

**AGREEMENT**  
**between the**  
**KANSAS DEPT. OF HEALTH AND ENVIRONMENT**  
**DIVISION OF HEALTH CARE FINANCE**  
**the**  
**SEDGWICK COUNTY BOARD OF COMMISSIONERS**  
**and the**  
**SEDGWICK COUNTY DIVISION OF HEALTH**  
**for**  
**Outreach, Prevention and Early Intervention Services**

This agreement is entered into by and between the Kansas Department of Health and Environment, Division of Health Care Finance, hereinafter sometimes referred to as "KDHE/DHCF", the Sedgwick County Board of Commissioners, hereinafter sometimes referred to as "County," and the Sedgwick County Division of Health, hereinafter sometimes referred to as "Service Contractor."

WHEREAS, K.S.A. Supp. 75-7401 authorizes the KDHE/DHCF to enter into a contract for services, and;

WHEREAS, the County and the Service Contractor desire to develop, implement, and maintain a voluntary program that provides outreach, prevention and early intervention services to new, low-income parents and children with emphasis on adolescent and pregnant teen parents of at-risk infants in the County, and;

WHEREAS, the KDHE/DHCF and the County recognize a need for the program proposed by the Service Contractor and desire to promote said program, and;

WHEREAS, Federal Financial Participation (FFP) is available to pay a portion of the project costs, and;

NOW, THEREFORE, for and in consideration of their mutual promises, the parties hereby agree as follows:

**I. KDHE/DHCF RESPONSIBILITIES:**

- A. Consultation/Review: KDHE/DHCF shall provide consultation and technical assistance to the Service Contractor during the term of this agreement, as well as review the quarterly program reports as part of the evaluation process for the program.
- B. Funding: KDHE/DHCF shall draw down and pay the County \$920,000 for the annual draw-down of Medicaid Funds for the year, in quarterly increments of approximately \$230,000, after an invoice showing expenditures made or to be made for the quarter and requesting "draw down" and remittance to the County of Medicaid funds (Federal Financial Participation or FFP); and, certification of non-federal matching funds using the form provided by KDHE/DHCF and signed by the Chairperson on behalf of the Board of County Commissioners, County Administrator, or other elected official or employee authorized to sign on behalf of the County, is received by KDHE/DHCF.

## II. COUNTY RESPONSIBILITIES:

A. Funding: The County shall provide certifiable, matching, non-federal funds in the amount of \$920,000 which is fifty percent (50.0%) of the total contract amount of \$1,840,000. Certifiable funds include, but are not limited to, taxes levied and received by the County, fees, bona fide donations, and other funds received by the County from non-federal sources (generally, although there may be exceptions) that are not already used as match for other FFP funds. Bona fide donations must comply with the requirements found in the Code of Federal Regulations (CFR) Section 433.54 that interprets and implements Section 1902(a)(2) and section 1903(w)(7)(G) of the Social Security Act.

### 1. "42 CFR Section 433.54 Bona fide donations.

- (a) A bona fide donation means a provider-related donation, as defined in Sec. 433.52, made to the State or unit of local government, that has no direct or indirect relationship, as described in paragraph (b) of this Section, to Medicaid payments made to--
  - (1) The health care provider;
  - (2) Any related entity providing health care items and services; or
  - (3) Other providers furnishing the same class of items or services as the provider or entity.
- (b) Provider-related donations will be determined to have no direct or indirect relationship to Medicaid payments if those donations are not returned to the individual provider, the provider class, or related entity under a hold harmless provision or practice, as described in paragraph (c) of this section.
- (c) A hold harmless practice exists if any of the following applies:
  - (1) The State (or other unit of government) provides for a direct or indirect non-Medicaid payment to those providers or others making, or responsible for, the donation, and the payment amount is positively correlated to the donation. A positive correlation includes any positive relationship between these variables, even if not consistent over time.
  - (2) All or any portion of the Medicaid payment to the donor, provider class, or related entity, varies based only on the amount of the donation, including where Medicaid payment is conditional on receipt of the donation.
  - (3) The State (or other unit of government) receiving the donation provides for any direct or indirect payment, offset, or waiver such that

the provision of that payment, offset, or waiver directly or indirectly guarantees to return any portion of the donation to the provider (or other parties responsible for the donation).

- (d) CMS will presume provider-related donations to be bona fide if the voluntary payments, including, but not limited to, gifts, contributions, presentations or awards, made by or on behalf of individual health care providers to the State, county, or any other unit of local government does not exceed--
  - (1) \$5,000 per year in the case of an individual provider donation; or
  - (2) \$50,000 per year in the case of a donation from any health care organizational entity.
- (e) To the extent that a donation presumed to be bona fide contains a hold harmless provision, as described in paragraph (c) of this section, it will not be considered a bona fide donation. When provider-related donations are not bona fide, CMS will deduct this amount from the State's medical assistance expenditures before calculating FFP. This offset will apply to all years the State received such donations and any subsequent fiscal year in which a similar donation is received."

