



City Council Report

915 I Street, 1st Floor
Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2017-00713

June 13, 2017

Discussion Item 24

Title: Agreement with the California Department of Health Care Services for the Whole Person Care Program and Related Implementation Activities

Location: Citywide

Recommendation:

Pass a Resolution authorizing the City Manager or his designee to: 1) execute an agreement with the State of California, Department of Health Care Services (DHCS), in substantial conformity with the draft agreement attached as Attachment A to the Resolution, to administer the Whole Person Care pilot program; 2) establish the Whole Person Care (I02000900) Multi-Year Operating Program (MYOP) in FY2016/17; 3) release \$1.75 million from the \$5 million commitment of General Funds for Affordable Housing and establish a FY2016/17 General Fund expenditure budget in I02000900 of \$1.75 million; and 4) amend the budget in I02000900 with a transfer of \$1.323 million from the City's Homeless Housing Initiative MYOP (I02000200) and establishing an \$8 million revenue and expenditure budget for the DHCS matching funds.

Contact: Emily Halcon, Homeless Services Coordinator, (916) 808-7896, Office of the City Manager

Presenter: Emily Halcon, Homeless Services Coordinator, (916) 808-7896, Office of the City Manager

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-Exhibit A to the Resolution - Draft Whole Person Care Award Letter and Funding Agreement with DHCS

Description/Analysis

Issue Detail: The City of Sacramento anticipates notification by June 12, 2017 from the California Department of Health Care Services (DHCS) of the City's acceptance into the Whole Person Care (WPC) pilot program, with a budget of approximately \$64 million over the next four years. WPC is a statewide Medi-Cal waiver program that allows communities to create a system of supportive services aimed to improve health outcomes and reduce utilization of high-cost services for vulnerable populations. Sacramento can access one dollar of federal match funding for each dollar of local funding the City contributes to WPC activities over four years (calendar years 2017-2020). In Sacramento, the WPC program is envisioned to support the broader City strategies to reduce homelessness, by creating a robust system of outreach, case management and supportive services for those frequent users of health care, homeless services and City emergency services.

The City has received the attached draft approval letter and agreement (Exhibit A to the Resolution) from DHCS and will receive final versions upon the City's acceptance into the WPC program. Following City's acceptance into the WPC program, City will be required to return the executed agreement to DHCS within approximately 10 days. Given this short timeline, staff is seeking Council approval now for execution of an agreement with DHCS in substantial conformity with the draft agreement attached as Exhibit A to the Resolution. In addition, the authorizations for funding allocation specified in this report will allow the City to begin the process to "stand up" its WPC program. Staff has already begun the Request for Qualifications (RFQ) process to identify a professional consulting team with experience in health care delivery to manage the WPC program. This team will report to the City's Homeless Services Coordinator and a Steering Committee that includes City leadership, but the consulting team will be the primary lead on the day-to-day management of contracts, finances, and data requirements for the WPC program.

Access to the WPC funding will be via an intergovernmental transfer (IGT) with DHCS for delivery of services in the most recently completed program year. The WPC program operates over the course of five "program years" which generally match calendar years. However, because the City is applying in the second round of funding, the first two "program years" have been shortened to six months and are both contained in calendar year 2017.

WPC PROGRAM YEAR	START DATE	END DATE	APPROXIMATE IGT DATE	CITY FISCAL YEAR(S)	DELIVERABLE
1	01/01/2017	06/30/2017	August, 2017	2017/18	Application completed
2	07/01/2017	12/31/2017	February, 2018	2017/18	Project set up
3	01/01/2018	12/31/2018	February, 2019	2017/18 – 2018/19	Delivery of services
4	01/01/2019	12/31/2019	February, 2019	2018/19 – 2019/20	Delivery of services
5	01/01/2020	12/31/2020	February, 2020	2019/20 – 2020/21	Delivery of services

The IGT requires the transfer of eligible local dollars from the City to DHCS. DHCS in turn uses the funds to receive additional federal funding from the Centers for Medicare and Medicaid Services (CMS). DHCS transfers both the original contribution from the City and matched funds to the City to pay for WPC eligible services. Program year 2 will focus on setting up the WPC program infrastructure, including establishing on-going contracts both for receipt of funding and delivery of services, and staff will return to Council during that time for additional approvals.

Policy Considerations: The Whole Person Care pilot program aligns with the federal directive and City commitment that funding for addressing homelessness follow a “housing first” approach, which offers permanent housing as quickly as possible for individuals and families experiencing homelessness. In housing first programs, supportive services are offered (but not required as a condition of tenancy) to help people keep their housing and avoid returning to homelessness. This evidence-based approach is consistent with the strategies and funding priorities of the other public agencies working to end homelessness in Sacramento. Partnering with other agencies to leverage resources and improve livability is consistent with the City Council’s past actions and current direction.

Economic Impacts: None.

Environmental Considerations: None.

Sustainability: Not applicable.

Commission/Committee Action: On May 31, 2016, the City Council accepted the Visioning Document and Workplan of the City Council Homeless Subcommittee. The Whole Person Care pilot program supports many of the implementation options detailed in the workplan.

