



AMENDMENT NO. 02 TO DATA SHARING AGREEMENT

Between

Partnership HealthPlan of California ("PHC")

And

Mendocino County, Public Health

September 21, 2018

This amendment (the "Amendment") is made by Partnership HealthPlan of California ("PHC") and Mendocino County, Public Health, parties to the Data Services Agreement for receiving health information, records to the extent necessary for Mendocino County Whole Person Care ("WPC") Pilot Program to identify the proposed target population to conduct case management and care coordination, as set forth in their approved WPC grant application ("Agreement") dated September 21, 2018. This Amendment is to be effective January 1, 2023.

RECITALS

WHEREAS, the Parties entered into a Data Sharing Agreement dated September 21, 2018;

WHEREAS, the Parties entered into Amendment No. 01 to revise the terms of the Agreement, specifically Section 5 and Section 17 on September 1, 2021;

WHEREAS, the Parties desire to amend the terms of the Agreement as set forth below:

1. Section 17: The first sentence in Section 17 is hereby removed and is replaced with the following new first sentence:

Term: The term of the Agreement shall remain in effect until December 31, 2023.

2. Attachment A – Business Associate Agreement is hereby deleted in its entirety and replaced with a new Business Associate Agreement attached herein.

FURTHERMORE, except as specifically modified and amended hereby, all of the terms, provisions, requirements and specifications contained in the Agreement will remain in full force and effect.

This Amendment may be executed by electronic signature or in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one agreement.

IN WITNESS THEREOF, the Parties hereto have caused their duly authorized representatives to execute this Amendment to be effective the date indicated above.

**PARTNERSHIP HEALTHPLAN
OF CALIFORNIA "PHC"**

MENDOCINO COUNTY, PUBLIC HEALTH

By: _____

By:  _____

Name: _____

Name: Jenine Miller, Psy.D. _____

Title: _____

Title: Interim Public Health Director _____

Date: _____

Date: Jun 9, 2023 _____

ATTACHMENT A
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”), effective as of January 1, 2023 (“Effective Date”) is entered into by and between PARTNERSHIP HEALTHPLAN OF CALIFORNIA (the “Plan” or “Covered Entity”) and MENDOCINO COUNTY, PUBLIC HEALTH (“Business Associate”). PARTNERSHIP HEALTHPLAN OF CALIFORNIA and MENDOCINO COUNTY, PUBLIC HEALTH may be referred to individually as a “Party” or collectively as “Parties.”

WHEREAS, the Parties have entered into a Data Sharing Agreement effective September 21, 2018 (“Agreement”) which may require Business Associate’s use or disclosure of protected health information (“PHI”) in performance of the services described in the Agreement on behalf of the Plan.

WHEREAS, the Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health (“HITECH”) Act and any regulations promulgated thereunder (collectively the “HIPAA Rules”), and other applicable State and federal laws, including but not limited to, the California Confidentiality of Medical Information Act (“CMIA”), California Health and Safety Code §1280.15, the Information Practices Act located at California Civil Code § 1798.82 et seq., Confidentiality of Alcohol and Drug Abuse Patient Records located at 42 CFR Part 2, California Welfare and Institutions Code § 5328, and California Health and Safety Code § 11845.5 as amended from time to time (collectively referred to as the “Privacy Rules”).

WHEREAS, this BAA, in conjunction with the HIPAA Rules, sets forth the terms and conditions pursuant to which PHI (in any format) that is created, received, maintained, or transmitted by, the Business Associate from or on behalf of the Plan, will be handled between the Business Associate, the Plan and with third parties during the term of the Agreement(s) and after its termination.

WHEREAS, Covered Entity has a Medi-Cal contract (“Medi-Cal Contract”) with the California Department of Health Care Services (“DHCS”), pursuant to which Covered Entity provides services or arranges, performs or assists in the performance of functions or activities on behalf of DHCS, and may create, receive, maintain, transmit, aggregate, use or disclose PHI in order to fulfill Covered Entity’s obligations under the Medi-Cal Contract. As a subcontractor of Covered Entity, Business Associate will be assisting in the performance of functions or activities on behalf of DHCS, and may create, receive, maintain, transmit, aggregate, use or disclose PHI in order to help fulfill Covered Entity’s obligations under the Medi-Cal Contract and its own obligations under the Agreement.

