

**AGREEMENT FOR MEDICAL PROVIDER WITHIN INPATIENT SERVICES IN
SEDGWICK COUNTY**

This Agreement is made and entered into this 1st day of January, 2012 by and between Sedgwick County, Kansas, on behalf of its COMCARE, whose address is 635 N Main, Wichita, KS, 67203, hereinafter referred to as "Contractor" or "COMCARE", and the Secretary of the Kansas Department of Social and Rehabilitation Services, whose address is 915 SW Harrison, Docking State Office Building, Topeka, Kansas 66612, hereinafter referred to as "SRS" or "Secretary".

WHEREAS, the Secretary, authorized by K.S.A. 39-708c to enter into a contract, desires to obtain a cooperative arrangement to ensure patients of COMCARE admitted to a local inpatient hospital for mental health services receive the appropriate medical oversight, and;

WHEREAS, the Contractor is a recognized provider of said goods or services and desires to provide the same to SRS.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, SRS and Contractor do hereby mutually covenant and agree as follows:

1) **SCOPE OF WORK**

SRS is willing to provide time limited/one-time financial support for COMCARE to maintain medical providers for County patients admitted for psychiatric hospitalization.

County agrees to supply identified medical providers, either through employees or contracted providers, to serve patients who require psychiatric hospitalization at Via Christi Behavioral Health Center. County agrees to fulfill the responsibilities, duties and professional services required of it in a careful, prudent and competent manner. County's medical providers will be responsible to:

1. Assume all usual and customary responsibilities in diagnosing and treating patients, including consultations, charting and generally attending such patients in the same manner as other patients are attended by psychiatrists in the community.
2. Coordinate all services with the COMCARE Inpatient Coordinator at the facility.
3. Provide on-call telephone coverage for COMCARE inpatient services.
4. Process hospital admissions of emergency room patients to proper service.
5. Provide oversight management of COMCARE patients for quality assurance and compliance review of patient care practices.
6. Act as liaison between Medical Center and COMCARE in resolving issues of inpatient care, coordinating the practices of both entities, and communicating alternatives for program delivery.

Deliverables

Contractor will provide SRS the following deliverables:

1. List of Medical personnel who are paid for through this contract to SRS.

3) **CONTRACT PERIOD**

This Agreement shall commence on January 1, 2012 and continue through December 31, 2012, with the option to renew by written mutual consent.

4) **COMPENSATION**

For the services provided by County's medical providers under this Contract in the manner herein before described, SRS agrees to pay County an annual total of \$200,000.

In the event that Contractor does not provide the services listed under this Agreement, or only provides a portion of the services, SRS reserves the right to withhold payments until such time as Contractor demonstrates that the services have been provided.

5) **PAYMENT**

Upon receipt of Contractor's invoice, payment for goods and services shall be made at the quarterly rate of \$50,000 payable by the 15th day of each month following the end of the calendar quarter with the first payment due no later than January 15, 2012. The compensation is intended to partially cover the costs incurred by County related to retention of the medical providers. All payments shall be in accordance with the Kansas Prompt Payment Act.

6) **GENERAL RELATIONSHIP**

Contractor agrees that in all matters relating to this Agreement that it shall be acting as an independent contractor and shall assume and pay all liabilities and perform all obligations imposed with respect to the performance of this Agreement. Contractor shall have no right, power, or authority to create any obligation, expressed or implied, on behalf of SRS and shall have no authority to represent SRS as an agent.

Neither Contractor nor Contractor's personnel shall be deemed to be employees of the State. Contractor shall take appropriate measures to insure that its personnel who perform services are adequately covered by any and all employer related taxes and insurance in accordance with applicable law.

Contractor and SRS concur that this Agreement is not assignable by either party. Each party shall be responsible for the acts and omissions only of its own staff, employees, officers and agents.

7) **OWNERSHIP**

All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this Agreement shall be owned by SRS. Contractor may not release any materials without the written approval of SRS.

