

MEMORANDUM OF UNDERSTANDING
BETWEEN
COUNTY OF ORANGE
AND
CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY

FOR
FISCAL LEVERAGING AND RELATED SUPPORT SERVICES

I-

PURPOSE ~~OF MOU~~

This **MEMORANDUM OF UNDERSTANDING** (MOU) is between the **COUNTY OF ORANGE**, a political subdivision of the State of California (**COUNTY**), and the **CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY** (~~**OCCFC**~~) ~~for the purpose of obtaining revenue for eligible community health and social services programs.~~ **CFCOC**). **COUNTY** and ~~**OCCFC**~~**CFCOC** may be referred to individually as “Party” and collectively as “the Parties.” ~~—This MOU contains guidelines for~~ **COUNTY’s** **COUNTY** and ~~**OCCFC’s**~~ **participation** **CFCOC** to participate in a collaborative effort for ~~**Fiscal Leveraging**~~ **fiscal leveraging** of ~~**OCCFC**~~ **eligible** funds and related support services.

H- WITNESSETH:

WHEREAS, **COUNTY** has entered into agreements with various State agencies for the purpose of fiscal claiming; ~~and including~~, but not limited to the State Department of Health Care Services (DHCS) to establish a means of claiming Federal Financial Participation (FFP) for Targeted Case Management (TCM) and Medi-Cal Administrative Activities (MAA), and others;

~~**WHEREAS**, **COUNTY** has access to programs such as but not limited to Title XIX Federal financial participation (FFP) for administrative costs, State Department of Health and Human Services (SDHS) for Targeted Case Management (TCM); Medi-Cal Administrative Activities (MAA), State Department of Mental Health for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT); and others; and~~

~~**WHEREAS**, the parties agree and understand that Medi-Cal claims for mental health services, including claims for services claimable under EPSDT, are required to be billed through the COUNTY’s Mental Health Services, which in Orange~~ **WHEREAS**, the purpose of the aforementioned State Agreement for MAA is to ensure the more efficient administration of the

State Medi-Cal Plan [CA Welfare and Institutions Code 14132.47 as it exists now or may hereafter be amended];

WHEREAS, the County ~~is within the~~ of Orange Health Care Agency (HCA); ~~and~~

WHEREAS, ~~HCA~~ has been assigned a TCM Provider number, and is authorized by ~~the State Department of Health and Human Services~~ DHCS to enter into written agreements with all TCM ~~Grantees~~ agencies, for the purpose of provision of TCM services to eligible Medi-Cal beneficiaries. The objectives of TCM ~~Services~~ services are to assist eligible individuals in gaining access to needed medical, social, educational, and other services. [42 USC, Section 1396n(g) (2) as it exists now or may hereafter be amended]; ~~and~~

WHEREAS, ~~the State Department of Health Services~~ DHCS has, by contract, designated the HCA as the Local Governmental Agency (LGA) for purposes of submitting ~~Medi-Cal Administrative Activities (MAA)~~ and TCM claims to the State; ~~and~~

WHEREAS, ~~OCCFC~~ CFCOC provides services to children and families primarily through ~~grant~~ agreements with ~~service providers (hereinafter referred to as "Grantees")~~ its contracted Community Based Organizations (CBO), some of which services are eligible to claim ~~EPSDT, MAA and/or TCM, and MAA; and~~

WHEREAS, COUNTY is agreeable to working with ~~OCCFC, OCCFC's~~ CFCOC, CFCOC's eligible ~~Grantees~~ CBOs, and others, to provide the appropriate claiming procedures; a mechanism for reimbursement; and plans for sustainability; ~~and~~

WHEREAS, ~~OCCFC~~ CFCOC is agreeable to working with COUNTY within ~~the~~ all applicable State, Federal, and local policies, rules and regulations ~~governing EPSDT, TCM, and MAA~~ and educating its ~~Grantees~~ CBOs to these policies, rules, and regulations;

WHEREAS, MAA performed by CFCOC and its CBOs will be eligible for FFP only when they are identified in a MAA plan approved by the State and when the amount expended meets Certified Public Expenditure (CPE) requirements;

WHEREAS, TCM services performed by CFCOC and its CBOs will be eligible for FFP only when they are identified in a TCM plan approved by the State and when the amount expended meets CPE requirements.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

PURPOSE

I. ~~III-OCCFC~~

The purpose of this MOU is to coordinate the implementation and management of available fiscal leveraging programs to obtain revenue for CFCOC and eligible community health and social services programs, and to enable CFCOC and its CBOs to participate in MAA/TCM and receive MAA/TCM reimbursements.

II. CFCOC RESPONSIBILITIES

~~OCCFC~~CFCOC shall:

A. ~~A. Contract~~ Perform MAA eligible services and contract with ~~Grantees~~CBOs to provide MAA eligible services for the proper and efficient administration of the Medi-Cal ~~eligible services~~ program and by so doing improve accessibility of Medi-Cal services to Medi-Cal eligible and potentially eligible individuals; and their families, as appropriate, served by ~~OCCFC~~CFCOC and its ~~Grantees~~CBOs.

~~MAA performed by OCCFC and its Grantees will be eligible for FFP only when they are identified in a MAA-claiming plan approved by the State. HCA shall Contract with CBOs to provide to OCCFC a list and definition of eligible MAA claimable activities.~~

B. ~~B. Perform Targeted Case Management (TCM) activities through OCCFC Grantees, in order to~~ services that assist Medi-Cal eligible individuals ~~in gaining within specified targeted groups to access to~~ needed medical, social, educational, and other services.

~~TCM performed by OCCFC's Grantees will be eligible for FFP only when they are identified in a TCM plan approved by the State. HCA shall provide to OCCFC a list and definition of eligible TCM claimable activities.~~

~~C. Coordinate Grantee requests for Early Periodic Screening, Diagnosis and Treatment (EPSDT) services with HCA. It is mutually agreed that HCA will make the final recommendation as to the appropriateness of services and staffing level of a Grantee's proposal to provide EPSDT eligible services.~~

~~D.C.~~ Submit ~~OCCFC~~CFCOC claim data ~~and~~, cost reports, and appropriate certification and expenditure detail as required to claim federal reimbursement and in accordance with all applicable Federal and State laws and regulations and COUNTY policies and procedures.

~~E.D.~~ Coordinate with COUNTY to develop and implement a plan to monitor and coordinate the delivery of services to prevent duplication.

