 614, 621–22, 66 S. Ct. 705, 707–08 (1946)).

§ 2.4 Criminal penalty for violation.

Under 42 U.S.C. 290ee–3(f) and 42 U.S.C. 290dd–3(f), any person who violates any provision of those statutes or these regulations shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

§ 2.5 Reports of violations.

(a) The report of any violation of these regulations may be directed to the United States Attorney for the judicial district in which the violation occurs.

(b) The report of any violation of these regulations by a methadone program may be directed to the Regional Offices of the Food and Drug Administration.

Subpart B—General Provisions

§ 2.11 Definitions.

For purposes of these regulations:

Alcohol abuse means the use of an alcoholic beverage which impairs the physical, mental, emotional, or social well-being of the user.

Drug abuse means the use of a psychoactive substance for other than medicinal purposes which impairs the physical, mental, emotional, or social well-being of the user.

Diagnosis means any reference to an individual's alcohol or drug abuse or to a condition which is identified as having been caused by that abuse which is made for the purpose of treatment or referral for treatment.

Disclose or disclosure means a communication of patient identifying information, the affirmative verification of another person's communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.

Informant means an individual:

(a) Who is a patient or employee of a program or who becomes a patient or employee of a program at the request of a law enforcement agency or official: and

(b) Who at the request of a law enforcement agency or official observes one or more patients or employees of the program for the purpose of reporting the information obtained to the law enforcement agency or official.

Patient means any individual who has applied for or been given diagnosis or treatment for alcohol or drug abuse at a federally assisted program and includes any individual who, after arrest on a criminal charge, is identified as an alcohol or drug abuser in order to determine that individual's eligibility to participate in a program.

Patient identifying information means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a program, if that number does not consist of, or contain numbers (such as a social security, or driver's license number) which could be used to identify a patient with reasonable accuracy and speed from sources external to the program.

Person means an individual, partnership, corporation, Federal, State or local government agency, or any other legal entity.

Program means:

(a) An individual or entity (other than a general medical care facility) who holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or

(b) An identified unit within a general medical facility which holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or

(c) Medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment and who are identified as such providers. (See §2.12(e)(1) for examples.)

Program director means:

(a) In the case of a program which is an individual, that individual:

(b) In the case of a program which is an organization, the individual designated as director, managing director, or otherwise vested with authority to act as chief executive of the organization.

Qualified service organization means a person which:

(a) Provides services to a program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy, and

(b) Has entered into a written agreement with a program under which that person:

(1) Acknowledges that in receiving, storing, processing or otherwise dealing with any patient records from the programs, it is fully bound by these regulations; and

(2) If necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by these regulations.

Records means any information, whether recorded or not, relating to a patient received or acquired by a federally assisted alcohol or drug program.

Third party payer means a person who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of his family or on the basis of the patient's eligibility for Federal, State, or local governmental benefits.

Treatment means the management and care of a patient suffering from alcohol or drug abuse, a condition which is identified as having been caused by that abuse, or both, in order to reduce or eliminate the adverse effects upon the patient.

Undercover agent means an officer of any Federal, State, or local law enforcement agency who enrolls in or becomes an employee of a program for the purpose of investigating a suspected violation of law or who pursues that purpose after enrolling or becoming employed for other purposes.

[52 FR 21809, June 9, 1987, as amended by 60 FR 22297, May 5, 1995]

§ 2.12 Applicability.

(a) *General* —(1) *Restrictions on disclosure.* The restrictions on disclosure in these regulations apply to any information, whether or not recorded, which:

(i) Would identify a patient as an alcohol or drug abuser either directly, by reference to other publicly available information, or through verification of such an identification by another person; and

(ii) Is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972, or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (or if obtained before the pertinent date, is maintained by a federally assisted alcohol or drug abuse program after that date as part of an ongoing treatment episode which extends past that date) for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.

(2) *Restriction on use.* The restriction on use of information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient (42 U.S.C. 290ee-3(c), 42 U.S.C. 290dd-3(c)) applies to any information, whether or not recorded which is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972, or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (or if obtained before the pertinent date, is maintained by a federally assisted alcohol or drug abuse program after that date as part of an ongoing treatment episode which extends past that date), for the purpose of treating alcohol or drug abuse, making a diagnosis for the treatment, or making a referral for the treatment.

(b) *Federal assistance.* An alcohol abuse or drug abuse program is considered to be federally assisted if:

(1) It is conducted in whole or in part, whether directly or by contract or otherwise by any department or agency of the United States (but see paragraphs (c)(1) and (c)(2) of this section relating to the Veterans' Administration and the Armed Forces);

(2) It is being carried out under a license, certification, registration, or other authorization granted by any department or agency of the United States including but not limited to:

(i) Certification of provider status under the Medicare program;

(ii) Authorization to conduct methadone maintenance treatment (see 21 CFR 291.505); or

(iii) Registration to dispense a substance under the Controlled Substances Act to the extent the controlled substance is used in the treatment of alcohol or drug abuse;

(3) It is supported by funds provided by any department or agency of the United States by being:

(i) A recipient of Federal financial assistance in any form, including financial assistance which does not directly pay for the alcohol or drug abuse diagnosis, treatment, or referral activities; or

(ii) Conducted by a State or local government unit which, through general or special revenue sharing or other forms of assistance, receives Federal funds which could be (but are not necessarily) spent for the alcohol or drug abuse program; or

(4) It is assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program.

