

MEMORANDUM OF UNDERSTANDING BETWEEN LAKE COUNTY SOCIAL SERVICES AND LAKE COUNTY BEHAVIORAL HEALTH SERVICES FOR MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

This Memorandum of Understanding (MOU) is made and entered into by and between the Lake County Department of Social Services, hereinafter referred to as "LCDSS", and Lake County Behavioral Health Services hereinafter referred to as "LCBHS", collectively referred to as the "parties". The LCDSS Director shall administer this MOU on behalf of LCDSS.

1. TERM

This MOU shall commence on July 1, 2020, and shall terminate on June 30, 2021 unless earlier terminated as hereinafter provided. In the event LCDSS desires to temporarily continue services after the expiration of this MOU, such continuation shall be deemed on a month-to-month basis, subject to the same terms, covenants, and conditions contained herein.

2. COMPENSATION

LCBHS has been selected by LCDSS to provide the services described hereunder in Exhibit "A" (Scope of Services), incorporated herein by this reference. Total compensation to LCBHS shall not exceed three hundred fifty thousand three hundred eighty-nine dollars (\$350,389.00) per fiscal year. One hundred fifty-three thousand three hundred forty-four dollars (\$153,344.00) for Mental Health Services; and one hundred ninety-seven thousand forty-five dollars (\$197,045.00) for Substance Abuse Services.

LCDSS shall compensate LCBHS for services in accordance with Exhibit "B" (Fiscal Provisions), attached hereto and incorporated herein. Compensation to LCBHS is contingent upon appropriation of federal, state, and county funds.

3. TERMINATION

This MOU may be terminated by mutual consent of the parties or by the LCDSS Director upon 30 days written notice to LCBHS.

In the event of non-appropriation of funds for the services provided under this MOU, LCDSS Director will terminate this MOU, without termination charge or other liability.

Upon termination, LCBHS shall be paid a prorated amount for the services provided up to the date of termination.

4. MODIFICATION

This MOU may only be modified by a written amendment hereto, executed by both parties; however, matters concerning scope of services which do not affect the compensation may be modified by mutual written consent of LCBHS and LCDSS Director.

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5. NOTICES

All notices between the parties shall be in writing addressed as follows:

LCDSS
P.O. Box 9000
Lower Lake, CA 95457

Lake County Behavioral Health Services
P.O. Box 1024
Lucerne, CA 95458

6. EXHIBITS

The MOU Exhibits, as listed below, are incorporated herein by reference:

Exhibit A – Scope of Services
Exhibit B – Fiscal Provisions
Exhibit C – Compliance Provisions

7. TERMS AND CONDITIONS

LCBHS warrants that it will comply with all terms and conditions of this MOU and Exhibits, and all other applicable federal, state, and local laws, regulations and policies.

This MOU constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior contracts, related proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties.

Executed at Lakeport, California on _____.

COUNTY OF LAKE

ATTEST: CAROL J. HUCHINGSON
Clerk to the Board of Supervisors

CHAIR, Board of Supervisors

By: _____

APPROVED AS TO FORM:
ANITA L. GRANT

County Counsel

By: _____



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LCDSS

LCBHS


Crystal Markytan (Dec 30, 2020 10:40 PST)

Crystal Markytan, Social Services Director

Date: 12/30/2020


Todd Metcalf (Dec 28, 2020 20:40 PST)

Todd Metcalf, Behavioral Health Services
Administrator

Date: 12/28/2020

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EXHIBIT “A” – SCOPE OF SERVICES

1. DESCRIPTION OF SERVICES

The parties will collaborate to assess and address Mental Health and Substance Abuse related barriers to employment and training of California Work Opportunity and Responsibility to Kids (CalWORKs) Welfare-to-Work (WTW) participants. In addition to the responsibilities listed below, both parties agree to attend monthly care coordination meetings.