Rationale for Recommendation: As the Continuum of Care (CoC) for the City and County of Sacramento, Sacramento Steps Forward (SSF) coordinates access to housing funded by the United States Department of Housing and Urban Development (HUD) through the CoC. SSF has developed a robust Coordinated Entry System and created an outreach navigation

program to help facilitate the efficient movement of people from homelessness into housing. While SSF's efforts have vastly improved the homeless response system, there are still gaps in both housing availability, and in the depth and breadth of outreach, case management and housing services. The WPC program intends to complement the efforts of SSF, targeting those who need more intensive services that the CoC can provide. The City will work closely with SSF to ensure that these two systems are coordinated and that opportunities to merge the systems are considered as both are brought to scale.

Financial Considerations: It is anticipated that, upon execution of the contract with DHCS, the City will begin establishing agreements with Sutter Health, Dignity Health, UCD, Kaiser, and Sacramento Covered, all of whom have committed to providing funding for the WPC program.

The City is required to transfer the IGT for the previous program year at the start of the next program year, for each year of participation. The anticipated yearly funding process for the WPC pilot program will be as follows:

- July 1, 2017 (at completion of WPC program year 1)
 - City will receive \$5.7 million from Dignity Health, Sutter Health, and Sacramento Covered for participation in program years 1 and 2 of the WPC program.
 - DHCS will request the City's IGT of approximately \$4 million for participation in the program.
 - The City has 10 days to make the IGT to DHCS.
 - DHCS will return the initial transfer of \$4 million with an additional \$4 million in federal match funds for total FY 2017/18 program funding in the amount of approximately \$8 million.
 - The \$4 million in matching funds received from DHCS will be budgeted for WPC in I02000900.
 - The entire \$8 million will be used to fund program activities in FY2017/18.

The IGT program provides funding based on prior year costs/participation. Given the timing of the City's participation, the City will receive half year funding for programs years 1 and 2 in FY2017/18. The estimates for program year 2 should provide the same funding as reflected above for program year 1.

This funding process will be repeated for each of the City's participation years. Given the multi-year nature of this program, a new multi-year operating project (MYOP) for the Whole Person Care (I02000900) pilot program with an initial FY2016/17 budget of \$1.75 million in General Funds is recommended. This \$1.75 million of General Funds comes from the FY2015/16 year-end resources committed for affordable housing.

The following chart summarizes the anticipated funding plan for the City's four-year WPC pilot program:

Funding Sources	FY2017/18	FY2018/19	FY2019/20	FY2020/21
City - General Funds				
211 Contract	140,000	140,000	140,000	140,000
Common Cents	500,000	500,000	500,000	500,000
Rapid ReHousing	250,000	250,000	250,000	250,000
Shelter Contracts	433,000	433,000	433,000	433,000
2015/16 Year End	1,000,000	250,000	250,000	250,000
City Subtotal:	2,323,000	1,573,000	1,573,000	1,573,000
Health Partners				
Sutter	2,010,550	2,010,550	2,010,550	2,010,550
Dignity Health	1,500,000	1,500,000	1,500,000	1,500,000
Kaiser	-	500,000	500,000	500,000
UC Davis	-	250,000	250,000	250,000
Sacramento Covered	2,176,286	2,176,286	2,176,286	2,176,286
Partners Subtotal:	5,686,836	6,436,836	6,436,836	6,436,836
State IGT Program				
DHCS Plan Year 1	4,004,918	-	-	-
DHCS Plan Year 2	4,004,918	-	-	-
DHCS Plan Year 3	-	8,009,836	-	-
DHCS Plan Year 4	-	-	8,009,836	-
DHCS Plan Year 5	-	-	-	8,009,836
DHCS Subtotal:	8,009,836	8,009,836	8,009,836	8,009,836
Total Program Funding	\$16,019,672	\$16,019,672	\$16,019,672	\$16,019,672

The following amendments to the FY2017/18 Approved Budget are necessary to implement the City's WPC program:

- The Homeless Housing Initiative (I02000200) MYOP General Fund budget shall be reduced by \$1.323 million leaving an FY2017/18 budget of \$943,351 I02000200.
 - The City will re-align existing City contracts for homeless outreach, shelter and services to comply with WPC requirements.
- The WPC MYOP budget shall be amended as follows:
 - The General Fund (Fund 1001) budget in I02000900 shall be increased by \$1.323 million with the transfer from I02000200.
 - \$8 million revenue and expenditure budget in the Operating Grant Fund (Fund 2702) shall be established in I02000900 for the IGT participation with DHCS for FY2017/18.

Agreements with the health partners including their funding commitments will be negotiated and executed after City receives its acceptance into the WPC program. The funding agreements and associated budget adjustments will be brought forward for Council approval at

a later date. The WPC budget in future years will be included in the Proposed Budget and any changes/amendments to the program will be presented to the Council for consideration.

Local Business Enterprise (LBE): None.