(c) *Exceptions—* (1) *Veterans' Administration.* These regulations do not apply to information on alcohol and drug abuse patients maintained in connection with the Veterans' Administration provisions of hospital care, nursing home care, domiciliary care, and medical services under title 38, United States Code. Those records are governed by 38 U.S.C. 4132 and regulations issued under that authority by the Administrator of Veterans' Affairs.

(2) *Armed Forces.* These regulations apply to any information described in paragraph (a) of this section which was obtained by any component of the Armed Forces during a period when the patient was subject to the Uniform Code of Military Justice except:

(i) Any interchange of that information within the Armed Forces; and

(ii) Any interchange of that information between the Armed Forces and those components of the Veterans Administration furnishing health care to veterans.

(3) *Communication within a program or between a program and an entity having direct administrative control over that program.* The restrictions on disclosure in these regulations do not apply to communications of information between or among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment, or referral for treatment of alcohol or drug abuse if the communications are

(i) Within a program or

(ii) Between a program and an entity that has direct administrative control over the program.

(4) *Qualified Service Organizations.* The restrictions on disclosure in these regulations do not apply to communications between a program and a qualified service organization of information needed by the organization to provide services to the program.

(5) *Crimes on program premises or against program personnel.* The restrictions on disclosure and use in these regulations do not apply to communications from program personnel to law enforcement officers which—

(i) Are directly related to a patient's commission of a crime on the premises of the program or against program personnel or to a threat to commit such a crime; and

(ii) Are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last known whereabouts.

(6) *Reports of suspected child abuse and neglect.* The restrictions on disclosure and use in these regulations do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities. However, the restrictions continue to apply to the original alcohol or drug abuse patient records maintained by the program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.

(d) *Applicability to recipients of information— (1) Restriction on use of information.* The restriction on the use of any information subject to these regulations to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any person who obtains that information from a federally assisted alcohol or drug abuse program, regardless of the status of the person obtaining the information or of whether the information was obtained in accordance with these regulations. This restriction on use bars, among other things, the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute a patient with respect to a suspected crime. Information obtained by undercover agents or informants (see §2.17) or through patient access (see §2.23) is subject to the restriction on use.

(2) *Restrictions on disclosures — Third party payers, administrative entities, and others.* The restrictions on disclosure in these regulations apply to:

(i) Third party payers with regard to records disclosed to them by federally assisted alcohol or drug abuse programs;

(ii) Entities having direct administrative control over programs with regard to information communicated to them by the program under §2.12(c)(3); and

(iii) Persons who receive patient records directly from a federally assisted alcohol or drug abuse program and who are notified of the restrictions on redisclosure of the records in accordance with §2.32 of these regulations.

(e) *Explanation of applicability— (1) Coverage.* These regulations cover any information (including information on referral and intake) about alcohol and drug abuse patients obtained by a program (as the terms “patient” and “program” are defined in §2.11) if the

program is federally assisted in any manner described in §2.12(b). Coverage includes, but is not limited to, those treatment or rehabilitation programs, employee assistance programs, programs within general hospitals, school-based programs, and private practitioners who hold themselves out as providing, and provide alcohol or drug abuse diagnosis, treatment, or referral for treatment. However, these regulations would not apply, for example, to emergency room personnel who refer a patient to the intensive care unit for an apparent overdose, unless the primary function of such personnel is the provision of alcohol or drug abuse diagnosis, treatment or referral and they are identified as providing such services or the emergency room has promoted itself to the community as a provider of such services.

(2) *Federal assistance to program required.* If a patient's alcohol or drug abuse diagnosis, treatment, or referral for treatment is not provided by a program which is federally conducted, regulated or supported in a manner which constitutes Federal assistance under §2.12(b), that patient's record is not covered by these regulations. Thus, it is possible for an individual patient to benefit from Federal support and not be covered by the confidentiality regulations because the program in which the patient is enrolled is not federally assisted as defined in §2.12(b). For example, if a Federal court placed an individual in a private for-profit program and made a payment to the program on behalf of that individual, that patient's record would not be covered by these regulations unless the program itself received Federal assistance as defined by §2.12(b).