8) **CONFIDENTIALITY**

Contractor agrees that confidentiality of record and client information and information shared by SRS staff is essential to this Agreement. Contractor understands that no disclosure, discussion, publication or further distribution of this information to any third party is authorized by SRS. This duty to protect confidentiality shall survive the expiration or

termination of this Agreement. This duty shall not prohibit Contractor from complying with court orders or mandated reporting requirements and cooperating in investigations as required by the State of Kansas statutes.

No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor shall agree to return any or all data furnished by SRS promptly at the request of SRS in whatever form it is maintained by contractor. On the termination or expiration of this Agreement, contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by State, shall destroy or render it unreadable.

9) RETENTION OF RECORDS

Unless SRS specifies in writing a shorter period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this Agreement for a period of six (6) years from the date of the expiration or termination of this Agreement. Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds six (6) years.

10) CAPTIONS

The descriptive headings of this Agreement are for convenience only and shall not be deemed to affect the meaning of any provision.

11) TERMINATION

Either party may terminate this Agreement with 60 days written notice.

12) SUBCONTRACTOR

Contractor shall not assign, transfer, sublet or delegate this Agreement or its power to execute this Agreement to any other person, company or corporation, in whole or in part without consent and approval in writing from SRS.

All terms, conditions and requirements of the Agreement shall apply without qualification to any services performed or goods provided by any subcontractor.

13) MODIFICATIONS

This Agreement may only be modified by the mutual written agreement of the parties.

The State of Kansas' current financial situation does not make it possible for SRS to make firm, unalterable financial commitments. In the event SRS determines lack of funding requires a modification of this Agreement, SRS reserves the right to renegotiate terms and conditions of the Agreement with the contractor. The contractor agrees to cooperate with SRS in renegotiating this Agreement should SRS determine that such modification is necessary to manage the resources available to SRS.

In the event SRS is subject to a formal funding reduction or allotment, SRS reserves the right to alter or adjust the payment amounts or terms of this Agreement to meet funding reductions or allotments by sending a written notice of such alterations or adjustments to the contractor

15 days before such alterations or adjustments become effective. Should the contractor believe there is a need to modify other terms or conditions of the Agreement, SRS will, in good faith, negotiate regarding the terms of the Agreement.

14) WEB DEVELOPMENT

Any web site, web pages, or web based applications developed by Contractor for SRS shall be in compliance with all Kansas Information Technology Committee (ITEC) policies, refer to: <http://www.da.ks.gov/kito/itec/>. Guidelines supporting the State Web Accessibility policy (ITEC 1210) can be found at <http://www.da.ks.gov/kito/itec/>. In addition, the web content must be in compliance with SRS web standards (SRS-ITS Standard 3401.04), available upon request.

15) DEBARMENT

Contractor warrants that it is currently not debarred from participation in any federal or state funded programs and that it shall immediately provide notice to SRS in the event it becomes debarred during the term of this Agreement.

16) FORM DA-146a

The provisions found in Contractual Provisions Attachment (form DA-146a), which is attached hereto, are hereby incorporated in this Agreement and made a part thereof.

17) AUDIT CLAUSE

Neither party to the Agreement shall prohibit or prevent the Legislative Division of Post Audit, SRS Division of Audit Services, or any authorized federal or state representative and/or auditors from having access to any records, documents, or other information--confidential or otherwise--regarding or relating to the execution and/or performance of this Agreement. (See K.S.A. 46-1101 et seq.)

18) FORCE MAJEURE

The Contractor shall not be held liable if the failure to perform under this Agreement arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, quarantine, strikes other than by the contractor's employees, and freight embargoes.