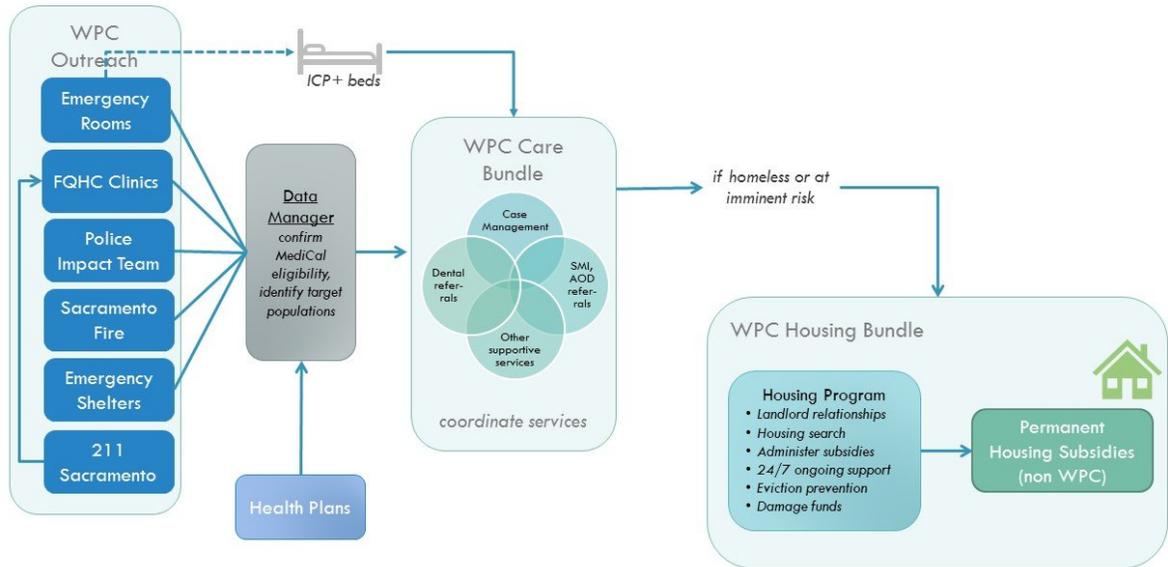
Background

Homelessness is an issue that impacts communities without regard to geographic or political boundaries and for which there is no single answer or approach. Since 2009, Sacramento Steps Forward (SSF) has been responsible for leading the strategic planning and implementation of efforts related to preventing and ending homelessness throughout Sacramento County. The City has committed significant resources to establish and support programs through Sacramento Steps Forward (SSF) that provide outreach, assessment, interim and rapid re-housing for people experiencing homelessness in Sacramento. In addition to supporting SSF, the City also funds other complementary programs, including emergency shelters, detox programs, and transitional housing. While each of these efforts is providing critical housing and services to some of the community's most vulnerable citizens, there are still many in need.

In response to the continued challenges and impacts associated with homelessness, the City and County, in collaboration with SSF, have been working on new strategies to create additional supportive housing opportunities. On January 31, 2017, the City Council and County Board of Supervisors met in joint session on the topic of homelessness and, at that meeting, both bodies directed the Sacramento Housing and Redevelopment Agency (SHRA) to begin the steps necessary to allocate turnover units in the public housing and housing choice voucher programs for three years to homeless populations. On March 21, 2017, SHRA returned to the City and County with an implementation plan that would allocate up to 150 housing choice vouchers (HCV) and up to 160 public housing units annually for three years for homeless populations. Access to SHRA housing resources is a critical component of addressing unsheltered homelessness, however, to reach those more vulnerable and disconnected persons, more intensive outreach, case management and housing supports must be offered with a housing first, client centered approach.

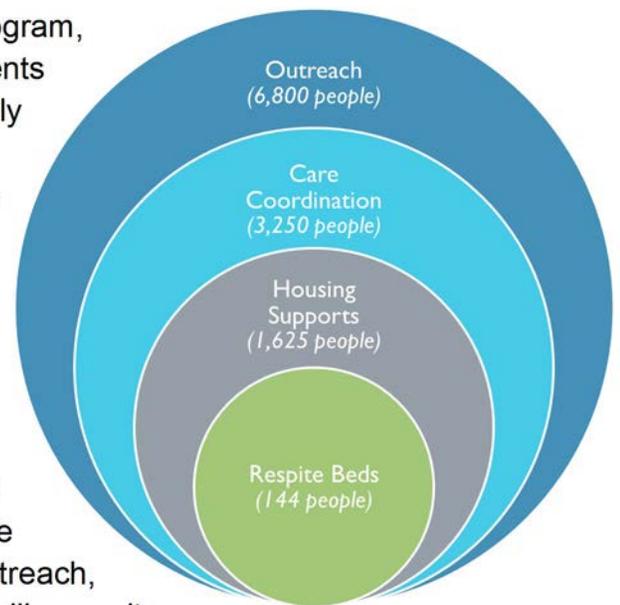
While the City, County and SHRA were working collaboratively to secure housing opportunities to help address the needs of homeless populations, the City was simultaneously seeking opportunities to create robust, wrap around services to support people move successfully from homelessness to housing. Around the time of the SHRA discussions, Mayor Steinberg was contacted by the State Department of Health Care Services (DHCS) about the Whole Person Care (WPC) pilot program. The WPC is a statewide waiver program for vulnerable Medi-Cal patients that aims to improve health outcomes and reduce utilization of high-cost services. The WPC is intended to be administered by counties in California, as counties are responsible for behavioral health, public health and other social services. Sacramento County had declined twice to apply for WPC, so DHCS offered the opportunity to apply for and administer a WPC program in Sacramento to the City.