(3) *Information to which restrictions are applicable.* Whether a restriction is on use or disclosure affects the type of information which may be available. The restrictions on disclosure apply to any information which would identify a patient as an alcohol or drug abuser. The restriction on use of information to bring criminal charges against a patient for a crime applies to any information obtained by the program for the purpose of diagnosis, treatment, or referral for treatment of alcohol or drug abuse. (Note that restrictions on use and disclosure apply to recipients of information under §2.12(d).)

(4) *How type of diagnosis affects coverage.* These regulations cover any record of a diagnosis identifying a patient as an alcohol or drug abuser which is prepared in connection with the treatment or referral for treatment of alcohol or drug abuse. A diagnosis prepared for the purpose of treatment or referral for treatment but which is not so used is covered by these regulations. The following are not covered by these regulations:

- (i) Diagnosis which is made solely for the purpose of providing evidence for use by law enforcement authorities; or
- (ii) A diagnosis of drug overdose or alcohol intoxication which clearly shows that the individual involved is not an alcohol or drug abuser (e.g., involuntary ingestion of alcohol or drugs or reaction to a prescribed dosage of one or more drugs).

[52 FR 21809, June 9, 1987; 52 FR 42061, Nov. 2, 1987, as amended at 60 FR 22297, May 5, 1995]

§ 2.13 Confidentiality restrictions.

(a) *General.* The patient records to which these regulations apply may be disclosed or used only as permitted by these regulations and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority. Any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure.

(b) *Unconditional compliance required.* The restrictions on disclosure and use in these regulations apply whether the holder of the information believes that the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by these regulations.

(c) *Acknowledging the presence of patients: Responding to requests.* (1) The presence of an identified patient in a facility or component of a facility which is publicly identified as a place where only alcohol or drug abuse diagnosis, treatment, or referral is provided may be acknowledged only if the patient's written consent is obtained in accordance with subpart C of these regulations or if an authorizing court order is entered in accordance with subpart E of these regulations. The regulations permit acknowledgement of the presence of an identified patient in a facility or part of a facility if the facility is not publicly identified as only an alcohol or drug abuse diagnosis, treatment or referral facility, and if the acknowledgement does not reveal that the patient is an alcohol or drug abuser.

(2) Any answer to a request for a disclosure of patient records which is not permissible under these regulations must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for alcohol or drug abuse. An inquiring party may be given a copy of these regulations and advised that they restrict the disclosure of alcohol or drug abuse patient records, but may not be told affirmatively that the regulations restrict the disclosure of the records of an identified patient. The regulations do not restrict a disclosure that an identified individual is not and never has been a patient.

§ 2.14 Minor patients.

(a) *Definition of minor.* As used in these regulations the term “minor” means a person who has not attained the age of majority specified in the applicable State law, or if no age of majority is specified in the applicable State law, the age of eighteen years.

(b) *State law not requiring parental consent to treatment.* If a minor patient acting alone has the legal capacity under the applicable State law to apply for and obtain alcohol or drug abuse treatment, any written consent for disclosure authorized under subpart C of these regulations may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. These regulations do not prohibit a program from refusing to provide treatment until the minor

patient consents to the disclosure necessary to obtain reimbursement, but refusal to provide treatment may be prohibited under a State or local law requiring the program to furnish the service irrespective of ability to pay.

(c) *State law requiring parental consent to treatment.* (1) Where State law requires consent of a parent, guardian, or other person for a minor to obtain alcohol or drug abuse treatment, any written consent for disclosure authorized under subpart C of these regulations must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor's behalf.

(2) Where State law requires parental consent to treatment the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf only if:

(i) The minor has given written consent to the disclosure in accordance with subpart C of these regulations or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the program director under paragraph (d) of this section.

(d) *Minor applicant for services lacks capacity for rational choice.* Facts relevant to reducing a threat to the life or physical well being of the applicant or any other individual may be disclosed to the parent, guardian, or other person authorized under State law to act in the minor's behalf if the program director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under subpart C of these regulations to his or her parent, guardian, or other person authorized under State law to act in the minor's behalf, and

(2) The applicant's situation poses a substantial threat to the life or physical well being of the applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf.

§ 2.15 Incompetent and deceased patients.

(a) *Incompetent patients other than minors* —(1) *Adjudication of incompetence.* In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his or her own affairs, any consent which is required under these regulations may be given by the guardian or other person authorized under State law to act in the patient's behalf.

(2) *No adjudication of incompetency.* For any period for which the program director determines that a patient, other than a minor or one who has been adjudicated incompetent, suffers from a medical condition that prevents knowing or effective action

on his or her own behalf, the program director may exercise the right of the patient to consent to a disclosure under subpart C of these regulations for the sole purpose of obtaining payment for services from a third party payer.

(b) *Deceased patients* —(1) *Vital statistics*. These regulations do not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

(2) *Consent by personal representative*. Any other disclosure of information identifying a deceased patient as an alcohol or drug abuser is subject to these regulations. If a written consent to the disclosure is required, that consent may be given by an executor, administrator, or other personal representative appointed under applicable State law. If there is no such appointment the consent may be given by the patient's spouse or, if none, by any responsible member of the patient's family.