A. LCBHS shall:

1. Provide adequate mental health therapist(s), substance abuse counselor(s) and support staff to perform an array of mental health (MH) and substance abuse (SA) services designed to provide time-limited assistance to CalWORKs WTW participants referred due to potential MH/SA barriers to employment and training.
2. Provide training for LCDSS Employment Services (ES) staff regarding best practices in treatment of MH/SA barriers annually, or more frequently as requested by either party.
3. Meet with referred WTW participants within ten (10) days of receiving referral from LCDSS ES staff, or immediately if an urgent situation occurs.
4. Conduct MH/SA assessments for WTW participants that have been referred by LCDSS ES staff.
5. Organize and participate in team meetings with participants and LCDSS ES staff within forty-five (45) days of each participant's referral date, to recommend services that address MH/SA issues identified as barriers to employment and training, and non-treatment services as well. Be available for additional team meetings, organized by LCDSS ES Staff, as needed to assist in development of ES WTW employment plans for all individual WTW participants referred for treatment.
6. Provide individual and group counseling to WTW participants. The counseling sessions will be based upon each participant's MH/SA service needs.
7. Be available for crisis intervention to provide brief screening during normal work hours, including but not limited to placement in residential substance abuse treatment or hospitalization for mental health.
8. Ensure all participants sign a Release of Information form for LCBHS.
9. When necessary, arrange placement, monitor progress, plan for discharge, and determine continuing treatment needs for WTW participants.

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10. Notify LCDSS ES staff immediately by telephone, and follow up with a faxed referral or case update form, if participant does not show up for or call to reschedule any scheduled MH/SA appointment.

11. Monitor and track participant services, participation hours, and progress.

B. LCDSS ES shall:

1. Identify WTW participants with potential MH/SA barriers to employment and training using the Online CalWORKs Assessment Tool (OCAT).
2. Conduct initial screening and assessment, and reassessment as needed, on WTW participants to determine the need for MH/SA services referral. If deemed necessary, refer WTW participants to LCBHS for MH/SA services.
3. Review recommendations made by LCBHS at team meeting, and incorporate the agreed upon treatment(s) into the participant's WTW employment plan.
4. Evaluate attendance and progress, and determine good cause or non-compliance of WTW participants in consultation with LCBHS.
5. Provide updates to LCBHS on changes in participant's WTW eligibility status, residence, contact information, participation status and requirements, and termination from the WTW program.
6. Provide training to LCBHS staff regarding LCDSS ES best practices based on WTW regulations annually, or more frequently as requested by either party.
7. Issue payment for Room & Board through a separate MOU with LCBHS.

2. REPORTING REQUIREMENTS

LCBHS shall submit monthly reports in a format approved by LCDSS by the 10th of the month following the report period. LCBHS will submit monthly case updates for every participant, which includes individual progress and individual participation. Additionally, a summary report that lists total clients served and total services provided shall be submitted monthly.

3. MONITORING REQUIREMENTS

LCBHS shall be subject to monitoring by LCDSS, allowing full access to the information requested for monitoring purposes.

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4. RECORDS RETENTION

LCBHS shall prepare, maintain, and/or make available to LCDSS upon request, all records and documentation pertaining to this MOU, including financial, statistical, property, recipient and service records and supporting documentation for a period of four (4) years from the date of final payment of this MOU. If at the end of the retention period, there is ongoing litigation or an outstanding audit involving the records, LCBHS shall retain the records until resolution of litigation or audit. After the retention period has expired, LCBHS assures that confidential records shall be shredded and disposed of appropriately.

5. GRIEVANCE

LCBHS agrees to provide a procedure through which recipients of MOU services shall have the opportunity to grieve or complain regarding service.

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EXHIBIT “B” – FISCAL PROVISIONS

1. BUDGET

LCBHS shall submit, in advance, a detailed budget, in the format approved by LCDSS for review and approval by the LCDSS Director. LCBHS shall be compensated only for expenses included in the approved budget. Modification to the budget must be approved in advance by the LCDSS Director.

2. EXPENDITURE OF FUNDS

A. MOU funds shall not be used to purchase food or promotional merchandise or to attend conferences unless specifically approved in the budget.

B. MOU funds shall not be used to purchase computers, printers, software or any related equipment unless specifically approved in the budget.

C. LCDSS Director reserves the right to refuse payment to LCBHS or disallow costs for any expenditure determined to be unreasonable, out of compliance, or inappropriate to the services provided hereunder.