City staff worked with DHCS for almost two months to refine a City application. Tremendous support was provided from all four health systems, the Federally Qualified Health Centers (FQHCs), and other community based organizations to ensure that the Sacramento application was responsive to the needs to vulnerable populations in our community and could be administered outside of an established County health department. The resulting program builds upon and enhances the existing homeless system in four areas:



1. Expansion of existing outreach efforts, both in terms of numbers of outreach workers and locations, and merging of health care and homeless outreach functions under one program.
2. Creation of a robust data system that allows identification of frequent users across multiple systems (health care, homeless and City first responders), and tracks patient outcomes in terms of both improvement in health and access to housing and supportive services.
3. Creation of a robust care management system for WPC patients that provides “whatever it takes” wraparound services including case management, transportation, behavioral health referrals, and dental care referrals with low client ratios.
4. Creation of a separate (but coordinated) housing support system to help WPC patients experiencing homelessness access and maintain housing, including the addition of new respite (ICP+) beds for people with acute medical needs upon discharge from the emergency department.

Over the course of the four (calendar) year WPC pilot program, the City anticipates serving over 6,800 unduplicated patients with one or more of these services, of which approximately 1,600 will be people experiencing homelessness. While WPC cannot pay rent subsidies, matching WPC services with various housing opportunities, including the SHRA housing resources, locally funding rapid re-housing and existing Continuum of Care housing could mean a significant impact on the health and social well-being of many vulnerable people in our community.



Funding for the WPC pilot program comes from both City general funds and from commitments from the health care community. The City will re-align existing contracts for outreach, shelter and service contracts to fund WPC services and will commit an additional \$1 million of General Funds to the program. In addition, all four local health care systems (Sutter, Dignity, UC Davis and Kaiser) and Sacramento Covered (a non-profit health care navigation organization) have committed to support WPC by funneling dollars they already provide for navigation and care management programs through WPC. Partnering with these local health care providers through the WPC pilot program not only allows them to better coordinate services and improve patient health, but also leverages their existing funding and matches it dollar for dollar with federal funding. With the contributions of these partners, the Sacramento WPC program will be over \$64 million (of which \$32 million will be federal match) over the course of the four-year pilot.

The actions of the Council tonight are the beginning of a very complex program. The City has committed to establish an innovative, community based program that leverages existing resources and establishes a collaboration between health care, homeless services, emergency responders and the City that could change the way we address homelessness beyond the four-year pilot. Over the next six months, the City will be working to develop the infrastructure of the program, with service delivery beginning in earnest in January of 2018. The program will include regular reports to the Council as well as establishment of a program implementation and communication plan such that the community at large can participate and understand the impacts of the WPC pilot program.

RESOLUTION NO. 2017 -

Adopted by the City of Sacramento

On date of

AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES FOR THE WHOLE PERSON CARE PILOT PROGRAM AND RELATED IMPLEMENTATION ACTIVITIES

BACKGROUND

- A. Despite increased collaboration and funding, homelessness in Sacramento is more visible and widespread, and impacts of unsheltered homelessness are being felt in communities throughout the City.
- B. Existing programs coordinated through Sacramento Steps Forward offer outreach, assessment and housing for people experiencing homelessness, but do not have the capacity or capability to provide the level of support necessary to re-house some of the most vulnerable and chronically homeless individuals in the community.
- C. On March 21, 2017, the City Council and the County Board of Supervisors, acting as the Housing Authorities of the City and County of Sacramento, authorized the Sacramento Housing and Redevelopment Agency (SHRA) to take the necessary steps to allocate turnover units in the public housing and housing choice voucher programs for three years to homeless populations.
- D. Access to SHRA housing resources is a critical component of addressing unsheltered homelessness, however, to reach those more vulnerable and disconnected persons, more intensive outreach, case management and housing supports must be offered with a housing first, client centered approach.
- E. The State of California Department of Health Care Services (DHCS) administers the Whole Person Care (WPC) pilot program under the authority of the federal Center for Medicaid and Medicare Services (CMS). The WPC pilot is a five-year program that provides federal matching dollars for the development of local programs that coordinate health, behavioral health and social services for vulnerable Medi-Cal populations.
- F. WPC programs must be administered by a local government entity. Because the County of Sacramento chose not to apply for WPC funding, CMS gave DHCS authority to work with the City of Sacramento on a WPC program.

- G. The City has been consulting with DHCS, health care plans and systems, local clinics and community based organizations to develop a WPC program that provides outreach, case management and housing support to vulnerable Medi-Cal patients who are frequent users of the emergency department and are homeless or at imminent risk of homelessness.
- H. The City anticipates notification by June 12, 2017 from DHCS of the City's acceptance into the WPC program. If City is accepted into the program, it is anticipated that health care providers and the City will provide \$32 million for the four-year program, which will be matched by \$32 million in federal funding. Although the state's WPC pilot program is a five-year pilot program, funding for round two applicants (including the City) is being truncated into four calendar years.
- I. The WPC program will allow the City to re-align existing contracts for homeless outreach, shelter and services, reducing the budgetary needs in the Homeless Housing Initiative (I02000200) MYOP and enabling the City to provide an initial \$4 million for the WPC pilot program.
- J. A City commitment of \$5 million for Affordable Housing was established in FY2016/17 from FY2015/16 year-end resources. This report recommends the release of \$1.75 million of Affordable Housing funds for participation in the WPC pilot program (\$1 million will be used for the City's WPC participation in FY2017/18).
- K. This WPC program is anticipated to provide \$64 million over the four-year pilot program.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or his designee is authorized to execute an agreement with the State of California, Department of Health Care Services, in substantial conformity with the draft agreement attached as Exhibit A, to administer the WPC pilot program.
- Section 2. The Whole Person Care (I02000900) pilot program MYOP is established in FY2016/17.
- Section 3. The City Manager or his designee is authorized to release \$1.75 million from the \$5 million commitment of General Funds (Fund 1001) for Affordable Housing and establish a FY2016/17 expenditure budget in I02000900 of \$1.75 million.