§ 2.16 Security for written records.

(a) Written records which are subject to these regulations must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use; and

(b) Each program shall adopt in writing procedures which regulate and control access to and use of written records which are subject to these regulations.

§ 2.17 Undercover agents and informants.

(a) *Restrictions on placement*. Except as specifically authorized by a court order granted under §2.67 of these regulations, no program may knowingly employ, or enroll as a patient, any undercover agent or informant.

(b) *Restriction on use of information*. No information obtained by an undercover agent or informant, whether or not that undercover agent or informant is placed in a program pursuant to an authorizing court order, may be used to criminally investigate or prosecute any patient.

[52 FR 21809, June 9, 1987; 52 FR 42061, Nov. 2, 1987]

§ 2.18 Restrictions on the use of identification cards.

No person may require any patient to carry on his or her person while away from the program premises any card or other object which would identify the patient as an alcohol or drug abuser. This section does not prohibit a person from requiring patients to use or carry cards or other identification objects on the premises of a program.

§ 2.19 Disposition of records by discontinued programs.

(a) *General.* If a program discontinues operations or is taken over or acquired by another program, it must purge patient identifying information from its records or destroy the records unless—

(1) The patient who is the subject of the records gives written consent (meeting the requirements of §2.31) to a transfer of the records to the acquiring program or to any other program designated in the consent (the manner of obtaining this consent must minimize the likelihood of a disclosure of patient identifying information to a third party); or

(2) There is a legal requirement that the records be kept for a period specified by law which does not expire until after the discontinuation or acquisition of the program.

(b) *Procedure where retention period required by law.* If paragraph (a)(2) of this section applies, the records must be:

(1) Sealed in envelopes or other containers labeled as follows: “Records of [insert name of program] required to be maintained under [insert citation to statute, regulation, court order or other legal authority requiring that records be kept] until a date not later than [insert appropriate date]”; and

(2) Held under the restrictions of these regulations by a responsible person who must, as soon as practicable after the end of the retention period specified on the label, destroy the records.

§ 2.20 Relationship to State laws.

The statutes authorizing these regulations (42 U.S.C. 290ee–3 and 42 U.S.C. 290dd–3) do not preempt the field of law which they cover to the exclusion of all State laws in that field. If a disclosure permitted under these regulations is prohibited under State law, neither these regulations nor the authorizing statutes may be construed to authorize any violation of that State law. However, no State law may either authorize or compel any disclosure prohibited by these regulations.

§ 2.21 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity

(a) *Research privilege description.* There may be concurrent coverage of patient identifying information by these regulations and by administrative action taken under: Section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a) and the implementing regulations at 42 CFR part 2a); or section 502(c) of the Controlled Substances Act (21 U.S.C. 872(c) and the implementing regulations at 21 CFR 1316.21). These “research privilege” statutes confer on the Secretary of Health and Human Services and on the Attorney General, respectively, the power to authorize researchers conducting certain types of research to withhold from all persons not connected with the research the names and other identifying information concerning individuals who are the subjects of the research.

(b) *Effect of concurrent coverage.* These regulations restrict the disclosure and use of information about patients, while administrative action taken under the research privilege statutes and implementing regulations protects a person engaged in applicable research from being compelled to disclose any identifying characteristics of the individuals who are the subjects of that research. The issuance under subpart E of these regulations of a court order authorizing a disclosure of information about a patient does not affect an exercise of authority under these research privilege statutes. However, the research privilege granted under 21 CFR 291.505(g) to treatment programs using methadone for maintenance treatment does not protect from compulsory disclosure any information which is permitted to be disclosed under those regulations. Thus, if a court order entered in accordance with subpart E of these regulations authorizes a methadone maintenance treatment program to disclose certain information about its patients, that program may not invoke the research privilege under 21 CFR 291.505(g) as a defense to a subpoena for that information.

§ 2.22 Notice to patients of Federal confidentiality requirements.

(a) *Notice required.* At the time of admission or as soon thereafter as the patient is capable of rational communication, each program shall:

- (1) Communicate to the patient that Federal law and regulations protect the confidentiality of alcohol and drug abuse patient records; and
- (2) Give to the patient a summary in writing of the Federal law and regulations.

(b) *Required elements of written summary.* The written summary of the Federal law and regulations must include:

- (1) A general description of the limited circumstances under which a program may acknowledge that an individual is present at a facility or disclose outside the program information identifying a patient as an alcohol or drug abuser.
- (2) A statement that violation of the Federal law and regulations by a program is a crime and that suspected violations may be reported to appropriate authorities in accordance with these regulations.
- (3) A statement that information related to a patient's commission of a crime on the premises of the program or against personnel of the program is not protected.
- (4) A statement that reports of suspected child abuse and neglect made under State law to appropriate State or local authorities are not protected.
- (5) A citation to the Federal law and regulations.