3. EQUIPMENT PURCHASED WITH CONTRACT FUNDS

LCBHS shall maintain an inventory of all equipment purchased with MOU funds and shall submit a copy of said inventory along with LCBHS's June invoice or upon termination of the MOU. All equipment purchased with MOU funds is the property of LCDSS and shall be delivered to LCDSS if no longer needed or upon termination of the MOU.

4. CONTRACTOR'S FINANCIAL RECORDS

LCBHS shall keep financial records for funds received hereunder, separate from any other funds administered by LCBHS, and maintained in accordance with Generally Accepted Accounting Principles and Procedures and the Office of Management and Budget's Cost Principles.

5. INVOICES

A. LCBHS shall submit quarterly Inter-Department Charges (IDC) Inter-Department Services (IDS) forms accompanied by an itemized invoice based on actual expenses, in a format approved by LCDSS, no later than the 20th of the month following the quarter in which services were provided, except for the quarter of April, May, and June.

B. For the quarter of April, May, and June:

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1. Funding for this MOU is appropriated on a fiscal year basis. LCDSS is not able to compensate LCBHS after the close of the fiscal year period.
2. To ensure LCBHS is properly compensated, LCBHS shall submit invoices based on estimated expenses, including all anticipated costs, no later than June 5th of the fiscal year period.
3. LCBHS shall follow up by submitting invoices for actual expenses, as stated hereinabove in Paragraph 5A., including remittance of the full amount of any overpayment that occurred in the event estimated expenses exceeded actual.

C. LCDSS shall review and approve LCBHS's invoices and make payment within fifteen (15) days of approval.

6. AUDIT REQUIREMENTS AND AUDIT EXCEPTIONS

A. Contractors that expend \$750,000 or more in Federal Awards shall arrange for an audit to be performed as required by the Single Audit Act of 1984, Public Law 98-502, Single Audit Act Amendments of 1996, Public Law 104-156, and Office of Management and Budget (OMB) Circular A-133, and a copy submitted to the:

Lake County Department of Social Services
Attn: Program Manager
P.O. Box 9000
Lower Lake, CA 95457

The copy shall be submitted within the earlier of 30 days after receipt of the auditor's report or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency.

LCBHS shall ensure that LCDSS-funded expenditures are displayed discretely along with the related federal expenditures in the single audit report's "Schedule of Expenditures of Federal Awards" (SEFA) under the appropriate Catalog of Federal Domestic Assistance (CFDA) number as referenced in Section B of this Article.

For LCDSS contracts that do not have CFDA numbers, LCBHS shall ensure that the LCDSS funded expenditures are discretely identified in the SEFA by the appropriate program name, identifying grant/contract number, and as passed-through the California Department of Social Services.

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EXHIBIT “C” – COMPLIANCE PROVISIONS

1. INFORMATION INTEGRITY AND SECURITY

A. LCBHS ensures that personal, sensitive and confidential information is protected from inappropriate or unauthorized access or disclosure in accordance with Welfare and Institutions Code Section 10850, LCDSS MEDS Data Privacy and Security Agreement, Lake County Information Security Policy, Health Insurance Portability and Accountability Act (HIPAA), and all other applicable laws, regulations and policies.

B. LCBHS shall immediately notify LCDSS of any known or suspected breach of personal, sensitive and confidential information related to LCBHS’s work under this MOU.

2. NON-DISCRIMINATION

A. LCBHS shall not unlawfully discriminate against any qualified worker or recipient of services because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status or age.

B. LCBHS shall comply with and annually sign the LCDSS “Assurance of Compliance” form.

3. ABUSE REPORTING REQUIREMENTS

A. LCBHS shall ensure that all known or suspected instances of child abuse or neglect, as defined in Penal Code Section 11165, are reported to LCDSS Child Welfare Services.

B. LCBHS shall ensure that all known or suspected instances of elder abuse as defined in Welfare and Institutions Code 15610, are reported to LCDSS Adult Protective Services.

4. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

A. LCBHS certifies to the best of its knowledge and belief, that it and its subcontractors:

1. Are not presently debarred or suspended from federal financial assistance programs and activities, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency;

2. Have not, within a three-year period preceding this MOU, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the preceding paragraph; and

4. Have not, within a three-year period preceding this MOU, had one or more public transactions terminated for cause or default.

B. LCBHS shall report immediately to LCDSS Director, in writing, any incidents of alleged fraud and/or abuse by either LCBHS or LCBHS's subcontractor. LCBHS shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by LCDSS Director.

5. CHILD SUPPORT

LCBHS shall comply with Public Contract Code Section 7110(a), recognizing the importance of child and family support obligations and enforcement including, but not limited to, disclosure of information and compliance with earnings assignment orders as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.

6. PAYROLL TAXES AND DEDUCTIONS

LCBHS shall promptly forward payroll taxes, insurances, and contributions to designated governmental agencies.

7. CONTRACTS IN EXCESS OF \$100,000

LCBHS shall comply with all applicable orders or requirements issued under the following laws:

- A. Clean Air Act, as amended (42 USC 1857).
- B. Clean Water Act, as amended (33 USC 1368).
- C. Federal Water Pollution Control Act, as amended (33 USC 1251, et seq.)
- D. Environmental Protection Agency Regulations (40 CFR, Part 15 and Executive Order 11738).
- E. Public Contract Code Section 10295.3.

8. STANDARD OF CARE

LCBHS represents that it is specially trained, licensed, experienced and competent to perform all the services, responsibilities and duties specified herein and that such services, responsibilities

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and duties shall be performed, whether by LCBHS or designated subcontractors, in a manner according to generally accepted practices.

9. INTEREST OF CONTRACTOR

LCBHS assures that neither it nor its employees has any interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder.

10. ATTORNEY'S FEES AND COSTS

If any action at law or in equity is necessary to enforce or interpret the terms of this MOU, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such part may be entitled.

11. ASSIGNMENT

LCBHS shall not assign any interest in this MOU and shall not transfer any interest in the same without the prior written consent of LCDSS Director except that claims for money due or to become due LCBHS from LCDSS under this MOU may be assigned by LCBHS to a bank, trust company, or other financial institution without such approval. Written notice of any such transfer shall be furnished promptly to LCDSS. Any attempt at assignment of rights under this MOU except for those specifically consented to by both parties or as stated above shall be void.

12. OWNERSHIP

All non-proprietary reports, drawings, renderings, or other documents or materials prepared by LCBHS hereunder are the property of the LCDSS.

13. ADHERENCE TO APPLICABLE DISABILITY LAW

LCBHS shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.). California Government Code Sections 12920 et seq., and all related state and local laws.

14. HIPAA COMPLIANCE

LCBHS will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make its best efforts to preserve data integrity and the confidentiality of protected health information.

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15. SAFETY RESPONSIBILITIES

LCBHS will adhere to all applicable CalOSHA requirements in performing work pursuant to this MOU. LCBHS agrees to provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards in the performance of work under this MOU.

16. JURISDICTION AND VENUE

This MOU shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding regarding this MOU or performance thereof shall be in Lake County, California. LCBHS waives any right of removal it might have under California Code of Civil Procedure Section 394.

17. RESIDENCY

All independent contractors providing services to LCDSS for compensation must file a State of California Form 590, certifying California residency or, in the case of a corporation, certifying that they have a permanent place of business in California.

18. NO THIRD-PARTY BENEFICIARIES

Nothing contained in this MOU shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.

19. SEVERABILITY

If any provision of this MOU is held to be unenforceable, the remainder of this MOU shall be severable and not affected thereby.

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Business Associate – Qualified Service Organization Agreement

THIS HIPAA BUSINESS ASSOCIATE and QUALIFIED SERVICE ORGANIZATION AGREEMENT (the "Agreement") is entered into effective July 1, 2019 (the "Effective Date"), by and between **Lake County Social Services**, ("Business Associate/Qualified Service Organization") and **Lake County Behavioral Health Services** (the "Covered Entity").