~~F. Provide start-up funding for three (3) COUNTY positions, with the intent of obtaining on-going funds to support administrative services provided through this MOU through MAA And other fiscal claiming of State and Federal funds, as established and described the Fiscal Provisions Paragraph of this MOU, to perform work as described in the County Responsibilities Paragraph of this MOU. In addition, upon approval of requests submitted in writing to OCCFC, provide funds to support other related project expenses such as equipment, supplies or travel.~~

~~G. OCCFC shall pay COUNTY installment payments quarterly in arrears, for actual reasonable costs incurred and paid by COUNTY to perform the Services required by this Agreement.~~

~~E. **IV** Comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Office of Management and Budget, outlined in 2 CFR Part 200. For all Federal Awards received as a sub-recipient, the CFCOC will follow the standards of internal control over compliance and single audit requirements as defined in the applicable Federal rules and regulations.~~

~~F. Comply with the Business Associate Terms and Conditions, as set forth in Exhibit A, attached hereto and incorporated herein by reference.~~

III. COUNTY RESPONSIBILITIES

COUNTY shall:

~~A. Provide the following positions and services:~~

~~**2.1. MAA/TCM Coordinator, Staff Analyst III, or comparable classification, Health Care Agency, (1.0 FTE or equivalent) shall work with OCCFC, COUNTY Auditor Controller, and community-based organizations, to coordinate and oversee OCCFC Grantee participation in MAA/TCM-related programs. Such coordination and oversight may include, but not necessarily be limited to:**~~

- ~~a. Provide a resource for questions, resolving issues and disseminating information to all organizations.~~
- ~~b. Prepare and or assist with documents required for Grantee participation in MAA/TCM such as Claim Plans, Claim Plan Amendments, Cost Reports, and agreements/contracts.~~
- ~~c. Provide training and technical assistance to Grantees related to State, Federal, and local requirements for participation in MAA/TCM.~~
- ~~d. Conduct periodic on-site reviews of OCCFC MAA/TCM Grantees to ensure compliance with State documentation requirements.~~
- ~~e. Participate in recognized SDHS and LGA Consortium forums, such as trainings, conferences, and work groups in order to keep abreast of current State and Federal policies, procedures, and practices; to establish a positive working relationship with SDHS Claiming Unit; and to maximize~~

~~claiming opportunities and reduce liabilities.~~

~~f. Act as a resource and liaison to SDHS, LGA Consortium, OCCFC, and its Grantees.~~

~~g. Provide recommendations regarding appropriate financial, personnel, and material resources for support of Grantee MAA/TCM coordination activities.~~

~~3. Senior Accountant Auditor II, or comparable classification, Auditor Controller, (1 FTE or equivalent)~~ shall oversee the MAA/TCM fiscal reporting and claiming within Orange County and act as liaison between the MAA/TCM Coordinator, LGA Consortium, the SDHS and County and Commission organizations that are participating in the program. ~~Such oversight and liaison activities may include, but not necessarily be limited to:~~

~~a. Provide a resource for questions, resolving issues and disseminating information to all organizations.~~

~~a. Responsible for the preparation and submittal of OCCFC and their Grantees claims.~~

~~c. Maintain records for claims and related revenue generated.~~

~~d.~~a. Disburse revenue to appropriate organizations.

~~e.~~a. Monitor fund balances and reconcile accounts.

~~f. Coordinate and submit all OCCFC Grantees' TCM Cost Reports.~~

~~g.~~a. Ensure that State agreements are properly reviewed, approved and distributed to participating parties and that the annual State "participation fee" is paid.

~~h. Train Grantees on the State's MAA Invoicing and TCM Billing reviewing the input of encounter data.~~

~~4. EPSDT Leveraging Monitoring Position, Clinical Social Worker or Psychologist, or comparable classification, Health Care Agency, (.5 FTE or equivalent)~~ shall provide oversight and consultation to all participating agencies in assuring compliance with all EPSDT Medi-Cal charting, program reporting, and quality assurance standards. ~~Such oversight and consultation activities may include, but not necessarily be limited to:~~

~~a. Serves as the program liaison between various county and contracted agency programs provide EPSDT Medi-Cal services to children ages 0-5 and their families.~~

~~b. Provide technical assistance, training, and consultation to qualified organizations proposing to provide EPSDT Medi-Cal services and to OCCFC in improving health services to children ages 0-5.~~

~~c. Coordinate and participate in the process of certifying new Grantees.~~

~~d. Assist in identifying opportunities and recommendations regarding behavioral health needs and program planning.~~

~~e. Participate in the RFA process where EPSDT Medi-Cal is identified as a potential funding source.~~

~~f. Participate in contract administration meetings.~~

~~5. MAA/TCM Leveraging Monitoring Position, Public Health Nurse III, or comparable classification, Health Care Agency, (.5 FTE or equivalent) shall provide oversight and consultation to all participating agencies in assuring compliance with all TCM Charting, program reporting, and quality assurance standards. Such oversight and consultation activities may include, but not necessarily be limited to:~~

- ~~a. Serves as the program liaison between various County and contracted agency programs provide Public Health TCM services to children ages 0-5 and their families.~~
- ~~b. Serve as the program liaison between various OCCFC and their Grantees providing TCM services with respect to reviewing/auditing documentation for appropriateness of billing and ensuring no duplication of services between those provided by COUNTY.~~
- ~~c. Provide technical assistance, training, and consultation to qualified organizations proposing to provide TCM services.~~
- ~~d. Coordinate and participate in the process of certifying new TCM Grantees with the emphasis on ensuring that there is no duplication of services between those provided by COUNTY or existing Grantees.~~

~~B. Provide training and technical support to OCCFC and Grantees including any applicable State and Federal Policy and Procedures and any other instructions, information and forms necessary for preparing, and submitting Claim Plans and claims. Any Claim Plan amendment that cannot be approved shall be returned to the OCCFC with a written explanation of the basis for disapproval.~~

A. ~~C.~~—Act as fund administrator for ~~OCCFC~~CFCOC and ~~Grantee~~CBO claims. ~~Changes~~Any changes in any State or Federal regulation affecting the ~~matching~~ percentage of reimbursement, and/or costs eligible for ~~enhanced or administrative match, which become effective subsequent to the execution of this MOU~~CPE, shall be applied herein as required by law or regulations.