NOW THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS

- 1.1 The following terms used in this BAA shall have the same meaning as those terms in the HIPAA Rules: Availability, Breach, Confidentiality, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Integrity, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

2. SPECIFIC DEFINITIONS

- 2.1 "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this BAA, shall mean MENDOCINO COUNTY, PUBLIC HEALTH.
- 2.2 "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this BAA, shall mean PARTNERSHIP HEALTHPLAN OF CALIFORNIA.
- 2.3 "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 and HITECH.
- 2.4 "Services" shall mean, to the extent and only to the extent they involve the creation, use or disclosure of PHI, the services provided by Business Associate to the Plan under the Agreement, including those set forth in this BAA, as amended by written consent of the parties from time to time.

3. RESPONSIBILITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- 3.1 Not use or disclose PHI or other confidential information other than as permitted or required by the BAA or as required by law;
- 3.2 Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the BAA;
- 3.3 Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits on behalf of the Plan. Business Associate shall comply with the applicable standards at Subpart C of 45 CFR Part 164. Such safeguards shall be based on applicable Federal Information Processing Standards (FIPS) Publication 199 protection levels;
- 3.4 Identify the security official who is responsible for the development and implementation of the policies and procedures required by 45 CFR Part 164, Subpart C;
- 3.5 Shall, at a minimum, utilize an industry-recognized security framework when selecting and implementing its security controls, and shall maintain continuous compliance with its selected framework;
- 3.6 Apply security patches and upgrades, and keep virus software up-to-date, on all systems on which PHI and other confidential information may be used;
- 3.7 Employ FIPS 140-2 compliant encryption of PHI at rest and in motion unless Business Associate determines it is not reasonable and appropriate to do so based upon a risk assessment, and equivalent alternative measures are in place and documented as such. In addition, Business Associate shall maintain, at a minimum, the most current industry standards for transmission and storage of PHI and other confidential information;
- 3.8 Immediately report to the Plan any use or disclosure of PHI not provided for by the BAA of which it becomes aware, including, but not limited to, Breaches or suspected Breaches of unsecured PHI under 45

CFR 164.410, and any Security Incident or suspected Security Incidents of PHI or confidential information which it becomes aware. Business Associate shall report the improper or unauthorized use or disclosure of PHI or potential loss of confidential information within 24 hours to the Plan. Business Associate shall immediately investigate any suspected Security Incident or Breach. Business Associate shall provide Covered Entity with all requested information so Covered Entity may comply with its reporting obligations to DHCS per the Medi-Cal Contract and all required Breach notifications. Business Associate shall mitigate, to the extent practicable, any harmful effects that is known to Business Associate of such Breach or Security Incident of PHI or other confidential information in violation of this BAA. Business Associate shall indemnify Covered Entity against any losses, damages, expenses or other liabilities including reasonable attorney's fees incurred as a result of Business Associate's or its agent's or Subcontractor's unauthorized use or disclosure of PHI including, but not limited to, the costs of notifying individuals affected by a Breach;

- 3.9 In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors, agents, vendors, or others that create, receive, maintain, or transmit PHI and/or confidential information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- 3.10 Make available PHI in a designated record set to the Plan as necessary to satisfy the Plan's obligations under 45 CFR 164.524;
- 3.11 Make any amendment(s) to PHI in a designated record set as directed or agreed to by the Plan pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy the Plan's obligations under 45 CFR 164.526;
- 3.12 Forward any requests from a Plan member for access to records maintained in accordance with the BAA as soon as they are received. The Plan will maintain responsibility for making determinations regarding access to records;
- 3.13 Direct any requests for an amendment from an individual as soon as they are received to the Plan. The Business Associate will incorporate any amendments from the Plan immediately upon direction from the covered entity;
- 3.14 Maintain and make available the information required to provide an accounting of disclosures to the Plan as necessary to satisfy the Plan's obligations under 45 CFR 164.528;
- 3.15 Forward any requests from a Plan member for an accounting of disclosures maintained in accordance with the BAA as soon as they are received. The Plan will maintain responsibility for making determinations regarding the provision of an accounting of disclosures;
- 3.16 To the extent the Business Associate is to carry out one or more of the Plan's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s);