Section 4. The FY2017/18 expenditure budget in I02000200 shall be reduced and the revenue and expenditure budgets in I02000900 shall be amended as reflected in the chart below:

Project Number	Fund Name (Number)	Revenue Source	Revenue Budget	Expenditure Budget
I02000200	General (1001)		-	(1,323,000)
I02000900	General (1001)		-	1,323,000
I02000900	Operating Grant (2702)	DHCS Matching Funds	8,009,836	8,009,836
Total Budget:			\$ 8,009,836	\$ 8,009,836

Exhibit A – Draft Funding Agreement with Department of Health Care Services



JENNIFER KENT
DIRECTOR

State of California – Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
GOVERNOR

[Date]

[Signatory Name]

[Signatory Title]

[Address]

NOTICE OF SECOND ROUND APPLICATION APPROVAL AND FUNDING
ALLOCATION FOR THE WHOLE PERSON CARE (WPC) PILOT PROGRAM FOR []
COUNTY

Dear [Signatory Name]:

The California Department of Health Care Services (DHCS) is pleased to announce that [Lead Entity Name] has been approved and selected to receive annual second round total funds in the amount of \$[], to implement its local Whole Person Care (WPC) Pilot program.

The attached WPC Agreement will become the agreement between DHCS and [Lead Entity] upon execution. This agreement includes the final approved application, conditions of participation, and eligibility for federal financial participation for all allowable costs. Formal acceptance of the enclosed agreement is required no later than June 22, 2017, with a signature from the individual with authority to sign and designated to enter into the agreement with DHCS on behalf of the WPC lead entity.

If you have any questions regarding this allocation, approval or acceptance process please contact Ms. Sarah Brooks, Deputy Director, Health Care Delivery Systems, at (916) 440-7800, or by email at Sarah.Brooks@dhcs.ca.gov.

Sincerely,

Mari Cantwell
Chief Deputy Director
Health Care Programs

Enclosure

DRAFT

WHOLE PERSON CARE AGREEMENT- Round Two

The overarching goal of the Whole Person Care (WPC) Pilot program is the coordination of health, behavioral health, and social services, as applicable, in a patient-centered manner with the goals of improved beneficiary health and wellbeing through more efficient and effective use of resources.

The Department of Health Care Services (DHCS) published a Request for Application (RFA) relating to the WPC Pilot Program on January 13, 2017. County of [] submitted its WPC application (Attachment A), in response to DHCS' RFA on March 1, 2017. DHCS accepted County of []'s WPC application to the RFA on [], 2017 with an allocation of \$[] in federal financial participation available for each calendar year for the WPC pilot beginning in program year two (July 1, 2017 – December 31, 2017) through program year five subject to the signing of this Agreement.

The total funds allocated in the sum of \$[], including federal financial participation and local non-federal funds are as follows:

Funding			
Program Year (PY)	Federal Financial Participation	Local Non-federal Funds	Total Funds
PY 2 (7/1/17-12/31/17)			
PY 3 (1/1/18-12/31/18)			
PY4 (1/1/19-12/31/19)			
PY 5 (1/1/20-12/31/20)			

The parties agree:

A. Section 6: Attestations and Certification

6.1 Attestation

I certify that, as the representative of the WPC pilot lead entity, I agree to the following conditions:

1. The WPC pilot lead entity will help develop and participate in regular learning collaboratives to share best practices among pilot entities, per STC 119.

2. The intergovernmental transfer (IGT) funds will qualify for federal financial participation per 42 CFR 433, subpart B, and will not be derived from impermissible sources, such as recycled Medicaid payments, federal money excluded from use as a state match, impermissible taxes, and non-bona fide provider-related donations, per STC 126.a. Sources of non-federal funding shall not include provider taxes or donations impermissible under section 1903(w), impermissible intergovernmental transfers from providers, or federal funds received from federal programs other than Medicaid (unless expressly authorized by federal statute to be used for claiming purposes, and the federal Medicaid funding is credited to the other federal funding source). For this purpose, federal funds do not include PRIME payments, patient care revenue received as payment for services rendered under programs such as the Designated State Health Programs, Medicare, or Medicaid
3. Within 30 days determining the interim or final payments due based on the mid-year and annual reports, DHCS will issue requests to the WPC pilot for the necessary IGT amounts. The WPC pilot shall make IGT of funds to DHCS in the amount specified within 7 days of receiving the state's request. If the IGTs are made within the requested timeframe, the payment will be paid within 14 days after the transfers are made.
4. This Agreement between DHCS and the WPC pilot lead entity constitutes the agreement that specifies the WPC pilot requirements, including a data sharing agreement, per STC 118. [See Exhibit A "HIPAA Business Associate Addendum (BAA)" of this Application.] The BAA will apply to the transfer and access of Protected Health Information (PHI) and Personal Information (PI) should the need for sharing such data arise. The DHCS BAA applies to any entity that is acting in a business associate capacity as defined by HIPAA specifically for the purpose of the WPC pilot's operation and evaluation. DHCS does not anticipate that PHI or PI will be shared with pilots for the purpose of the WPC pilot's operation or evaluation, and DHCS anticipates only limited, or no, sharing of PHI or PI from the WPC pilot to DHCS. However, the BAA will apply if PHI or PI is shared.
5. The WPC pilot will report and submit timely and complete data to DHCS in a format specified by the state. Incomplete and/or non-timely data submissions may lead to a financial penalty after multiple occurrences and technical assistance is provided by the state.
6. The WPC pilot shall submit mid-year and annual reports in a manner specified by DHCS and according to the dates outlined in Attachment GG. The WPC pilot payments shall be contingent on whether progress toward the WPC pilot requirements approved in this application has been made.
7. The WPC pilot will meet with evaluators to assess the WPC pilot.