Bona fide donations must be given directly to the County from the donor and the donor and amount donated must be identified in the funding certification submitted quarterly by the Board of County Commissioners.

- B. Funding Certification: During the contract year, on a quarterly basis, the Board of County Commissioners, County Administrator, or other official or employee authorized to sign for the County shall certify to KDHE/DHCF on a form provided by KDHE/DHCF (Attachment C - Certification of Non-Federal Match Form) or duplicate thereof, that it has expended or will expend \$920,000 as matching funds required to match the FFP for this contract and that both federal and matching funds have been or will be expended for the purposes specified herein. In the event that the County expends more or less than \$230,000 in any one or more quarters, the County may seek reimbursement of the actual amount expended in that quarter or those quarters. The amount reimbursed in any one contract year shall not exceed \$920,000 unless this contract is changed by amendment hereto. This form should be submitted to KDHE/DHCF for expenditures incurred in each calendar quarter (Ex: Jan-Mar, April-Jun, July-Sept, Oct-Dec).
- C. Invoice: The County Budget Officer or other authorized elected official or employee shall submit an invoice each calendar quarter (Attachment D – Sample Invoice or other Invoice in a format preferred by the County) showing funds expended or to be expended for services as specified in this agreement and requesting draw down of federal financial participation (FFP) and reimbursement to the County.
- D. Hold Harmless: The County shall indemnify the State against any and all loss of federal funds as a result of a finding by the federal government that the "certified match funds" provided by the County did not meet federal requirements or to loss

of federal funds to any extent arising out of the County's negligence in the performance of services under this contract.

- E. Debarment and Suspension: Before federal funds can be disbursed to the County, federal law requires that the County certify that it, all principals representing the County, and any subcontractors providing services to the County, are not currently under debarment or suspension and have not been under debarment or suspension within the past three years. The County will make this certification by attesting to Attachment E, Compliance with the Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information and Non-Debarment Certification and Warranty form by signature to this Contract.

### III. SERVICE CONTRACTOR RESPONSIBILITIES:

- A. Program Development: Service Contractor shall develop, implement and maintain Program elements to promote best practices in providing prevention/early intervention services to new parents. Program elements shall include:
1. Identify all families of at-risk infants from a targeted geographic area using reliable screening mechanisms.
  2. Provide intensive, long-term, home visitor support.
  3. Facilitate bonding between parent and infant.
  4. Empower parents to seek support services through available community resources.
  5. Promote healthy child development.
  6. Prevent child abuse and neglect among project children from birth to age 5.
  7. Link the child to a pediatric medical facility, other community services, and to developmental resources, as needed.
  8. Initiate services with new parents before birth or at birth.
  9. Identify families who are most in need of services
  10. Offer services voluntarily and use positive, persistent, outreach efforts to build family trust.
  11. Offer services intensively (at least once a week) and over the long term (2-5 years), with well-defined criteria for increasing or decreasing frequency of services.
  12. Ensure services are culturally appropriate and staff acknowledges, understands and respects the family's cultural differences. Staff and materials used shall reflect the cultural, linguistic, geographic, racial and ethnic diversity of the population served.
  13. Ensure services are comprehensive, focusing on supporting the family as a whole (parent(s) and child or children).
  14. Ensure services are provided by staff with caseloads limited and monitored, to assure that home visits provide an adequate amount of time for each family visit to meet their unique and varying needs and to plan for future activities.
  15. At a minimum, all families shall be linked to a medical provider to assure optimal health and development (i.e., the Medicaid Early, Periodic Screening, Diagnosis and Treatment Program (EPSDT), timely immunizations, well-child care, etc.). Dependent upon the family's needs,

they may also be linked to additional services such as financial, food and housing assistance programs; school readiness programs; child care and job training programs; family support centers, substance abuse treatment programs and domestic violence shelters.

- B. Reports: The Service Contractor shall report to KDHE/DHCF quarterly regarding the program success. Reports, using Attachment B – KDHE Quarterly Report, are due with the certification of funds and invoice requesting draw-down and payment of the Medicaid matching funds.

The Certification of Matching Funds and the Program Report must be made on Forms provided as Attachments B – Quarterly Report and C – Certification of Non-Federal Match. The invoice (Attachment D – Sample Invoice) showing amounts expended or to be expended and requesting draw-down and remittance to the County of the quarterly, Federal Match (FFP) may be made using the format used in Attachment D or in any other format preferred by the County and showing amounts expended or to be expended and requesting draw-down and remittance to the County of the FFP.

- C. Services to be Provided: The Service Contractor acknowledges that KDHE/DHCF may adjust Attachment B at any point within the contracting period to include the addition of new information. The Service Contractor shall make potential adjustments within 60 days at the Service Contractor's expense.