19) CRIMINAL PROVISION

By acceptance of this Agreement, the Contractor declares and assures that they have not been convicted for any criminal offense that indicates a lack of integrity or honesty. Crimes indicating a lack of integrity or honesty include but are not limited to the following: any conviction of federal, state or local laws for embezzlement; theft; forgery; bribery; falsification or destruction of records; receiving stolen property; racketeering; and violation of antitrust laws. Any conviction(s) incident to obtaining or attempting to obtain or performing a public or private contract or subcontract; or conviction of any other offense which impacts the performance and/or responsibility of a contractor or subcontractor are also considered as offenses which lack of integrity and honesty. The Contractor shall ensure that any employees hired for this Agreement are not on any register indicating a problem with the law or abusive or neglectful acts or crimes against persons such as KBI security clearance, the Child Abuse and Neglect Central Registry, and the Adult Protective Services Registry.

20) CONFLICT OF INTEREST

The Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the State and who are providing services involving this Agreement or similar in nature to the scope of this Agreement to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any State employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the State.

21) SEVERABILITY

If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.

22) CONTRACT DOCUMENTS

The contract documents shall consist of the following documents. In the case of ambiguity or conflict in the contract documents, the following order of precedence shall govern:

- a) Form DA-146a;
- b) any amendments to this Agreement;
- c) this Agreement; and
- d) any Attachments or Exhibits to this Agreement, excluding Form DA-146a.

23) HIPAA

Confidentiality under the Health Insurance Portability and Accountability Act, 1996 (HIPAA): SRS is a covered entity under the act and therefore Contractor is not permitted to use or disclose health information in ways that SRS could not. This protection continues as long as the data is in the hands of the Contractor.

Definition: For purposes of this section, the terms "Protected Health Information" and "PHI" mean individually identifiable information in any medium pertaining to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, that Contractor receives from SRS or that Contractor creates or receives on behalf of SRS. The terms "Protected Health Information" and "PHI" apply to the original data and to any health data derived or extracted from the original data that has not been de-identified.

Electronic protected health information (EPHI) is a subset of PHI and means individually identifiable health information that is transmitted by or maintained in electronic media.

- a) Required/Permitted Uses Section 164.504(e)(2)(i): Contractor is required/permitted to use the PHI for the following purposes:
 - (i) Any activity required to ensure contract compliance and fulfill contract obligations
- b) Required/Permitted Disclosures Section 164.504(e)(2)(i): Contractor shall disclose SRS' PHI only as allowed herein or as specifically directed by SRS.

- c) Limitation of Use and Disclosure Section 164.504(e)(2)(ii)(A): Contractor agrees that it will not use or further disclose the PHI other than as permitted or required by this contract or as required by law.
- d) Disclosures Allowed for Management and Administration Section 164.504(e)(2)(i)(A) and 164.504(e)(4)(i): Contractor is permitted to use and disclose PHI received from SRS in its capacity as a Contractor to SRS if such use is necessary for proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor.
- e) Minimum Necessary: Contractor agrees to limit the amount of PHI used and/or disclosed pursuant to this section to the minimum necessary to achieve the purpose of the use and disclosure.
- f) Safeguarding and Securing PHI Sections 164.308, 164.310, 164.312, 164.314 and 164.504(e)(2)(ii)(B): Contractor agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI and or EPHI that the Contractor creates, receives, maintains, or transmits. Contractor will furnish SRS with a written description of such safeguards taken upon request. Contractor agrees to allow authorized representatives of SRS access to premises where the PHI and or EPHI is kept for the purpose of inspecting physical security arrangements.
- g) Agents and Subcontractors Section 164.504(e)(2)(ii)(D): Contractor will ensure that any entity, including agents and subcontractors, to whom it discloses PHI received from SRS or created or received by Contractor on behalf of SRS agrees to the same restrictions, conditions and safeguards that apply to Contractor with respect to such information.
- h) Right to Review: SRS reserves the right to review terms of agreements and contracts between the Contractor and subcontractors as they relate to the use and disclosure of PHI belonging to SRS.
- i) Ownership: Contractor shall at all times recognize SRS' ownership of the PHI.
- j) Notification Section 164.304, 164.314 (a)(2)(C) and 164.504(e)(2)(ii)(C): Contractor shall notify SRS both orally and in writing of any use or disclosure of PHI and or EPHI not allowed by the provisions of this Contract of which it becomes aware, and of any instance where the PHI is subpoenaed, copied or removed by anyone except an authorized representative of SRS or the Contractor. The Contractor shall report to SRS any security incident within 5 business days of becoming aware of such incident. For the purposes of this paragraph, "security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification or interference with systems operations in an information system.
- k) Transmission of PHI Section 164.312 I(1) and 164.312 I(2): Contractor agrees to follow the HIPAA standards with regard to the transmission of PHI.