B. ~~D.~~—Maintain a copy of claims and supporting documentation provided to COUNTY by the claimants for a period of time as required by the funding sources.

C. ~~E.~~—Make files available to the ~~OCCFC~~CFCOC, State or Federal auditors as required.

~~F. Review required claims reports to ensure compliance with applicable rules and regulations.~~

G.D. Establish and administer a Special Revenue Fund, an interest-bearing fund, to deposit reimbursement revenue received from the claiming of costs for MAA/TCM activities as a result of eligible services provided by ~~Grantees~~CBOs and ~~OCCFC~~CFCOC and to allow for distribution of revenue to ~~Grantees~~CBOs and ~~OCCFC~~CFCOC. The Special Revenue

Fund shall include a subsidiary ledger that identifies funds for each participating ~~Grantee~~CBO and ~~OCCFC~~CFCOC.

- ~~H.E.~~ Maintain an Administrative Cost Recovery Fee Reserve within the Special Revenue Fund for the purpose of providing a resource to ~~repay potential State audit disallowances, reducing the risk of loss to COUNTY and OCCFC from audit disallowances, and to~~ allow for the ~~successful implementation and~~ sustainability of MAA-and-/TCM leveraging activities provided under this MOU. ~~The~~The Administrative Cost Recovery Fee Reserve may be used for ~~potential audit disallowances~~, State participation fees, ~~offset~~offsetting the cost of administering fiscal leveraging support services including the positions described in this MOU, and other purposes that may be established through the Fiscal Leveraging Management Group- (FLMG) in accordance with Section V.A below.
- F. Maintain an Audit Reserve within the Special Revenue Fund for the purpose of providing a resource to repay State audit disallowances, reducing the risk of loss to COUNTY, CFCOC, and participating organizations from audit disallowances. The Audit Reserve may be used for audit disallowances, and other purposes that may be established through the FLMG in accordance with Section V.A below.
- G. Comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Office of Management and Budget, outlined in 2 CFR Part 200. For all Federal Awards received, COUNTY will follow the standards of internal control over compliance and single audit requirements as defined in the applicable Federal rules and regulations.
- H. Provide the following positions and services to satisfy the above responsibilities:
1. **MAA/TCM Administrative Coordinator, at a classification that would have the skills and knowledge to perform the stated duties.** HCA shall work with CFCOC, COUNTY Auditor Controller, and community-based organizations, to coordinate and oversee CFCOC and CFCOC's CBOs' participation in MAA/TCM related programs. Such coordination and oversight may include, but not necessarily be limited to:
 - a. Act as a liaison to LGA Consortium, CFCOC and its CBOs and provide a resource for questions, resolving issues and disseminating information to all inquiring and participating organizations (including post-participation issues, such as audits and fund disbursements).
 - b. Prepare and/or assist with documents required for CBO participation in MAA/TCM such as Claim Plans, Operational Plans, Plan Amendments, Time Surveys, Cost Reports, and agreements/contracts.
 - c. Provide training and technical assistance to CFCOC and its CBOs related to State, Federal, and local requirements for participation in MAA/TCM.
 - d. Conduct periodic on-site reviews of CFCOC CBOs participating in MAA/TCM to ensure compliance with State, Federal, and local requirements, including compliance with responsibilities pertaining to subrecipient

monitoring outlined in 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, and the compilation and maintenance of an audit file.

- e. Participate in recognized DHCS and LGA Consortium forums, such as trainings, conferences, and work-groups in order to keep abreast of current State and Federal policies, procedures, and practices; to establish a positive working relationship with DHCS Claiming Unit; and to maximize claiming opportunities and reduce liabilities.
- f. Participate in policy discussion and provide input for decision-making and problem resolution through the LGA Consortium related to the interests of the COUNTY, CFCOC, and participating organizations.
- g. Provide staff support to the FLMG.
- h. Provide recommendations regarding appropriate financial, personnel, and material resources for support of CBO MAA/TCM coordination activities.

2. MAA/TCM Assistant Administrative Coordinator, at a classification that would have the skills and knowledge to perform the stated duties. HCA shall work with the MAA/TCM Administrative Coordinator, providing services, which may include, but not necessarily be limited to all of those activities cited above for the MAA/TCM Administrative Coordinator, and the following activities.

- a. Gather, file, compile, and summarize applicable data.
- b. Provide administrative support; such as, preparing purchase requests, maintaining reports and calendars, making travel arrangements, and assisting with the logistical coordination of MAA/TCM meetings and training.

3. MAA/TCM LGA Fiscal Coordinator, at a classification that would have the skills and knowledge to perform the stated duties. HCA Accounting shall oversee the MAA/TCM fiscal reporting and claiming within Orange County and act as liaison between the MAA/TCM Administrative Coordinator, LGA Consortium, DHCS, COUNTY, and participating organizations. Such oversight and liaison activities may include, but not necessarily be limited to the following duties (within all applicable State, Federal, and local regulations, policies, and procedures):

- a. Provide a resource for fiscal related questions, resolving issues and disseminating information to all participating organizations (including post-participation issues, such as audits and fund disbursements).
- b. Be responsible for the coordination, review or preparation, and submission of all CFCOC, and CBOs' MAA/TCM-required documents, including invoices and cost reports.
- c. Maintain records for all claims and related revenue that is generated.
- d. Disburse revenue to appropriate organizations.
- e. Monitor fund balances and reconcile accounts.

f. Ensure that State agreements are properly reviewed, approved and distributed to participating parties and that the annual State “participation fee” is paid.

g. ~~Conduct~~ Ensure CBOs are trained on the State’s MAA Invoicing and administer activities necessary for the claiming TCM Billing requirements and ~~distribution~~ review the input of revenue received from EPSDT for Grantees TCM encounter data.

I.4. MAA/TCM LGA Fiscal Staff, at a classification that are eligible would have the skills and approved knowledge to participate in EPSDT, perform the stated duties. HCA Accounting shall work with the MAA/TCM LGA Fiscal Coordinator providing services which may include but not necessarily be limited to all of those activities cited above for the MAA/TCM LGA Fiscal Coordinator.