8. Payments for WPC pilots will be contingent on certain deliverables or achievements; payments will not be distributed, or may be recouped, if pilots fail to demonstrate achievement or submission of deliverables. Funding for PY1 will be available for this submitted and approved WPC pilot application and for reporting baseline data; this funding is in support of the initial identification of the target population and other coordination and planning activities that were necessary for the submission of a successful application. Funding for PY2 through PY5 shall be made available based on the activities and interventions described in the approved WPC Pilot application. (STC 126). Federal funding received shall be returned if the WPC pilot, or a component of it as determined by the state, is not subsequently implemented.
9. If the individual WPC pilot applicant receives its maximum approved pilot year budget funding before the end of the pilot year, the individual WPC pilot will continue to provide WPC pilot services to enrolled WPC pilot participants at levels established in the approved WPC pilot application through the end of the pilot year.
10. WPC Pilot payments shall not be earned or payable for activities otherwise coverable or directly reimbursable by Medi-Cal.
11. The WPC lead entity has reviewed and compared the activities in the proposed WPC pilot application to its county's Medi-Cal Targeted Case Management Program (TCM), and has made appropriate adjustments to reduce the request for WPC funds as necessary to ensure that the WPC pilot funding for activities and interactions of their care coordination teams do not duplicate payments under the county's TCM benefit. The WPC lead entity has provided documentation for the adjustment(s) in the approved application which was accepted in accordance with DHCS guidance provided to the lead entity during the DHCS application review process.
12. The lead entity will respond to general inquiries from the state pertaining to the WPC pilot within one business day after acknowledging receipt, and provide requested information within five business days, unless an alternate timeline is approved or determined necessary by DHCS. DHCS will consider reasonable timelines that will be dependent on the type and severity of the information when making such requests.
13. The lead entity understands that the state of California must abide by all requirements outlined in the STCs and Attachments GG, HH, and MM. The state may suspend or terminate a WPC pilot if corrective action has been imposed and persistent poor performance continues. Should a WPC pilot be terminated, the state shall provide notice to the pilot and request a close-out plan due to the state within 30 calendar days, unless significant harm to beneficiaries is occurring, in which case the state may request a close-out plan within 10 business days. All state requirements regarding pilot termination can be found in Attachment HH.

County of
Contract No. 16-14184-

- I hereby certify that all information provided in this application is true and accurate to the best of my knowledge, and that this application has been completed based on a good faith understanding of WPC pilot program participation requirements as specified in the Medi-Cal 2020 waiver STCs, Attachments GG, HH and MM, and the DHCS Frequently Asked Questions document.

A. WPC Pilot Program Agreement

Notice

All inquiries and notices relating to this Agreement should be directed to the representatives listed below. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this Contract.

DRAFT

The Agreement representatives during the term of this Agreement will be:

Department of Health Care Services	WPC Pilot Lead Entity
Managed Care Quality & Monitoring Division	
Attention: Bob Baxter	Attention:
Telephone: (916) 319-9707	Telephone: ()

As a condition for participation in the WPC Pilot program, the WPC pilot lead entity (referred to as “Contractor” below) agrees to comply with all of the following terms and conditions, and with all of the terms and conditions included on any attachment(s) hereto, which is/are incorporated herein by reference:

- 1. Nondiscrimination.** Pursuant to Affordable Care Act section 1557 (42 U.S.C. section 18116), during the performance of this Contract, Contractor shall not, and shall also require and ensure its subcontractors, providers, agents, and employees to not, cause an individual, beneficiary, or applicant to be excluded on the grounds prohibited under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or subject to any other applicable State and Federal laws, from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity offered through DHCS.
- 2. Term and Termination.** This Agreement will be effective from the date both DHCS and Contractor have executed this Agreement and terminate on June 30, 2021 unless the application is renewed or the WPC Pilot program is extended, or the WPC pilot is terminated in accordance with procedures established pursuant to STC 120 and Attachment HH thereof.
- 3. Compliance with Laws and Regulations.** Contractor agrees to, and shall also require and ensure its subcontractors to, comply with all applicable provisions of Chapters 7 and 8 of the Welfare and Institutions Code, and any applicable rules or regulations promulgated by DHCS pursuant to these chapters. Contractor agrees to, and shall also requires its subcontractors to, comply with all federal laws and regulations governing and regulating the Medicaid program.
- 4. Fraud and Abuse.** Contractor agrees, and shall also require its subcontractors to agree, that it shall not engage in or commit fraud or abuse. “Fraud” means intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. “Abuse” means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.

5. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.
6. **Complete Integration.** This Agreement, including any attachments or documents incorporated herein by express reference is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matters of this Agreement.
7. **Amendment.** No alteration or variation of the terms or provisions of this Agreement shall be valid unless made in writing and signed by the parties to this Agreement, and no oral understanding or agreement not set forth in this Agreement, shall be binding on the parties to this Agreement.
8. **Discrepancy or Inconsistency.** If there is a discrepancy or inconsistency in the terms of this Agreement and Attachment A, then this Agreement controls.

DRAFT

Signature of WPC Lead Entity Representative
Date

Name:

Title:

Signature of DHCS Representative
Date

Name: Mari Cantwell

Title: Chief Deputy Director, Health Care Programs

DRAFT

Whole Person Care Agreement

Exhibit A – Health Insurance Portability and Accountability Act (HIPAA Business Associate Addendum (BAA))

I. Recitals

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (‘the HITECH Act’), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations”).
- B. The Department of Health Care Services (“DHCS”) wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information (“PHI”), including protected health information in electronic media (“ePHI”), under federal law, and personal information (“PI”) under state law.
- C. As set forth in this Agreement, Contractor, here and after, is the Business Associate of DHCS acting on DHCS' behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHCS and creates, receives, maintains, transmits, uses or discloses PHI and PI. DHCS and Business Associate are each a party to this Agreement and are collectively referred to as the "parties."
- D. The purpose of this Addendum is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that DHCS must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act, and the Final Omnibus Rule as well as the Alcohol and Drug Abuse patient records confidentiality law 42 CFR Part 2, and any other applicable state or federal law or regulation. 42 CFR section 2.1(b)(2)(B) allows for the disclosure of such records to qualified personnel for the purpose of conducting management or financial audits, or program evaluation. 42 CFR Section 2.53(d) provides that 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 an appropriate court order.

- E. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

II. Definitions

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the Final Omnibus Rule.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the final Omnibus Rule.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and Final Omnibus Rule.
- D. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.
- E. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- F. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.
- G. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- H. Personal Information shall have the meaning given to such term in California Civil Code section 1798.29.
- I. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.

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

III. Terms of Agreement

A. Permitted Uses and Disclosures of PHI by Business Associate

Permitted Uses and Disclosures. Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DHCS, provided that such use or disclosure would not violate the HIPAA regulations, if done by DHCS. Any such use or disclosure must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, the HIPAA regulations, the Final Omnibus Rule and 42 CFR Part 2.

1. Specific Use and Disclosure Provisions. Except as otherwise indicated in this Addendum, Business Associate may:

- a. Use and disclose for management and administration. Use and disclose PHI for the proper management and administration of the Business Associate provided that such disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
- b. Provision of Data Aggregation Services. Use PHI to provide data aggregation services to DHCS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DHCS with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of DHCS.

B. Prohibited Uses and Disclosures

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

C. Responsibilities of Business Associate

Business Associate agrees:

1. Nondisclosure. Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
2. Safeguards. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of DHCS, in compliance with 45 CFR sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164, subpart C, in compliance with 45 CFR section 164.316. Business Associate shall develop and maintain a written information privacy

and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Business Associate will provide DHCS with its current and updated policies.

3. Security. To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
 - a. Complying with all of the data system security precautions listed in Attachment A, the Business Associate Data Security Requirements;
 - b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement;
 - c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
 - d. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with DHCS.

D. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.

E. Business Associate's Agents and Subcontractors.

1. To enter into written agreements with any agents, including subcontractors and vendors, to whom Business Associate provides PHI or PI received from or created or received by Business Associate on behalf of DHCS, that impose

the same restrictions and conditions on such agents, subcontractors and vendors that apply to Business Associate with respect to such PHI and PI under this Addendum, and that comply with all applicable provisions of HIPAA, the HITECH Act the HIPAA regulations, and the Final Omnibus Rule, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI and PI. Business associates are directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized by its contract or required by law. A business associate also is directly liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule. A "business associate" also is a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate. Business Associate shall incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI or PI be reported to Business Associate.

2. In accordance with 45 CFR section 164.504(e)(1)(ii), upon Business Associate's knowledge of a material breach or violation by its subcontractor of the agreement between Business Associate and the subcontractor, Business Associate shall:
 - a. Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by DHCS; or
 - b. Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.
- F. Availability of Information to DHCS and Individuals. To provide access and information:
1. To provide access as DHCS may require, and in the time and manner designated by DHCS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHCS (or, as directed by DHCS), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for DHCS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHCS health plans; or those records used to make decisions about individuals on behalf of DHCS. Business Associate shall use the forms and processes developed by DHCS for this purpose and shall respond to requests for access to records transmitted by

DHCS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.

2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable DHCS to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
 3. If Business Associate receives data from DHCS that was provided to DHCS by the Social Security Administration, upon request by DHCS, Business Associate shall provide DHCS with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.
- G. Amendment of PHI. To make any amendment(s) to PHI that DHCS directs or agrees to pursuant to 45 CFR section 164.526, in the time and manner designated by DHCS.
- H. Internal Practices. To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHCS, or created or received by Business Associate on behalf of DHCS, available to DHCS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHCS or by the Secretary, for purposes of determining DHCS' compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to DHCS and shall set forth the efforts it made to obtain the information.
- I. Documentation of Disclosures. To document and make available to DHCS or (at the direction of DHCS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR section 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for DHCS as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health records for DHCS after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The

electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.