Business Associate/Qualified Service Organization and Covered Entity have a business relationship (the "Relationship" or the "Agreement") in which Business Associate/Qualified Service Organization may perform functions or activities on behalf of Covered Entity involving the use and/or disclosure of protected health information received from, or created or received by, Business Associate/Qualified Service Organization on behalf of Covered Entity. Business Associate is also a Qualified Service Organization (QSO) under 42 CFR, Part 2 and agrees to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information. Therefore, if Business Associate is functioning as a Business Associate or QSO to Covered Entity, Business Associate agrees to the following terms and conditions set forth in this Business Associate/Qualified Service Organization Agreement.

Definitions

Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Terms used, but not otherwise defined, in this agreement shall have the same meaning as those terms in the HIPAA and CFR 42 Part 2 Regulations. Protected Health Information (PHI) includes electronic Protected Health Information (ePHI).

Specific definitions:

- (a) **Business Associate.** "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean ***Lake County Social Services (name of contractor)***.
- (b) **Qualified Service Organization.** "Qualified Service Organization" shall generally have the same meaning as defined in 42 CFR 2.11, and in reference to the party to this agreement, shall mean ***Lake County Social Services (name of contractor)***.

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- (c) **Covered Entity**. “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean *Lake County Behavioral Health Services*.
- (d) **HIPAA Rules**. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 as well as the HITECH Act.
- (e) **CFR 42 Part 2**. “CRF 42 Part 2” shall mean the federal law governing Confidentiality of Alcohol and Drug Abuse Patient Records and its implementing regulations.

Obligations and Activities of Business Associate/Qualified Service Organization

Business Associate/QSO agrees to:

- (a) **Limitations on Uses and Disclosures of PHI**. Business Associate/QSO shall not, and shall ensure that its directors, officers, employees, and agents do not, use or disclose PHI in any manner that is not permitted or required by the Relationship, this Agreement, or required by law. All uses and disclosures of, and requests by Business Associate/QSO, for PHI are subject to the minimum necessary rule of the Privacy Standards and shall be limited to the information contained in a limited data set, to the extent practical, unless additional information is needed to accomplish the intended purpose, or as otherwise permitted in accordance with Section 13405(b) of HITECH and any implementing regulations. See Permitted Uses and Disclosures by Business Associate below.
- (b) **Required Safeguards To Protect PHI**. Use, and document the implementation of, appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement;
- (c) **Reporting of Improper Use and Disclosures or Breaches of Unsecured PHI**. Report to Covered Entity within 24 business hours of Business Associate/QSO becoming aware of any use or disclosure of protected health information not provided for by the Agreement. Business Associate/QSO shall also report to Covered Entity within 24 business hours any breaches of unsecured protected health information as required at 45 C.F.R. §§ 164.400-414, and any security incident of which it becomes aware. Report should be made to:

Compliance Officer
Lake County Behavioral Health Services
1-877-610-2355

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- (d) **Mitigation of Harmful Effects.** Business Associate/QSO agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate/QSO in violation of the requirements of this Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements. Business Associate/QSO shall cooperate with Covered Entity's breach notification and mitigation activities, and shall be responsible for all costs incurred by Covered Entity for those activities.
- (e) **Access to Information.** Within five (5) business days of a request by the Covered Entity, make available protected health information in a designated record set as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524. In the event an individual delivers directly to the Business Associate/QSO a request for access to protected health information, the Business Associate/QSO shall within two (2) business days forward such request to the Covered Entity;
- (f) **Availability of PHI for Amendment.** Within five (5) business days of request of a Covered Entity, make amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526. This includes, but is not limited to, the Business Associate/QSO providing such information to the Covered Entity for amendment and incorporation of any such amendment(s) in the protected health information. In the event an individual delivers directly to the Business Associate/QSO a request for amendment(s) to protected health information, the Business Associate/QSO shall within two (2) business days forward such request to the Covered Entity;
- (g) **Documentation of Disclosures.** Maintain a record of all disclosures of protected health information and information related to such disclosures, including the name of the recipient and the date of disclosure. If known, the records shall also include, the address of the recipient of the protected health information, a brief description of the protected health information disclosed, and the purpose of the disclosure which includes an explanation of the basis of such disclosure;
- (h) **Accounting of Disclosures.** Within five (5) days of notice by Covered Entity to Business Associate/QSO that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, Business Associate/QSO shall make available to Covered Entity information to permit Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. § 164.528. In the case of an electronic health record maintained or hosted by Business Associate/QSO on behalf of Covered Entity, the accounting period shall be three (3) years and the accounting shall include disclosures for treatment, payment and healthcare operations, in accordance with the applicable effective date of Section 13402(a) of HITECH. In the event the request for an