IV. ~~V~~ JOINT RESPONSIBILITIES

COUNTY and ~~OCCFC~~ CFCOC shall:

A. ~~A.~~ Appoint Contract Officers to be responsible for the administration of this MOU.

B. ~~B.~~ Comply with all applicable laws governing the confidentiality of client information.

C. ~~C. Establish a Fiscal Leveraging Management Group for the purpose of~~ Maintain the FLMG to coordinate and communicate requirements of a community fiscal leveraging program including, reviewing activities and processes with respect to claiming, billing, reserves, reimbursements, services and other related activities. Such group shall, at a minimum, include HCA, ~~OCCFC, COUNTY’S~~ CFCOC, and COUNTY’S Auditor-Controller, and SSA./HCA Accounting. The ~~Fiscal Leveraging Management Group~~ FLMG shall establish and document policies and procedures relating to its responsibilities.

VI-TERM OF AGREEMENT

~~A. The term of this MOU shall commence on November 1, 2002 and shall remain in effect~~

~~until such time as it is terminated in accordance with the Termination Paragraph in this MOU.~~ However, the Parties shall be obligated to perform such duties as would normally extend beyond this term including, but not limited to, obligations with respect to indemnification, confidentiality and publication.

- ~~1. It is mutually agreed that revenue received, as a result of claims submitted, is anticipated to be distributed through the guidelines outlined in this MOU retroactive to January 1, 2001.~~
- ~~2. It is mutually agreed that positions filled by COUNTY and other OCCFC approved related project expenses such as equipment, supplies or travel in support of services provided through this MOU prior to the commencement of this MOU, shall be billable to and reimbursable by OCCFC retroactive to November 6, 2001.~~

~~V. VII~~—FISCAL PROVISIONS

Reimbursement under this MOU shall be made in the following manner:

- ~~1.A.~~ COUNTY and ~~OCCFC~~CFCOC, through the ~~Fiscal Leveraging Management Group~~FLMG, shall agree upon mechanism(s) to establish and administer ~~a Reserve~~Reserves. Such mechanisms and the amount and use of funds held in the ~~Reserve~~Reserves shall be documented and approved by the ~~Fiscal Leveraging Management Group~~FLMG, formally approved by the HCA Director or designee, and formally approved by ~~OCCFC'S~~CFCOC'S Executive ~~Officer~~Director or designee and incorporated as attachments to this MOU.
- ~~2.B.~~ COUNTY shall use ~~a portion of the Reserve~~Audit Reserves for the purpose of repayment of ~~potential~~ audit disallowances as follows:
 - ~~1.~~ ~~1.~~—In the event of an audit disallowance realized on behalf of a ~~Grantee~~CBO, the ~~parties~~Parties agree as ~~follows~~outlined below:
 - ~~a) The audit disallowance shall be first paid by the Grantee unless otherwise agreed to and documented by the Fiscal Leveraging Management Group.~~
 - ~~a. b) In the event the Grantee does not have sufficient funds to repay 100% of the audit disallowance, Reserves in an~~ from the Audit Reserve up to the amount proportionate to the ~~Grantee's contribution to the reserve may be used for this purpose~~CBO's ~~portion~~ unless otherwise agreed to and documented by

the ~~Fiscal Leveraging Management Group~~ FLMG.

~~b. c)~~ In the event that the proportionate ~~Grantee~~ CBO amount is not sufficient to repay ~~100% of~~ the audit disallowance ~~balance~~, the ~~Fiscal Leveraging and Management Group~~ FLMG shall meet and determine whether to obtain the difference from the remaining balance of the ~~Reserve~~ Audit Reserve or from the CBO, unless otherwise agreed to and documented by the FLMG.

~~d)~~ In the event that the amount remaining in the Audit Reserve is not sufficient to repay ~~100% the audit disallowance balance, the assumption of the audit disallowance, then~~ COUNTY and OCCFC agree to share the cost of the audit balance as follows:

- ~~1) For Grantees with whom COUNTY had an existing Medi-Cal contract at the time said Grantee entered into an arrangement for fiscal leveraging activities with OCCFC, COUNTY shall assume 100% of the cost of the audit balance for any year audited.~~
- ~~2) For Grantees with whom COUNTY did not have an existing Medi-cal contract at the time said Grantee entered into an arrangement for fiscal leveraging activities with OCCFC, OCCFC will assume 100% of the cost of the audit balance for any year audited.~~

~~c. 2.~~ COUNTY and OCCFC may choose to repay the audit disallowance from ~~the Reserve prior to beginning the steps outlined follow the protocol as described in further detail in paragraph B.1 agreed to and documented by the~~ the Fiscal Leveraging ~~Management Group~~ Program Policies and Procedures, approved by the HCA Director and CFCOC Executive Director.

~~2.~~ 3. If COUNTY or ~~OCCFC~~ CFCOC, in the course of conducting its own review and/or audits of ~~Grantees~~ CBOs, determines that a ~~potential~~ State audit disallowance may be incurred, the reason for and the estimated amount of the ~~potential~~ audit disallowance shall be presented to the ~~Fiscal Leveraging Management Group~~ FLMG for determination of how any current or future Audit Reserves should be set aside, if any, in anticipation of the State audit findings.

~~4. COUNTY and OCCFC shall be independently responsible for audit disallowances resulting from claims for services provided directly by COUNTY or OCCFC and may utilize funds in the Reserve as approved and documented by the Fiscal Leveraging Management Group.~~

- C. ~~C.~~ The Audit Reserve funds shall be held until a State audit is completed or the audit risk passes for a particular fiscal year. When the audit risk period passes for a fiscal year, any remaining Audit Reserve funds will be distributed to each CBO by fiscal year.
- D. COUNTY agrees to process claims and reimbursements as designated in applicable State and Federal contracts and mechanisms established by the ~~Fiscal Leveraging Management Group~~ FLMG.
- E. ~~D.~~ It is mutually understood that reimbursement of claims is contingent upon the availability of State and Federal funds.
- F. ~~E.~~ It is mutually agreed that costs will only be claimed if sufficient ~~matching funds are~~ CPE is available for the purpose of this agreement. Nothing in this MOU requires either ~~party~~ Party to maintain or increase existing levels of funding. The MOU shall also be subject to any additional restrictions, limitations or conditions set forth by the funding sources which may affect the provisions, term or funding of this MOU in any manner.
- ~~F. OCCFC and its Grantees shall accept as payment in full, the annual TCM service reimbursement encounter rate approved by the State as established by the annual TCM Cost Report process for participants in the Community State Plan Amendment (SPA) category.~~
- G. ~~G.~~ The COUNTY'S administrative costs for this program will be partially funded with Federal funds related to the COUNTY'S administrative services claiming MAA in association with this MOU (approximately 50%) and the remaining amount through the Administrative Cost Recovery Fee Reserve defined in this MOU.
- H. It is mutually agreed that all administrative reimbursement funds received through MAA and other fiscal claiming of State and Federal funds related to COUNTY'S ~~and OCCFC'S~~ administrative services in association with this MOU shall be exempt from consideration ~~for the~~ of a withhold amount for the Audit Reserve and for the Administrative Cost Recovery Fee Reserve and shall be used for the on-going support of administrative services provided through this MOU.
- I. ~~VIII.~~ It is mutually agreed that administrative reimbursement funds received through MAA and other fiscal claiming of State and Federal funds related to CFCOC claiming in association with this MOU shall be subject to a withhold amount for the Administrative Cost Recovery Fee Reserve for on-going support of administrative services. No amount will be withheld for the Audit Reserve.
- J. COUNTY and CFCOC shall be independently responsible for MAA/TCM audit disallowances resulting from claims for services provided directly by COUNTY or CFCOC.