- 3.17 Make its internal practices, books, and records available to Covered Entity, the Secretary, and DHCS upon reasonable request for purposes of determining compliance with the HIPAA Rules. Make its facilities and systems available to DHCS to monitor compliance with the Medi-Cal Contract;
- 3.18 Ensure that all members of its Workforce with access to PHI and/or other confidential information sign a confidentiality statement prior to access to such data. The confidentiality statement must be renewed annually;
- 3.19 Agree to comply with DHCS's monitoring provisions contained in the Medi-Cal Contract;
- 3.20 Agree to comply with the more protective of the privacy and security standards defined herein as Privacy Rules. Therefore, to the extent other applicable state laws or federal laws provide a greater degree of protection and security than HIPAA or are more favorable to the individuals whose information is concerned, Business Associate shall comply with the more protective applicable privacy and security standards. Business Associate shall treat any violation of the more protective standards as a Breach or Security Incident pursuant to Section 3.8 herein;
- 3.21 In the event Business Associate received data from Covered Entity that was verified by or provided by Social Security Administration ("SSA") and is subject to an agreement between DHCS and SSA, upon request, Business Associate shall provide Covered Entity with a list of all employees and agents who have access to such data, including employees and agents of its agents, so that Covered Entity can submit this list to DHCS. Business Associate shall notify Covered Entity immediately upon the discovery of a suspected breach or security incident that involves SSA data;
- 3.22 Shall promptly report to Covered Entity if Business Associate is the subject of any audit, compliance review, investigation, or any proceeding that is related to the performance of its obligations pursuant to the Agreement, so Covered Entity can report this information to DHCS per the Medi-Cal Contract;
- 3.23 Shall promptly report to Covered Entity if Business Associate is the subject of any judicial or administrative proceeding alleging a violation of HIPAA, Business Associate shall report this to Covered Entity unless it is legally prohibited from doing so. Covered Entity is then required to report this information to DHCS per the Medi-Cal Contract; and
- 3.24 Shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement, available to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings commenced against DHCS or Covered Entity, or their directors, officers or employees.

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 4.1 Business Associate may only use or disclose PHI, inclusive of de-identified data derived from such PHI, as necessary to perform the functions, activities, Services set forth in the Agreement, provided that such use and disclosure would not violate HIPAA or other applicable laws if done by Covered Entity.

- 4.2 Business Associate must obtain approval from the Plan before providing any de-identified information in accordance with 45 CFR 164.514(a)-(c). Business Associate, if approved, will obtain instructions for the manner in which the de-identified information will be provided.
- 4.3 Business Associate may use or disclose PHI as required by law.
- 4.4 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Plan's minimum necessary policies and procedures.
- 4.5 Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Plan except for the specific uses and disclosures set forth below.
- 4.6 Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 4.7 Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI and other confidential information.

5. PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS

- 5.1 The Plan shall notify Business Associate of any limitations in the notice of privacy practices under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 5.2 The Plan shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 5.3 The Plan shall notify Business Associate of any restriction on the use or disclosure of PHI that the Plan has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

- 6.1 The Plan shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity.

7. TERM AND TERMINATION

- 7.1 Term. The Term of this BAA shall be effective as of January 1, 2023 and shall terminate on the expiration date of the Agreement or on the date the Plan terminates for cause as authorized in Paragraph 7.2 below, whichever is sooner.
- 7.2 Termination for Cause. Business Associate authorizes termination of this BAA by the Plan, if the Plan determines, in its sole discretion, that Business Associate has violated a material term of this BAA and either:
- 7.2.1 The Plan provides Business Associate an opportunity to cure the Breach or end the violation within a time specified and Business Associate does not cure the Breach or end the violation within the time specified by the Plan; or
- 7.2.2 The Plan immediately terminates this BAA upon notice if the Plan determines, in its sole discretion, that a cure is not possible.
- 7.3 Obligations of Business Associate Upon Termination. Upon termination of this BAA for any reason, Business Associate, with respect to PHI received from the Plan, or created, maintained, or received by Business Associate on behalf of the Plan, shall:
- 7.3.1 Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- 7.3.2 Return to covered entity or, if agreed to by covered entity, destroy the remaining PHI that the Business Associate still maintains in any form. If return or destruction is not feasible, Business Associate shall notify Covered Entity. Covered Entity is then required to notify DHCS and DHCS may require additional terms and conditions under which Business Associate may retain the PHI and Business Associate shall agree to such terms;
- 7.3.3 Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
- 7.3.4 Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at section 4 of this BAA which applied prior to termination; and
- 7.3.5 Return to covered entity or, if agreed to by covered entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- 7.4 Survival. The obligations of Business Associate under this Section shall survive the termination of this BAA.