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accounting is delivered directly to Business Associate/QSO, Business Associate/QSO shall within two (2) days forward such request to Covered Entity;

- (i) **Availability of Books and Records.** Business Associate/QSO shall make its internal practices, books, and records relating to the use and disclosure and privacy protection of PHI received from Covered Entity, or created, maintained or received by Business Associate/QSO on behalf of the Covered Entity, available to the Covered Entity, the State of California, and the Secretary of the Department of Health and Human Services, in the time and manner designated by the Covered Entity, State or Secretary, for purposes of determining Covered Entity's compliance with the Privacy Standards. Business Associate/QSO shall notify the Covered Entity upon receipt of such a request for access by the State or Secretary, and shall provide the Covered Entity with a copy of the request as well as a copy of all materials disclosed.
- (j) **Electronic PHI.** To the extent that Business Associate/QSO creates, receives, maintains or transmits electronic PHI on behalf of Covered Entity, Business Associate/QSO shall:
 - (I) Comply with 45 C.F.R. §§164.308, 301, 312, and 316 in the same manner as such sections apply to Covered Entity, pursuant to Section 13401(a) of HITECH, and otherwise implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI;
 - (II) Ensure that any agent to whom Business Associate/QSO provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect it; and
 - (III) Report to Covered Entity any security incident of which Business Associate/QSO becomes aware.
- (k) **Business Associate/QSO as Agent of Covered Entity.** To the extent the Business Associate/QSO is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate/QSO shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

Permitted Uses and Disclosures by Business Associate/QSO

- (a) Business Associate/QSO may only use or disclose protected health information:
 - (i) To carry out its duties to the Covered Entity pursuant to the terms of the Relationship;
 - (ii) For its own proper management and administration; and
 - (iii) To carry out its legal responsibilities.

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- (b) Business Associate/QSO may use or disclose protected health information as required by law.
- (c) Business Associate/QSO agrees to limit uses and disclosures and requests for protected health information to the minimum amount necessary to accomplish the purpose of the request, use, or disclosure, and consistent with the Covered Entity's minimum necessary policies and procedures.
- (d) Business Associate/QSO may disclose protected health information for the proper management and administration of the Business Associate/QSO or to carry out the legal responsibilities of the Business Associate/QSO, provided the disclosures are required by law, or Business Associate/QSO obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person. Additionally, Business Associate/QSO must obtain an agreement from the receiving party to immediately notify the Business Associate/QSO of any instances of which it is aware in which the confidentiality of the information has been breached.
- (e) Business Associate/QSO may provide data aggregation services relating to the health care operations of the Covered Entity.

Provisions for Covered Entity to Inform Business Associate/QSO of Privacy Practices and Restrictions

- (a) Covered Entity shall notify Business Associate/QSO within five (5) business days of notice of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate/QSO's use or disclosure of protected health information.
- (b) Covered Entity shall notify Business Associate/QSO within five (5) business days of notice of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect Business Associate/QSO's use or disclosure of protected health information.
- (c) Covered Entity shall notify Business Associate/QSO within five (5) business days of notice of any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate/QSO's use or disclosure of protected health information.