VI. ISSUE RESOLUTION

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For resolution of issues between COUNTY and ~~OCCEFC~~CFCOC with respect to the implementation and operation of this MOU, the following sequential steps shall apply.

- A. ~~A.~~—Each ~~party~~Party shall routinely use all informal communication processes and methods with the other ~~party~~Party, including but not limited to, telephone contact, facsimile machine (FAX), written correspondence and meetings, including the ~~Fiscal Leveraging Management Group~~FLMG, to resolve any issues or problems regarding the implementation and operation of this MOU regarding the services described herein.
- B. ~~B.~~—If the ~~parties~~Parties are unable to resolve the issue, either ~~parties'~~Party's Contract Officer may give written notice to the other, setting forth in specific terms the existence and nature of any unresolved issues related to the purposes and obligations of this MOU. The Contract Officers shall have fifteen (15) days following such notice to obtain resolution of any issue identified in this manner, provided, however, the Contract Officers may agree to extend the period of time.
- C. ~~C.~~—If the Contract Officers are unable to obtain resolution of the issue(s), they shall submit a joint written statement describing the facts of the issue, within forty-five (45) days after the written notice described above to the HCA Director and the ~~OCCEFC~~CFCOC Executive Officer for resolution. If the Contract Officers are unable to prepare a joint statement, each shall submit separate statements to both the HCA Director and ~~OCCEFC~~CFCOC Executive Officer ~~with~~within the forty-five (45) day period. The HCA Director and ~~OCCEFC~~CFCOC Executive Officer shall meet and make their best effort to resolve the matter within thirty (30) days following the submission of the statements. Resolution of the dispute shall be documented in the form of written correspondence exchanged by the HCA Director and ~~OCCEFC~~CFCOC Executive Officer within fifteen (15) days following their meeting.
- D. ~~D.~~—The right and remedies provided by this ~~paragraph~~Section are in addition to those provided by law to either ~~party~~Party.

~~IX.~~

VII. INDEMNIFICATION

- A. ~~COUNTY~~CFCOC agrees to ~~defend,~~ indemnify, defend with counsel approved in writing by COUNTY, and hold ~~OCCFC~~COUNTY, its officers, ~~associates~~ elected and appointed officials, officers, employees ~~and,~~ directors, members, shareholders and/or affiliates, agents, and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from ~~and against~~ any ~~and all~~ claims, demands, including defense costs, or liability, ~~loss, expense, attorneys' fees,~~ of any kind or ~~claims for~~ nature, including but not limited to personal injury or ~~damages~~ property damage, arising ~~out of the~~ from or related to the services, products or other performance ~~of services in the project~~ provided by CFCOC pursuant to this MOU ~~but only in proportion to, and to the extent, such.~~ If judgment is entered against CFCOC and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CFCOC and COUNTY agree that liability, ~~loss, expense, attorneys' fees, or~~ will be apportioned as determined by the court. Neither Party shall request a jury apportionment.
- A.B. COUNTY agrees to indemnify, defend with counsel approved in writing by CFCOC, and hold CFCOC, its commissioners, officers, elected and appointed officials, officers, employees, agents, directors, members, shareholders and/or affiliates harmless from any claims ~~for,~~ demands, including defense costs, or liability of any kind or nature, including but not limited to personal injury or ~~damages are caused by, or result from, the negligent or intentional acts or omissions of COUNTY, its officers, agents, or employees.~~ property damage, arising from or related to the services, products or other performance provided by COUNTY pursuant to this MOU. If judgment is entered against COUNTY and CFCOC by a court of competent jurisdiction because of the concurrent active negligence of CFCOC, COUNTY and CFCOC agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.
- ~~B.~~ ~~OCCFC agrees to defend, indemnify and hold COUNTY, its officers, employees and agents, harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of services in the project pursuant to this MOU but only in proportion to, and to the extent, such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by, or result from, the negligent or intentional acts or omissions of OCCFC, its officers, associates, agents, or employees.~~
- C. ~~X.~~ The COUNTY and CFCOC will satisfy their duty to indemnify each other through a program of self-insurance or maintaining insurance.
- D. Each Party agrees to provide the indemnifying Party with written notification of any claim related to services provided by either Party pursuant to this MOU within thirty (30)

calendar days of notice thereof, and in the event the indemnifying Party is subsequently named Party to the litigation, each Party shall cooperate with the indemnifying Party in its defense.