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

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

Notice shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves data provided to DHCS by the Social Security Administration, notice shall be provided by calling the DHCS EITS Service Desk. Notice shall be made using the "DHCS Privacy Incident Report" form, including all information known at the time. Business Associate shall use the most current version of this form, which is posted on the DHCS Privacy Office website (www.dhcs.ca.gov, then select "Privacy" in the left column and then "Business Use" near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

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

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
 - b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
2. Investigation and Investigation Report. To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI

or PI. If the initial report did not include all of the requested information marked with an asterisk, then within 72 hours of the discovery, Business Associate shall submit an updated "DHCS Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:

3. Complete Report. To provide a complete report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. If all of the required information was not included in either the initial report, or the Investigation Report, then a separate Complete Report must be submitted. The report shall be submitted on the "DHCS Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If DHCS requests information in addition to that listed on the "DHCS Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide DHCS with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "DHCS Privacy Incident Report" form. DHCS will review and approve or disapprove the determination of whether a breach occurred, is reportable to the appropriate entities, if individual notifications are required, and the corrective action plan.
4. Notification of Individuals. If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.

1. Provide an opportunity for DHCS to cure the breach or end the violation and terminate the Agreement if DHCS does not cure the breach or end the violation within the time specified by Business Associate; or
 2. Immediately terminate the Agreement if DHCS has breached a material term of the Addendum and cure is not possible.
- L. Due Diligence. Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.
- M. Sanctions and/or Penalties. Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

IV. Obligations of DHCS

DHCS agrees to:

- A. Notice of Privacy Practices. Provide Business Associate with the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR section 164.520, as well as any changes to such notice. Visit the DHCS Privacy Office to view the most current Notice of Privacy Practices at:
<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/default.aspx> or the DHCS website at www.dhcs.ca.gov (select "Privacy in the left column and "Notice of Privacy Practices" on the right side of the page).
- B. Permission by Individuals for Use and Disclosure of PHI. Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. Notification of Restrictions. Notify the Business Associate of any restriction to the use or disclosure of PHI that DHCS has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. Requests Conflicting with HIPAA Rules. Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHCS.

V. Audits, Inspection and Enforcement

- A. From time to time, DHCS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the DHCS Privacy Officer in writing. The fact that DHCS inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does DHCS':
1. Failure to detect or
 2. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of DHCS' enforcement rights under this Agreement and this Addendum.
- B. If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify DHCS and provide DHCS with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

VI. Termination

- A. Term. The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the contract and shall terminate when all the PHI provided by DHCS to Business Associate, or created or received by Business Associate on behalf of DHCS, is destroyed or returned to DHCS, in accordance with 45 CFR 164.504(e)(2)(ii)(I).
- B. Termination for Cause. In accordance with 45 CFR section 164.504(e)(1)(ii), upon DHCS' knowledge of a material breach or violation of this Addendum by Business Associate, DHCS shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHCS; or
 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.

- C. **Judicial or Administrative Proceedings.** Business Associate will notify DHCS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. DHCS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. DHCS may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- D. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHCS (or created or received by Business Associate on behalf of DHCS) that Business Associate still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall notify DHCS of the conditions that make the return or destruction infeasible, and DHCS and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

VII. Miscellaneous Provisions

- A. **Disclaimer.** DHCS makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHCS' request, Business Associate agrees to promptly enter into negotiations with DHCS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. DHCS may terminate this Agreement upon thirty (30) days written notice in the event:
1. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by DHCS pursuant to this Section; or

2. Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHCS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
 - D. No Third-Party Beneficiaries. Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than DHCS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
 - E. Interpretation. The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.
 - F. Regulatory References. A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
 - G. Survival. The respective rights and obligations of Business Associate under Section VI.D of this Addendum shall survive the termination or expiration of this Agreement.
 - H. No Waiver of Obligations. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

**HIPAA BAA
Attachment A
Business Associate Data Security Requirements**

I. Personnel Controls

- A. Employee Training. All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS PHI or PI must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- B. Employee Discipline. Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. Confidentiality Statement. All persons that will be working with DHCS PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to DHCS PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- D. Background Check. Before a member of the workforce may access DHCS PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

II. Technical Security Controls

- A. Workstation/Laptop encryption. All workstations and laptops that process and/or store DHCS PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.

- B. Server Security. Servers containing unencrypted DHCS PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. Minimum Necessary. Only the minimum necessary amount of DHCS PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. Removable media devices. All electronic files that contain DHCS PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, smartphones, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- E. Antivirus software. All workstations, laptops and other systems that process and/or store DHCS PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. Patch Management. All workstations, laptops and other systems that process and/or store DHCS PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- G. User IDs and Password Controls. All users must be issued a unique user name for accessing DHCS PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- H. Data Destruction. When no longer needed, all DHCS PHI or PI must be cleared, purged, or destroyed consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization such that the PHI or PI cannot be retrieved.

- I. System Timeout. The system providing access to DHCS PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. Warning Banners. All systems providing access to DHCS PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PHI or PI, or which alters DHCS PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DHCS PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. Access Controls. The system providing access to DHCS PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- M. Transmission encryption. All data transmissions of DHCS PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- N. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting DHCS PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

III. Audit Controls

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

IV. Business Continuity / Disaster Recovery Controls

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

V. Paper Document Controls

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