(c) *Program options.* The program may devise its own notice or may use the sample notice in paragraph (d) to comply with the requirement to provide the patient with a

summary in writing of the Federal law and regulations. In addition, the program may include in the written summary information concerning State law and any program policy not inconsistent with State and Federal law on the subject of confidentiality of alcohol and drug abuse patient records.

(d) *Sample notice.*

Confidentiality of Alcohol and Drug Abuse Patient Records

The confidentiality of alcohol and drug abuse patient records maintained by this program is protected by Federal law and regulations. Generally, the program may not say to a person outside the program that a patient attends the program, or disclose any information identifying a patient as an alcohol or drug abuser
Unless:

- (1) The patient consents in writing;
- (2) The disclosure is allowed by a court order; or
- (3) The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation.

Violation of the Federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with Federal regulations.

Federal law and regulations do not protect any information about a crime committed by a patient either at the program or against any person who works for the program or about any threat to commit such a crime.

Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under State law to appropriate State or local authorities.

(See 42 U.S.C. 290dd-3 and 42 U.S.C. 290ee-3 for Federal laws and 42 CFR part 2 for Federal regulations.)

(Approved by the Office of Management and Budget under control number 0930-0099)

§ 2.23 Patient access and restrictions on use.

(a) *Patient access not prohibited.* These regulations do not prohibit a program from giving a patient access to his or her own records, including the opportunity to inspect and copy any records that the program maintains about the patient. The program is not required to obtain a patient's written consent or other authorization under these regulations in order to provide such access to the patient.

(b) *Restriction on use of information.* Information obtained by patient access to his or her patient record is subject to the restriction on use of his information to initiate or substantiate any criminal charges against the patient or to conduct any criminal investigation of the patient as provided for under §2.12(d)(1).

Subpart C—Disclosures With Patient's Consent

§ 2.31 Form of written consent.

(a) *Required elements.* A written consent to a disclosure under these regulations must include:

(1) The specific name or general designation of the program or person permitted to make the disclosure.

(2) The name or title of the individual or the name of the organization to which disclosure is to be made.

(3) The name of the patient.

(4) The purpose of the disclosure.

(5) How much and what kind of information is to be disclosed.

(6) The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under §2.14; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under §2.15 in lieu of the patient.

(7) The date on which the consent is signed.

(8) A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.

(9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

(b) *Sample consent form.* The following form complies with paragraph (a) of this section, but other elements may be added.

1. I (name of patient) Request Authorize:

2. (name or general designation of program which is to make the disclosure)

3. To disclose: (kind and amount of information to be disclosed)

4. To: (name or title of the person or organization to which disclosure is to be made)

5. For (purpose of the disclosure)

6. Date (on which this consent is signed)

7. Signature of patient

8. Signature of parent or guardian (where required)

9. Signature of person authorized to sign in lieu of the patient (where required)

10. This consent is subject to revocation at any time except to the extent that the program which is to make the disclosure has already taken action in reliance on it. If not previously revoked, this consent will terminate upon: (specific date, event, or condition)

(c) *Expired, deficient, or false consent.* A disclosure may not be made on the basis of a consent which:

(1) Has expired;

(2) On its face substantially fails to conform to any of the requirements set forth in paragraph (a) of this section;

(3) Is known to have been revoked; or

(4) Is known, or through a reasonable effort could be known, by the person holding the records to be materially false.

(Approved by the Office of Management and Budget under control number 0930-0099)

§ 2.32 Prohibition on redisclosure.

Notice to accompany disclosure. Each disclosure made with the patient's written consent must be accompanied by the following written statement:

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise

permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

[52 FR 21809, June 9, 1987; 52 FR 41997, Nov. 2, 1987]

§ 2.33 Disclosures permitted with written consent.

If a patient consents to a disclosure of his or her records under §2.31, a program may disclose those records in accordance with that consent to any individual or organization named in the consent, except that disclosures to central registries and in connection with criminal justice referrals must meet the requirements of §§2.34 and 2.35, respectively.

§ 2.34 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs

(a) *Definitions.* For purposes of this section:

Central registry means an organization which obtains from two or more member programs patient identifying information about individuals applying for maintenance treatment or detoxification treatment for the purpose of avoiding an individual's concurrent enrollment in more than one program.

Detoxification treatment means the dispensing of a narcotic drug in decreasing doses to an individual in order to reduce or eliminate adverse physiological or psychological effects incident to withdrawal from the sustained use of a narcotic drug.

Maintenance treatment means the dispensing of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

Member program means a detoxification treatment or maintenance treatment program which reports patient identifying information to a central registry and which is in the same State as that central registry or is not more than 125 miles from any border of the State in which the central registry is located.

(b) *Restrictions on disclosure.* A program may disclose patient records to a central registry or to any detoxification or maintenance treatment program not more than 200 miles away for the purpose of preventing the multiple enrollment of a patient only if:

(1) The disclosure is made when:

(i) The patient is accepted for treatment;

(ii) The type or dosage of the drug is changed; or

(iii) The treatment is interrupted, resumed or terminated.