VIII. PUBLICATION OF PROJECT RESULTS

- A.** ~~A.~~ ~~OCFECFCOC~~ and its subcontractor(s) shall have the right to publish or publicly disseminate research data and research results collected, received or developed hereunder. With prior consent of COUNTY, ~~OCFECFCOC~~ may submit proposed publications to the Clerk of the Board of Supervisors in accordance with ~~OCFECFCOC~~ published filing schedules. In all other instances, ~~OCFECFCOC~~ and its subcontractor(s) shall submit to COUNTY thirty (30) days prior to submission for publication a copy of all proposed publications or papers disclosing data, data summaries or data vignettes, collected, received or developed hereunder. In the event COUNTY determines that the publication or paper contains research subject identifiers or other information that may lead to the identification of a participant, COUNTY shall immediately notify ~~OCFECFCOC~~, and ~~OCFECFCOC~~ shall remove the identifying information prior to submission for publication or public dissemination. In addition, COUNTY may provide comments and suggestions regarding the publication or paper, and ~~OCFECFCOC~~ will give such comments and suggestions due consideration. In the event COUNTY does not provide comments or suggestions, or does not provide notice to ~~OCFECFCOC~~ as described herein, ~~OCFECFCOC~~ shall be free to publish or publicly disseminate such publications or papers.
- B.** ~~B.~~ For purposes of this Section, the term “publication,” or any derivation thereof, shall include the public dissemination of information via any medium, whether oral or written, including but not limited to books, magazines, newspapers, scientific journals, other periodicals, television, radio, presentations at conferences and symposiums, electronic mail, and internet postings.
- C.** ~~C.~~ Additionally, the term “public dissemination,” or any derivation thereof, shall mean the transmission of research data to any ~~party~~ Party other than COUNTY, ~~OCFECFCOC~~ or ~~Grantee~~ CBO(s), and their employees, who are subject to the confidentiality provisions as set forth above.

IX. ~~XI~~—USE OF NAME

 The Parties agree that they will not use the name(s) of the other Party, or its employees, in any advertisement, press release, or publicity related to the services performed under this MOU without the prior written approval of the other Party.

X. ~~XII~~ NOTICE AND COMMUNICATION

A. ~~A.~~ Whenever any notice is to be given hereunder, it shall be in writing and shall be deemed effective:

- 1.** ~~1.~~ When written and deposited in the United States mail, first class postage prepaid and addressed as specified below,
- 2.** ~~2.~~ When faxed, transmission confirmed,
- 3.** ~~3.~~ When sent by electronic mail,
- 4.** ~~4.~~ When accepted by US Postal Services Express Mail, Federal Express, United Parcel Service or other expedited delivery service.

B. ~~B.~~ Any questions regarding this MOU, review of publications or papers submitted to HCA or any other matters may be directed to ~~Melissa Tober, the HCA Contract Services Division Manager~~ at (714) 834-~~5891~~5809. Notice to HCA shall be made to the following ~~addresses~~address:

Orange County Health Care Agency
Attn: ~~Contract Development & Management~~Services Division Manager
405 ~~W.~~5th St. ~~6th Floor~~Street, Suite 600
Santa Ana, CA 92701

~~Attn: Division Manager~~

C. ~~C.~~ Any questions regarding overall ~~OCCFC~~CFCOC project administration, management, oversight of ~~its~~contractors/Grantees ~~CBOs~~ and staff matters may be directed to ~~Alyce Mastrianni, OCCFC~~the CFCOC Contracts Manager at (714) 834-~~3916~~5310. Notice to ~~OCCFC~~CFCOC shall be made to the following address:

~~Orange County~~Children and Families Commission of Orange County
Attention: ~~Fred Trudeau, Contracts Officer~~Manager
~~17320 Red Hill Ave.,~~1505 E. 17th Street, Suite 200230
~~Irvine~~Santa Ana, CA 9261492705

XI. TERM

The term of this MOU shall commence upon execution by all Parties, superseding the previous MOU, and shall remain in effect until such time as it is terminated in accordance with the Termination Section in this MOU. However, the Parties shall be obligated to perform such duties as would normally extend beyond this term including, but not limited to, obligations with respect to indemnification, confidentiality and publication.

XII. ~~XIII~~ TERMINATION

- A. Either Party may terminate this MOU, with or without stating cause, upon thirty (30) days written notice served upon the other Party.
- B. The obligations of COUNTY under this MOU are contingent upon the availability of Federal and/or State funds, as applicable, and inclusion of sufficient funds for the services hereunder in the budget approved by the Orange County Board of Supervisors each fiscal year this MOU is effective or in operation. In the event that such funding is terminated or reduced, COUNTY may terminate this MOU or reduce COUNTY'S obligations accordingly.

XIII. ~~XIV~~ GENERAL PROVISIONS

- A. ~~This MOU~~ Alternation of Terms. This MOU, together with Exhibit A, Business Associate Terms and Conditions, which is attached hereto and incorporated herein by reference, represents the entire understanding of the Parties with respect to the subject matter. No change, modification, extension, termination or waiver of this MOU, or any of the understandings herein contained, shall be valid unless made in writing and signed by duly authorized representatives of the Parties ~~hereto~~.

B. Severability. If a court of competent jurisdiction declares any provision of this MOU or application thereof to any person or circumstances to be invalid or if any provision of this MOU contravenes any federal, state or county statute, ordinance, or regulation, the remaining provisions of this MOU or the application thereof shall remain valid, and the remaining provisions of this MOU shall remain in full force and effect, and to that extent the provisions of this MOU are severable.

C. Independent Contractor. Each Party is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this MOU. Each Party is entirely responsible for compensating staff, subcontractors, and consultants employed by that Party. This MOU shall not be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and CFCOC or any of either Party's employees, agents, consultants, or subcontractors. Each Party assumes exclusively the responsibility for the acts of its employees, agents, consultants, or subcontractors as they relate to the services to be provided during the course and scope of their employment. Each Party, its agents, employees, consultants, or subcontractors, shall not be entitled to any rights or privileges of the other Party's employees and shall not be considered in any manner to be an employee of the other Party.

D. Attorneys' Fees. In the event that any Party to this MOU brings any arbitration or legal action with respect to the subject of this MOU, each Party shall bear its own attorney's fees, costs and expenses.

| **IN WITNESS WHEREOF**, the ~~parties~~ Parties have executed this MOU, in the County of Orange, State of California.