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MEMORANDUM OF UNDERSTANDING BETWEEN LAKE COUNTY SOCIAL SERVICES AND LAKE COUNTY BEHAVIORAL HEALTH SERVICES FOR MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

42 CFR Part 2 – Substance Abuse Treatment PHI

- (a) **Qualified Service Organization Status.** To the extent that in performing its services for or on behalf of Covered Entity, Business Associate/QSO uses, discloses, maintains, or transmits protected health information that is protected by 42 CFR, Part 2, Business Associate/QSO acknowledges and agrees that it is a QSO for the purpose of such federal law. Business Associate/QSO acknowledges that in receiving, storing, processing or otherwise dealing with any PHI from the Covered Entity, it is fully bound by 42 C.F.R. Part 2.
- (b) **Judicial and Administrative Proceedings.** Business Associate/QSO will resist any efforts, including judicial proceedings, to obtain PHI except as provided in 42 C.F.R. Part 2. In the event Business Associate/QSO receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Covered Entity shall have the right to control Business Associate/QSO's response to such request. Business Associate/QSO shall notify Covered Entity of the request as soon as reasonably practicable, but in any event within two (2) days of receipt of such request.
- (c) **Limitations.** Business Associate/QSO may use and/or disclose PHI within BA/QSO for the proper management and administration of its business, except as otherwise limited by the Agreement or 42 C.F.R. Part 2. Business Associate/QSO may use and/or disclose PHI within BA/QSO to carry out its legal responsibilities, except as otherwise limited by the Agreement or 42 C.F.R. Part 2. Re-disclosure of client information to third party is prohibited by 42 CFR Part 2 except to report violations of law as permitted by HIPAA and 42 C.F.R. Part 2.
- (d) **Notification.** Covered Entity will notify Business Associate/QSO of any changes in or revocation of, authorization by an Individual to use or disclose PHI. Covered Entity will notify Business Associate/QSO of any Individual requests for restrictions to the use or disclosure of PHI. Business Associate/QSO acknowledges it is fully bound by HIPAA and 42 C.F.R. Part 2.
- (e) **CFR 42 Part 2 Precedence.** Mandatory provisions of HIPAA preempt provisions of the Agreement. Provisions of the Agreement not mandated by HIPAA but nonetheless permitted by HIPAA will control. In the event of inconsistencies between HIPAA and 42 C.F.R. Part 2, the more restrictive rule will control.

Parties will comply with any and all federal, state and local laws pertaining to client confidentiality including, but not limited to, state mental health and developmental disability confidentiality law, state and federal drug and alcohol confidentiality laws and state AIDS/HIV confidentiality laws.

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MEMORANDUM OF UNDERSTANDING BETWEEN LAKE COUNTY SOCIAL SERVICES AND LAKE COUNTY BEHAVIORAL HEALTH SERVICES FOR MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

Term and Termination

- (a) **Term.** The Term of this Agreement shall be effective as of **July 1, 2019** and shall terminate at the *time Lake County Behavioral Health Services (Business Associate/QSO)* ceases to provide **mental health and substance abuse services for Lake County Social Services** or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- (b) **Termination for Cause.** Business Associate/QSO authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate/QSO has violated a material term of the Agreement. At the Covered Entity's option, the Covered Entity may permit the Business Associate/QSO to cure or end any such violation within the time specified by the Covered Entity. Covered Entity's option to have cured a breach of this Agreement shall not be construed as a waiver of any other rights Covered Entity has in the Relationship, this Agreement or by operation of law or in equity.
- (c) **Obligations of Business Associate/QSO Upon Termination.**
 - (i) Upon termination of this Agreement for any reason, Business Associate/QSO shall return to Covered Entity or, at the Covered Entity's discretion and direction, destroy all protected health information received from Covered Entity, or created, maintained, or received by Business Associate/QSO on behalf of Covered Entity, that the Business Associate/QSO still maintains in any form. This provision shall apply to protected health information that is in the possession of the Business Associate/QSO or agents of the Business Associate/QSO. Business Associate/QSO shall retain no copies of the protected health information.
 - (ii) Upon termination of this Agreement for any reason, Business Associate/QSO may retain certain protected health information for its own management and administration or to carry out its legal responsibilities at the discretion of the Covered Entity. With respect to such protected health information necessary for Business Associate/QSO's own management and administration or to carry out its legal responsibilities which was received from Covered Entity, or created, maintained, or received by Business Associate/QSO on behalf of Covered Entity, Business Associate/QSO shall:
 - 1) Retain only that protected health information which is necessary for Business Associate/QSO to continue its proper management and administration or to carry out its legal responsibilities;
 - 2) Return to Covered Entity, or if agreed to by Covered Entity, destroy the remaining protected health information that the Business Associate/QSO still maintains in any form;
 - 3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this