- l) Employee Compliance with Applicable Laws and Regulations: Contractor agrees to require each of its employees having any involvement with the PHI to comply with applicable laws and regulations relating to security, confidentiality and privacy of the PHI and with the provisions of this Contract.
- m) Custodial Responsibility: An employee of Contractor shall be designated as the custodian of PHI and will be responsible for observance of all conditions of use. If custodianship is transferred within the organization, Contractor shall notify SRS promptly.
- n) Access, Amendment, and Accounting of Disclosures Section 164.504(e)(2)(ii)(E-G): Contractor will provide access to the PHI in accordance with 45 C.F.R. Section 164.524. Contractor will make the PHI available for amendment and incorporate any amendments to the PHI in accordance with 45 C.F.R. Section 164.526. Contractor will make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. Section 164.528.
- o) Documentation Verifying HIPAA Compliance Section 164.504(e)(2)(ii)(H): Contractor will make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of Health and Human Services for purposes of determining SRS's compliance with 45 C.F.R. Parts 160 and 164. Contractor will make these same policies, procedures, and documentation available to SRS or its designee upon request.
- p) Contract Termination Section 164.314 (a)(2)(i)(D) and 164.504(e)(2)(ii)(I): Contractor agrees that within 45 days of the termination of this contract, it will return or destroy, at SRS' direction, any and all PHI that it maintains in any form and will retain no copies of the PHI. If the return or destruction of the PHI is not feasible, the protections of this section of the contract shall be extended to the information, and further use and disclosure of PHI is limited to those purposes that make the return or destruction of PHI infeasible. Any use or disclosure of PHI except for the limited purpose is prohibited.
- q) Termination for Compliance Violation Section 164.314 (a)(2)(i)(D) 164.504(e)(2)(iii) and Section 164.504(e)(1)(ii): Contractor acknowledges that SRS is authorized to terminate this Contract if SRS determines that Contractor has violated a material term of this section of the contract. If termination of the Contract is not feasible due to an unreasonable burden on SRS, Contractor's violation will be reported to the Secretary of Health and Human Services, along with steps SRS took to cure or end the violation or breach and the basis for not terminating the contract.

24) **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the parties and supersedes all other prior written or oral contracts between the parties with respect to the subject matter hereof.

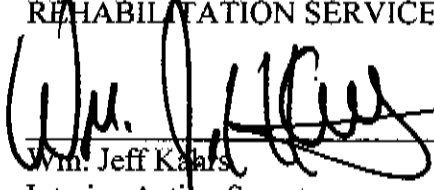
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized official or officers.

COMCARE OF SEDGWICK COUNTY

KANSAS DEPARTMENT OF SOCIAL AND
REHABILITATION SERVICES

Tim R. Norton
Chairman

Date



Jeff Kahrs
Interim-Acting Secretary

Date
11/03/11

ATTEST:

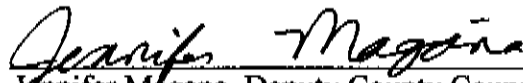
KANSAS DEPARTMENT OF ADMINISTRATION

Chris Howe
Director of Purchases

Date

Kelly B. Arnold, County Clerk

APPROVED AS TO FORM:



Jennifer Magana, Deputy County Counselor

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 04-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