By: _____
Chair of the Board of Supervisors
County of Orange

By: _____
Chair
Children and Families Commission
of Orange County

Dated: _____

Dated: _____

Signed and certified that a copy of this document
has been delivered to the Chair of the Board

Signed and certified that a copy of this document
has been delivered to the Chair of the
Commission

By: _____
Clerk of the Board of Supervisors
of Orange County, California

By: _____
Clerk of the Commission

Dated: _____

Dated: _____

Approved as to form:
County Counsel
County of Orange, California

Approved as to form:
Woodruff, Spradlin & Smart

By: _____
Deputy

By: _____
Commission Counsel

Dated: _____

Dated: _____

**EXHIBIT A
TO MEMORANDUM OF UNDERSTANDING
BETWEEN
COUNTY OF ORANGE
~~ORANGE COUNTY~~
AND**

**CHILDREN AND
FAMILIES COMMISSION OF**, ~~a public body and legal public entity~~ **ORANGE COUNTY**

BY: _____ **Dated:** _____
~~Crystal Kochendorfer, Chair~~

**FOR
FISCAL LEVERAGING AND RELATED SUPPORT SERVICES**

I. BUSINESS ASSOCIATE TERMS AND CONDITIONS

A. GENERAL PROVISIONS AND RECITALS:

The parties acknowledge that any information and client data regarding the services provided by COUNTY to CFCOC, pursuant to this MOU, shall be in aggregate form and is not anticipated to include any individually identifiable information that would be considered Protected Health Information (PHI). However, in the event that PHI is required to be shared by COUNTY with CFCOC, the following Business Associate Terms and Conditions shall apply.

1. The parties agree that the terms used, but not otherwise defined below, shall have the same meaning as those terms in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as it may exist now or be hereafter amended.
2. It is agreed by both parties that CFCOC is a Business Associate of COUNTY for the purposes of this MOU.
3. It is understood by both parties that the HIPAA Security and Privacy Rules apply to the CFCOC in the same manner as they apply to the covered entity (COUNTY). CFCOC shall therefore at all times be in compliance with the applicable provisions of both the Privacy and the Security Rules as are described in Subparagraphs B.4. and B.5. below, and is responsible for complying with the issued regulations for said rules, as they currently exist or are hereafter amended, for purposes of safeguarding any Protected

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County of Orange Health Care Agency

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Health Information (PHI) used or generated by CFCOC consistent with the terms of this MOU.

4. It is understood by both parties that the Privacy Rule does not pre-empt any state statutes, rules or regulations that impose more stringent requirements with respect to confidentiality of PHI.
5. COUNTY wishes to disclose certain information to CFCOC pursuant to the terms of this MOU, some of which may constitute PHI as defined in Subparagraph B.6. below.
6. COUNTY and CFCOC intend to protect the privacy and provide for the security of PHI disclosed to the CFCOC pursuant to this MOU, in compliance with HIPAA and the regulations promulgated thereunder by the U.S. Department of Health and Human Services as they may now exist or be hereafter amended.

B. DEFINITIONS:

1. "Breach" means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the Protected Health Information.
 - a. For purposes of this definition, compromises the security or privacy of the Protected Health Information means poses a significant risk of financial, reputational, or other harm to the Individual.
 - b. A use or disclosure of Protected Health Information that does not include the identifiers listed at §164.514 (e) (2), date of birth, and zip code does not compromise the security or privacy of protected health information.
 - c. Breach excludes:
 - 1) Any unintentional acquisition, access, or use of Protected Health Information by a workforce member or person acting under the authority of a covered entity or a business associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
 - 2) Any inadvertent disclosure by a person who is authorized to access Protected Health Information at a covered entity or business associate to another person authorized to access Protected Health Information at the same covered entity or business associate, or organized health care arrangement in which the covered entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.
 - 3) A disclosure of Protected Health Information where a covered entity or business

associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

2. “Designated Record Set” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
3. “Individual” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).
4. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
5. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.”
6. “Protected Health Information” or “PHI” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103, as applied to the information created or received by Business Associate from or on behalf of Covered Entity.
7. “Required by Law” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.103.
8. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
9. “Unsecured Protected Health Information” means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

OBLIGATIONS AND ACTIVITIESCOUNTY OF ORANGE

BY: _____ DATED: _____

C. _____ CHAIRMAN OF THE BOARD CFCOC AS BUSINESS ASSOCIATE:
_____ OF SUPERVISORS

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIR OF THE BOARD.

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Memorandum of Understanding

County of Orange Health Care Agency

Children and Families Commission of Orange County~~CDI-FL-01~~

MOU FCI-HCA-10

DATED: _____

DARLENE J. BLOOM
Clerk of the Board of Supervisors
of Orange County, California

~~APPROVED AS TO FORM~~
~~COUNTY COUNSEL~~
~~ORANGE COUNTY, CALIFORNIA~~

~~APPROVED AS TO FORM~~
~~STRADLING YOCCA CARLSON & RAUTH~~
~~ORANGE COUNTY CHILDREN AND~~
~~FAMILIES COMMISSION~~

BY: _____

BY: _____

DEPUTY

GENERAL COUNSEL

Dated: _____

Dated: _____

1. CFCOC agrees not to use or disclose PHI other than as permitted or required by this MOU or as required by law.
2. CFCOC agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this MOU.
3. CFCOC agrees to mitigate, to the extent practicable, any harmful effect that is known to either party of a use or disclosure of PHI by either party in violation of the requirements of this MOU.
4. CFCOC agrees to report within five (5) business days any use or disclosure of PHI not provided for by this MOU of which either party becomes aware.
5. CFCOC agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from COUNTY, or created or received by CFCOC on behalf of COUNTY, agrees to the same restrictions and conditions that apply through this MOU to CFCOC with respect to such information.
6. CFCOC agrees to provide access, within fifteen (15) calendar days of receipt of a written request by COUNTY, to PHI in a Designated Record Set, to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR Section 164.524.
7. CFCOC agrees to make any amendment(s) to PHI in a Designated Record Set that COUNTY directs or agrees to pursuant to 45 CFR Section 164.526 at the request of COUNTY or an Individual, within thirty (30) calendar days of receipt of said request by COUNTY. CFCOC agrees to notify COUNTY in writing no later than ten (10) calendar days after said amendment is completed.

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8. CFCOC agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by CFCOC on behalf of COUNTY, available to COUNTY and the Secretary, in a time and manner as determined by COUNTY, or as designated by the Secretary, for purposes of the Secretary determining COUNTY's compliance with the Privacy Rule.
9. CFCOC agrees to document any disclosures of PHI and to make information related to such disclosures available as would be required for COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
10. CFCOC agrees to provide COUNTY or an Individual, as directed by COUNTY, in a time and manner to be determined by COUNTY, that information collected in accordance with this MOU, in order to permit COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
11. CFCOC shall work with COUNTY upon notification by CFCOC to COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.1.c. above.