8. MISCELLANEOUS

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

- 8.2 Regulatory References. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.
- 8.3 Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. Any provision of this BAA which is in conflict with current or future applicable Federal or State laws is hereby amended to conform to the provisions of those laws. Such amendment of this BAA shall be effective on the effective date of the laws necessitating it, and shall be binding on the Parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the Parties.
- 8.4 Interpretation. Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules.
- 8.5 Counterparts; Facsimile Signatures. This BAA may be executed in any number of counterparts, each of which will be deemed an original and all of which together will constitute one and the same document. This BAA may be executed and delivered by facsimile or in PDF format via email, and any such signatures will have the same legal effect as manual signatures. If a Party delivers its executed copy of this BAA by facsimile signature or email, such party will promptly execute and deliver to the other party a manually signed original if requested by the other party.

Acknowledged and agreed:

**PARTNERSHIP HEALTHPLAN
OF CALIFORNIA "PHC"**

By: _____

Name: _____

Title: _____

Date: _____

MENDOCINO COUNTY, PUBLIC HEALTH

By:  _____

Name: Jenine Miller, Psy.D.

Title: Interim Public Health Director

Date: Jun 9, 2023

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

By: 
DEPARTMENT HEAD

Date: Jun 9, 2023

Budgeted: N/A

Grant: ☐ Yes ☒ No

Grant No.:

COUNTY OF MENDOCINO

By: 
GLENN MCGOURTY, Chair
BOARD OF SUPERVISORS

Date: 07/11/2023


ATTEST:

DARCIE ANTLE, Clerk of said Board

By: 
Deputy 07/11/2023

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: 
Deputy 07/11/2023

INSURANCE REVIEW:

By: 
Risk Management

Date: 06/01/2023

CONTRACTOR/COMPANY NAME

By: _____
SIGNATURE

Date: _____

NAME AND ADDRESS OF CONTRACTOR:

Partnership HealthPlan of California
4665 Business Center Dr.
Fairfield, CA 94534

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: 
Deputy

Date: 06/01/2023

EXECUTIVE OFFICE/FISCAL REVIEW:

By: 
Deputy CEO or Designee

Date: 06/01/2023

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors
Exception to Bid Process Required/Completed ☐ N/A
Mendocino County Business License: Valid ☐
Exempt Pursuant to MCC Section: Located outside Mendocino County/State MOU






Partnership HealthPlan of California, WPC DUA MOU, Amendment 2, \$0, 18-23, PH - For Signatures

Final Audit Report

2023-06-09

Created:	2023-06-07
By:	Kirsty Bates (batesk@mendocinocounty.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA57amoMig4s7BPM6avpSfzWUouY0OW7BI

"Partnership HealthPlan of California, WPC DUA MOU, Amend ment 2, \$0, 18-23, PH - For Signatures" History

-  Document created by Kirsty Bates (batesk@mendocinocounty.org)
2023-06-07 - 7:33:24 PM GMT
-  Document emailed to Jenine Miller (millerje@mendocinocounty.org) for signature
2023-06-07 - 7:34:11 PM GMT
-  Email viewed by Jenine Miller (millerje@mendocinocounty.org)
2023-06-09 - 5:51:58 PM GMT
-  Document e-signed by Jenine Miller (millerje@mendocinocounty.org)
Signature Date: 2023-06-09 - 5:52:51 PM GMT - Time Source: server
-  Agreement completed.
2023-06-09 - 5:52:51 PM GMT