(2) The disclosure is limited to:

- (i) Patient identifying information;
- (ii) Type and dosage of the drug; and
- (iii) Relevant dates.

(3) The disclosure is made with the patient's written consent meeting the requirements of §2.31, except that:

(i) The consent must list the name and address of each central registry and each known detoxification or maintenance treatment program to which a disclosure will be made; and

(ii) The consent may authorize a disclosure to any detoxification or maintenance treatment program established within 200 miles of the program after the consent is given without naming any such program.

(c) *Use of information limited to prevention of multiple enrollments.* A central registry and any detoxification or maintenance treatment program to which information is disclosed to prevent multiple enrollments may not redisclose or use patient identifying information for any purpose other than the prevention of multiple enrollments unless authorized by a court order under subpart E of these regulations.

(d) *Permitted disclosure by a central registry to prevent a multiple enrollment.* When a member program asks a central registry if an identified patient is enrolled in another member program and the registry determines that the patient is so enrolled, the registry may disclose—

(1) The name, address, and telephone number of the member program(s) in which the patient is already enrolled to the inquiring member program; and

(2) The name, address, and telephone number of the inquiring member program to the member program(s) in which the patient is already enrolled. The member programs may communicate as necessary to verify that no error has been made and to prevent or eliminate any multiple enrollment.

(e) *Permitted disclosure by a detoxification or maintenance treatment program to prevent a multiple enrollment.* A detoxification or maintenance treatment program which has received a disclosure under this section and has determined that the patient is already enrolled may communicate as necessary with the program making the disclosure to verify that no error has been made and to prevent or eliminate any multiple enrollment.

§ 2.35 Disclosures to elements of the criminal justice system which have referred patients.

(a) A program may disclose information about a patient to those persons within the criminal justice system which have made participation in the program a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody if:

(1) The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress (e.g., a prosecuting attorney who is withholding charges against the patient, a court granting pretrial or post trial release, probation or parole officers responsible for supervision of the patient); and

(2) The patient has signed a written consent meeting the requirements of §2.31 (except paragraph (a)(8) which is inconsistent with the revocation provisions of paragraph (c) of this section) and the requirements of paragraphs (b) and (c) of this section.

(b) *Duration of consent.* The written consent must state the period during which it remains in effect. This period must be reasonable, taking into account:

(1) The anticipated length of the treatment;

(2) The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when the final disposition will occur; and

(3) Such other factors as the program, the patient, and the person(s) who will receive the disclosure consider pertinent.

(c) *Revocation of consent.* The written consent must state that it is revocable upon the passage of a specified amount of time or the occurrence of a specified, ascertainable event. The time or occurrence upon which consent becomes revocable may be no later than the final disposition of the conditional release or other action in connection with which consent was given.

(d) *Restrictions on redisclosure and use.* A person who receives patient information under this section may redisclose and use it only to carry out that person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given.

Subpart D—Disclosures Without Patient Consent

§ 2.51 Medical emergencies.

(a) *General Rule.* Under the procedures required by paragraph (c) of this section, patient identifying information may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.

(b) *Special Rule.* Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.

(c) *Procedures.* Immediately following disclosure, the program shall document the disclosure in the patient's records, setting forth in writing:

- (1) The name of the medical personnel to whom disclosure was made and their affiliation with any health care facility;
- (2) The name of the individual making the disclosure;
- (3) The date and time of the disclosure; and
- (4) The nature of the emergency (or error, if the report was to FDA).

(Approved by the Office of Management and Budget under control number 0930–0099)

§ 2.52 Research activities

(a) Patient identifying information may be disclosed for the purpose of conducting scientific research if the program director makes a determination that the recipient of the patient identifying information:

- (1) Is qualified to conduct the research;
- (2) Has a research protocol under which the patient identifying information:
 - (i) Will be maintained in accordance with the security requirements of §2.16 of these regulations (or more stringent requirements); and
 - (ii) Will not be redisclosed except as permitted under paragraph (b) of this section; and
- (3) Has provided a satisfactory written statement that a group of three or more individuals who are independent of the research project has reviewed the protocol and determined that:
 - (i) The rights and welfare of patients will be adequately protected; and
 - (ii) The risks in disclosing patient identifying information are outweighed by the potential benefits of the research.

(b) A person conducting research may disclose patient identifying information obtained under paragraph (a) of this section only back to the program from which that information

was obtained and may not identify any individual patient in any report of that research or otherwise disclose patient identities.