MEMORANDUM OF UNDERSTANDING BETWEEN LAKE COUNTY SOCIAL SERVICES AND LAKE COUNTY BEHAVIORAL HEALTH SERVICES FOR MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

Section, for as long as Business Associate/QSO retains the protected health information;

- 4) Not use or disclose the protected health information retained by Business Associate/QSO other than for the purposes for which such protected health information was retained and subject to the same conditions set out at paragraph (d) above under "Permitted Uses and Disclosures By Business Associate/QSO" which applied prior to termination; and
- 5) Return to Covered Entity or, if agreed to by Covered Entity, destroy the protected health information retained by Business Associate/QSO when it is no longer needed by Business Associate/QSO for its proper management and administration or to carry out its legal responsibilities.

- (d) **Survival**. The obligations of Business Associate/QSO under this Section shall survive the termination of this Agreement.

Miscellaneous

- (a) **Regulatory References**. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- (b) **Amendment**. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA, CFR 42 Part 2, HITECH, the Privacy Standards, Security Standards or Transactions Standards and any other applicable law.
- (c) **Interpretation**. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules and CFR 42, Part 2.
- (d) **Injunctive Relief**. Business Associate/QSO stipulates that its unauthorized use or disclosure of protected health information while performing services pursuant to this Agreement would cause irreparable harm to Covered Entity, and in such event, Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.
- (e) **Indemnification**. Business Associate/QSO shall indemnify and hold harmless Covered Entity and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by Covered Entity arising from a violation by Business Associate/QSO of its obligations under this Agreement.
- (f) **Exclusion from Limitation of Liability**. To the extent that Business Associate/QSO has limited its liability under the terms of this Agreement, whether with a maximum recovery

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SERVICES**

for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, all limitations shall exclude any damages to Covered Entity arising from Business Associate/QSO's breach of its obligations relating to the use and disclosure of protected health information.

- (g) **Owner of Protected Health Information.** Under no circumstances shall Business Associate/QSO be deemed in any respect to be the owner of any protected health information used or disclosed by or to Business Associate/QSO by Covered Entity.
- (h) **Third Party Rights.** The terms of this Agreement do not grant any rights to any parties other than Business Associate/QSO and Covered Entity.
- (i) **Independent Contractor Status.** For the purposed of this Agreement, Business Associate/QSO is an independent contractor of Covered Entity, and shall not be considered an agent of Covered Entity.

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

LAKE COUNTY SOCIAL SERVICES

By: _____

Name: Crystal Markytan

Title: Social Services Director

Lake County Behavioral Health Services

By: _____

Name: Todd Metcalf, B.S

Title: Behavioral Health Services
Administrator

DSS-BHS-MOU-CalWORKs

Final Audit Report

2020-12-29

Created:	2020-12-29
By:	Stephanie Wilson (Stephanie.Wilson@lakecountyca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIAQjsdU0l8eT3dDcgSBsgy1ZTBOdpN95

"DSS-BHS-MOU-CalWORKs" History

-  Document created by Stephanie Wilson (Stephanie.Wilson@lakecountyca.gov)
2020-12-29 - 0:28:03 AM GMT- IP address: 208.91.28.66
-  Document emailed to Todd Metcalf (todd.metcalf@lakecountyca.gov) for signature
2020-12-29 - 0:28:37 AM GMT
-  Email viewed by Todd Metcalf (todd.metcalf@lakecountyca.gov)
2020-12-29 - 4:39:54 AM GMT- IP address: 174.194.205.168
-  Document e-signed by Todd Metcalf (todd.metcalf@lakecountyca.gov)
Signature Date: 2020-12-29 - 4:40:15 AM GMT - Time Source: server- IP address: 174.194.205.168
-  Agreement completed.
2020-12-29 - 4:40:15 AM GMT