D. SECURITY RULE:

1. Security. CFCOC shall establish and maintain appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI. CFCOC shall follow generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of PHI.
2. Agents and Subcontractors. CFCOC shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI, agrees to implement reasonable and appropriate safeguards to protect the PHI.
3. Security Incidents. CFCOC shall report any "security incident" of which it becomes aware to COUNTY. For purposes of this MOU, a security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans, "pings," or unsuccessful attempts to penetrate computer networks or servers maintained by CFCOC.

E. BREACH DISCOVERY AND NOTIFICATION:

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1. Following the discovery of a Breach of Unsecured Protected Health Information, CFCOC shall notify COUNTY of such Breach, however both parties agree to a delay in the notification if so advised by a law enforcement official, pursuant to 45 CFR 164.412.
2. A Breach shall be treated as discovered by CFCOC as of the first day on which the Breach is known to the CFCOC, or by exercising reasonable diligence, would have been known to CFCOC.
3. CFCOC shall be deemed to have knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of the CFCOC, as determined by federal common law of agency.
4. CFCOC shall provide the notification of the Breach without unreasonable delay, and in no case later than five (5) business days after a Breach.
5. The notification may be oral, but shall be followed by written notification within twenty-four (24) hours of the oral notification. Thereafter, CFCOC shall provide written notification containing the contents stated below, within five (5) business days. CFCOC shall be required to provide any other information relevant to the Breach in writing, as soon as discovered, or as soon as the information is available.
6. CFCOC's notification shall include, to the extent possible:
 - a. The identification of each Individual whose unsecured protected health information has been, or is reasonably believed by CFCOC to have been, accessed, acquired, used, or disclosed during the Breach,
 - b. Any other information that COUNTY is required to include in the notification to Individual it must provide pursuant to 45 CFR §164.404 (c), at the time CFCOC is required to notify COUNTY or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:
 - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - 4) A brief description of what the parties are doing to investigate the Breach, to

- mitigate harm to Individuals, and to protect against any future Breaches; and
- 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
7. COUNTY may require CFCOC to provide notice to the Individual as required in 45 CFR § 164.404 if it is reasonable to do so under the circumstances, at the sole discretion of the COUNTY.
8. In the event that CFCOC is responsible for, or suffers a Breach of Unsecured Protected Health Information, in violation of the Privacy Rule, CFCOC shall have the burden of demonstrating that CFCOC made all notifications to COUNTY as required by the Breach Notification regulations, or in the alternative, that the use or disclosure did not constitute a Breach as defined in 45 CFR § 164.402.
9. CFCOC shall maintain documentation of all required notifications required pursuant to this MOU in the event of an impermissible use or disclosure of Unsecured Protected Health Information, or its risk assessment of the application of an exception to demonstrate that the notification was not required.
10. CFCOC shall provide to COUNTY all specific and pertinent information about the Breach to permit COUNTY to meet its notification obligations under the HITECH Act, as soon as practicable, but in no event later than fifteen (15) calendar days after reporting the initial Breach to the COUNTY.
11. CFCOC shall continue to provide all additional pertinent information about the Breach as it may become available, in reporting increments of fifteen (15) calendar days after the last report. CFCOC shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to COUNTY, when such requested by COUNTY.
12. CFCOC shall bear all expense or other costs associated with the Breach, that are incurred in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CFCOC:

1. Except as otherwise limited in this MOU, CFCOC may use or disclose PHI to perform functions, activities, or services for, or on behalf of, COUNTY as specified in this MOU, provided that such use or disclosure would not violate the Privacy Rule if done by COUNTY or the minimum necessary policies and procedures of COUNTY.

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2. CFCOC is permitted to use PHI as necessary for the proper management and administration of CFCOC or to carry out legal responsibilities of CFCOC. (ref. 45 CFR 164.504(e)(4)(i)(A-B)).
3. CFCOC is permitted to disclose PHI received from COUNTY for the proper management and administration of CFCOC or to carry out legal responsibilities of CFCOC, provided:
 - a. The disclosure is required by law; or
 - b. CFCOC obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent unauthorized use or disclosure of the PHI, and the person immediately notifies CFCOC of any instance of which it is aware in which the confidentiality of the Information has been Breached. (ref. 45 CFR 164.504(e)(4)(ii)).
4. CFCOC is also permitted to use or disclose PHI to provide data aggregation services, as that term is defined by 45 CFR 164.501, relating to the health care operations COUNTY.

G. OBLIGATIONS OF COUNTY

1. COUNTY shall notify CFCOC of any limitation(s) in COUNTY's notice of privacy practices in accordance with 45 CFR Section 164.520, to the extent that such limitation may affect CFCOC's use or disclosure of PHI.
2. COUNTY shall notify CFCOC of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect CFCOC's use or disclosure of PHI.
3. COUNTY shall notify CFCOC of any restriction to the use or disclosure of PHI that COUNTY has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect CFCOC's use or disclosure of PHI.
4. COUNTY shall not request CFCOC to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by COUNTY.

H. BUSINESS ASSOCIATE TERMINATION

1. Notwithstanding the Termination provisions set forth in this MOU, the MOU shall only terminate when all of the PHI provided by COUNTY to CFCOC, or created or received by CFCOC on behalf of COUNTY, is destroyed or returned to COUNTY, or if

- infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Subparagraph.
2. In addition to the rights and remedies provided in the Termination paragraph of this MOU, upon COUNTY's knowledge of a material breach by CFCOC of the requirements of this Paragraph, COUNTY shall either:
- a. Provide an opportunity for CFCOC to cure the material breach or end the violation and terminate this MOU if CFCOC does not cure the material breach or end the violation within thirty (30) business days; or
 - b. Immediately terminate this MOU if CFCOC has breached a material term of this MOU and cure is not possible; or
 - c. If neither termination nor cure is feasible, COUNTY shall report the violation to the Secretary of the Department of Health and Human Services.
3. Upon termination of this MOU, all PHI provided by COUNTY to CFCOC, or created or received by CFCOC on behalf of COUNTY, shall either be destroyed or returned to COUNTY as provided in the Termination paragraph of this MOU, and in conformity with the Privacy Rule.
- a. This provision shall apply to PHI that is in the possession of subcontractors or agents of CFCOC.
 - b. CFCOC shall retain no copies of the PHI.
 - c. In the event that CFCOC determines that returning or destroying the PHI is infeasible, CFCOC shall provide to COUNTY notification of the conditions that make return or destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible, CFCOC shall extend the protections of this MOU to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as CFCOC maintains such PHI.