[52 FR 21809, June 9, 1987, as amended at 52 FR 41997, Nov. 2, 1987]

§ 2.53 Audit and evaluation activities

(a) *Records not copied or removed.* If patient records are not copied or removed, patient identifying information may be disclosed in the course of a review of records on program premises to any person who agrees in writing to comply with the limitations on redisclosure and use in paragraph (d) of this section and who:

(1) Performs the audit or evaluation activity on behalf of:

(i) Any Federal, State, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities; or

(ii) Any private person which provides financial assistance to the program, which is a third party payer covering patients in the program, or which is a quality improvement organization performing a utilization or quality control review; or

(2) Is determined by the program director to be qualified to conduct the audit or evaluation activities.

(b) *Copying or removal of records.* Records containing patient identifying information may be copied or removed from program premises by any person who:

(1) Agrees in writing to:

(i) Maintain the patient identifying information in accordance with the security requirements provided in §2.16 of these regulations (or more stringent requirements);

(ii) Destroy all the patient identifying information upon completion of the audit or evaluation; and

(iii) Comply with the limitations on disclosure and use in paragraph (d) of this section; and

(2) Performs the audit or evaluation activity on behalf of:

(i) Any Federal, State, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities; or

(ii) Any private person which provides financial assistance to the program, which is a third part payer covering patients in the program, or which is a quality improvement organization performing a utilization or quality control review.

(c) *Medicare or Medicaid audit or evaluation.* (1) For purposes of Medicare or Medicaid audit or evaluation under this section, audit or evaluation includes a civil or administrative investigation of the program by any Federal, State, or local agency responsible for oversight of the Medicare or Medicaid program and includes administrative enforcement, against the program by the agency, of any remedy authorized by law to be imposed as a result of the findings of the investigation.

(2) Consistent with the definition of program in §2.11, program includes an employee of, or provider of medical services under, the program when the employee or provider is the subject of a civil investigation or administrative remedy, as those terms are used in paragraph (c)(1) of this section.

(3) If a disclosure to a person is authorized under this section for a Medicare or Medicaid audit or evaluation, including a civil investigation or administrative remedy, as those terms are used in paragraph (c)(1) of this section, then a quality improvement organization which obtains the information under paragraph (a) or (b) may disclose the information to that person but only for purposes of Medicare or Medicaid audit or evaluation.

(4) The provisions of this paragraph do not authorize the agency, the program, or any other person to disclose or use patient identifying information obtained during the audit or evaluation for any purposes other than those necessary to complete the Medicare or Medicaid audit or evaluation activity as specified in this paragraph.

(d) *Limitations on disclosure and use.* Except as provided in paragraph (c) of this section, patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by a court order entered under §2.66 of these regulations.

Subpart E—Court Orders Authorizing Disclosure and Use

§ 2.61 Legal effect of order

(a) *Effect.* An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by 42 U.S.C. 290ee–3, 42 U.S.C. 290dd–3 and these regulations. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as and accompany an authorizing court order entered under these regulations.

(b) *Examples.* (1) A person holding records subject to these regulations receives a subpoena for those records: a response to the subpoena is not permitted under the regulations unless an authorizing court order is entered. The person may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under these regulations.

(2) An authorizing court order is entered under these regulations, but the person authorized does not want to make the disclosure. If there is no subpoena or other compulsory process or a subpoena for the records has expired or been quashed, that person may refuse to make the disclosure. Upon the entry of a valid subpoena or other compulsory process the person authorized to disclose must disclose, unless there is a valid legal defense to the process other than the confidentiality restrictions of these regulations.

[52 FR 21809, June 9, 1987; 52 FR 42061, Nov. 2, 1987]

§ 2.62 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.

A court order under these regulations may not authorize qualified personnel, who have received patient identifying information without consent for the purpose of conducting research, audit or evaluation, to disclose that information or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under §2.66 may authorize disclosure and use of records to investigate or prosecute qualified personnel holding the records.

§ 2.63 Confidential communications.

(a) A court order under these regulations may authorize disclosure of confidential communications made by a patient to a program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

(b) [Reserved]

§ 2.64 Procedures and criteria for orders authorizing disclosures for noncriminal purposes

(a) *Application.* An order authorizing the disclosure of patient records for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the patient records

are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given a written consent (meeting the requirements of these regulations) to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice.* The patient and the person holding the records from whom disclosure is sought must be given:

(1) Adequate notice in a manner which will not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Review of evidence: Conduct of hearing.* Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record, unless the patient requests an open hearing in a manner which meets the written consent requirements of these regulations. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria for entry of order.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) *Content of order.* An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

§ 2.65 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.

(a) *Application.* An order authorizing the disclosure or use of patient records to criminally investigate or prosecute a patient may be applied for by the person holding the records or by any person conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice and hearing.* Unless an order under §2.66 is sought with an order under this section, the person holding the records must be given:

- (1) Adequate notice (in a manner which will not disclose patient identifying information to third parties) of an application by a person performing a law enforcement function;
- (2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order; and
- (3) An opportunity to be represented by counsel independent of counsel for an applicant who is a person performing a law enforcement function.

(c) *Review of evidence: Conduct of hearings.* Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or the person holding the records. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria.* A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

- (1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.
- (2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.
- (3) Other ways of obtaining the information are not available or would not be effective.
- (4) The potential injury to the patient, to the physician-patient relationship and to the ability of the program to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a person performing a law enforcement function that:

(i) The person holding the records has been afforded the opportunity to be represented by independent counsel; and

(ii) Any person holding the records which is an entity within Federal, State, or local government has in fact been represented by counsel independent of the applicant.

(e) *Content of order.* Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crime or suspected crime specified in the application; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment of only that public interest and need found by the court.

[52 FR 21809, June 9, 1987; 52 FR 42061, Nov. 2, 1987]

§ 2.66 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute a program or the person holding the records.

(a) *Application.* (1) An order authorizing the disclosure or use of patient records to criminally or administratively investigate or prosecute a program or the person holding the records (or employees or agents of that program or person) may be applied for by any administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over the program's or person's activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against a program or the person holding the records (or agents or employees of the program or person) in which it appears that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has given a written consent (meeting the requirements of §2.31 of these regulations) to that disclosure.

(b) *Notice not required.* An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to the program, to the person holding the records, or to any patient whose records are to be disclosed, upon implementation of an order so granted any of the above persons must be afforded an

opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Requirements for order.* An order under this section must be entered in accordance with, and comply with the requirements of, paragraphs (d) and (e) of §2.64 of these regulations.

(d) *Limitations on disclosure and use of patient identifying information:* (1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under §2.65 of these regulations.

§ 2.67 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of a program.

(a) *Application.* A court order authorizing the placement of an undercover agent or informant in a program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the program are engaged in criminal misconduct.

(b) *Notice.* The program director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order), unless the application asserts a belief that:

(1) The program director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The program director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) *Criteria.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of the program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the program outweigh the potential injury to patients of the program, physician-patient relationships and the treatment services.

(d) *Content of order.* An order authorizing the placement of an undercover agent or informant in a program must:

- (1) Specifically authorize the placement of an undercover agent or an informant;
- (2) Limit the total period of the placement to six months;
- (3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the program; and
- (4) Include any other measures which are appropriate to limit any potential disruption of the program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(e) *Limitation on use of information.* No information obtained by an undercover agent or informant placed under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under §2.65 of these regulations.

Attachment 3

STATE OF CALIFORNIA - HEALTH AND HUMAN SERVICES AGENCY

Department of Health Care Services

MC 1982 C: Medi-Cal Specialty Mental Health Services Monthly Claim for Reimbursement -
Quality Assurance/Utilization Review (QA/UR) Cost

Instructions

Heading Instructions:

Enter the date the claim form is submitted, the County Code, the name of the County, the County Legal Entity number, the fiscal year and the month in which the Quality Assurance/Utilization Review expenditures were incurred. Complete one claim for each quarter.

Line Item Instructions

Round all figures to the nearest cents.

Lines 1 to 4: Enter amounts expended for skilled professional medical personnel and their direct support staff in Column A.

Lines 1 to 7: Enter the amounts expended for non-medical professionals and non-enhanced clerical staff in Column B.

Line 8: The total expended is shown for each program. No entry required.

Line 9 to 11: Enter Performance Outcome Systems (POS) amounts expended for skilled professional medical personnel and their direct support staff in Column A. Enter the amounts expended for non-medical professionals and non-enhanced clerical staff in Column B. The non-federal share is reimbursed with 100% State General Fund (SGF).

Line 12: Enter Foster Family Agency (FFA) amounts expended for skilled professional medical personnel and their direct support staff in Column A. Enter the amounts expended for non-medical professionals and non-enhanced clerical staff in

Line 13: Enter the total Federal Medicaid Managed Care Final Rule and Parity Rule amounts expended for skilled professional medical personnel and their direct support staff in Column A. Enter the amounts expended for non-medical professionals and non-enhanced clerical staff in Column B. The non-federal share is shared between the County and DHCS. 50% County Funds and 50% SGF.

Line 14: The total expended is shown for each program. No entry required.

Line 15: Enter the percentage of time staff spent on QA/UR activities.

Line 16: Enter the percentage of time spent on Medi-Cal QA/UR. If your county only provides QA/UR only for Medi-Cal patients, then enter 100 percent. If your county provides quality assurance activities for all patients, then the percentage of Medi-Cal patients will be used here.

Line 17: The relevant Federal Medical Assistance Percentage (FMAP) is shown for each program. No entry required.

Line 18: The State General Fund for POS, FFA, and Managed Care Final Rule is computed. No entry required.

Line 19: The Federal Financial Participation for each program is computed. No entry required.

Certifications:

Each claim form must include the signed certification of the Local Mental Health Director and either the County Auditor-Controller, City Finance Officer, or the Local Mental Health Accounting Officer.

Send all claims to: 1982Cclaim@dhcs.ca.gov