1. Service providers should receive intensive training specific to their role in order to understand the essential components of family assessment and visitation. This training must include, but is not limited to, the areas of:
  - (a) identifying at-risk families
  - (b) offering services and making referrals
  - (c) assisting with the application for Medicaid or CHIP services
  - (d) promoting use of preventive health care
  - (e) securing medical homes
  - (f) emphasizing the importance of immunizations and the EPSDT Program
  - (g) utilizing creative outreach efforts
  - (h) establishing and maintaining trust with families
  - (i) building upon family strengths
  - (j) developing an individual family support plan
  - (k) observing parent-child interactions
  - (l) determining the safety of the home
  - (m) managing crisis situations
2. Service providers should receive ongoing, effective supervision on a weekly basis so they are able to:
  - (a) develop realistic and effective plans to empower families to meet their objectives;
  - (b) understand why a family may not be making progress and how to work with that family more effectively;
  - (c) develop accurate assessment skills.
3. Home visitors should have a framework of education/experience which prepares them for handling the variety of situations they may encounter

when working with at-risk families. All service providers should participate in basic training opportunities in order to effectively perform their job in the areas of cultural competency, substance abuse, reporting child abuse, domestic violence, drug exposed infants, and services in their community.

Failure of the Service Contractor to provide qualified staffing at the level required may result in termination of this contract.

#### IV. CONTRACT TERMS AND CONDITIONS:

- A. Term: The term of this contract shall begin July 1, 2018 through June 30, 2019 with three (3) additional one (1) year renewals, at the option of the parties hereto, and in written agreement of the parties.
- B. Compensation: Total annual funding under this agreement shall not exceed \$1,840,000, said amount comprising the County's certified matching funds of \$920,000 and the FFP amount of \$920,000. In the event increased funding becomes available to the County, and the County wishes to expand the scope of services, the County shall notify KDHE/DHCF in order that an amendment to the contract be prepared, if applicable.

County shall submit the quarterly certification and request the quarterly "draw down" of funds on or about July 1, October 1, January 1, and April 1 of the agreement year. The Service Contractor's report must accompany the certification and request for quarterly "draw down" of funds.

Quarterly payments shall be processed within two weeks of receiving the County's invoice or "draw down" request; Quarterly Report; and, Certification of Non-Federal Match. In no event shall the payment exceed forty-five days from date of request.

- C. Suspension/Termination: Any of the parties hereto may terminate this agreement for any reason by giving written notice of the termination to the remaining parties at least 30 days prior to the date of termination stated in the written notice.

Further, it is understood and agreed that all obligations of KDHE/DHCF, including continuance of payments hereunder, are contingent upon the availability and continued appropriation of state and federal funds, and in no event shall KDHE/DHCF be liable for any payments hereunder in excess of such available appropriated funds. In the event that the amount of any available or appropriated funds provided by the state or federal sources for the purchase of services hereunder shall be reduced, terminated or shall not be continued at an aggregate level sufficient to allow for the purchase of the services specified hereunder for any reason whatsoever, KDHE/DHCF shall notify the County and Service Contractor of such reduction of funds available and shall be entitled to reduce the KDHE/DHCF's commitment hereunder or to terminate the contract as it deems necessary.

- D. Termination for Unavailability of Funds: It is understood and agreed by the County and the Service Contractor that all obligations of the State of Kansas, including continuance of payments hereunder, are contingent upon the availability and

continued appropriation of state and federal funds, and in no event shall the State of Kansas be liable for any payments hereunder in excess of such available appropriated funds. In the event that the amount of any available or appropriated funds provided by the state or federal sources for the purchase of services hereunder shall be reduced, terminated or shall not be continued at an aggregate level sufficient to allow for the purchase of the services specified hereunder for any reason whatsoever, the State of Kansas shall notify County and the Service Contractor of such reduction of funds available and shall be entitled to reduce the State's commitment hereunder or to terminate the contract as it deems necessary.

- E. Retention of and Access to Records: All records prepared pursuant to this agreement shall be retained and safeguarded for a six-year period following termination of this agreement, and said records shall be made available to any other party to this agreement, and independent auditor retained by any other party, the Secretary of Health & Human Services, the U.S. Comptroller General, the Auditor of the Kansas Legislative Division of Post Audit, or their designees.

Each party shall bear the costs of storing, retrieving, and producing its records created and required to be kept under this agreement.

In the event that the terms of this agreement give rise to litigation, the parties shall retain all documents arising out of the litigation, for two years following termination of the litigation and any appeal thereof.

- F. Independent Contractor Status: At all times pertinent to this agreement the County and Service Contractor shall perform as and hold the status of independent Contractors and at no time be deemed employees of the State. County and Service Contractor shall have sole discretion in directing the conduct, activities, and duties performed by their respective employees pursuant to this agreement.

County and Service Contractor shall take appropriate measures to ensure that their personnel who perform services are adequately covered by any and all employer related taxes and insurance in accordance with applicable law. KDHE/DHCF will not withhold any form of taxes, insurances, assessments, or plan payments required of an employer-employee status or that which may be requested by the County or Service Contractor, and County and Service Contractor shall be solely responsible for said taxes, insurances, assessments, and plan payments.

- G. Confidentiality:

The Service Contractor may have access to private or confidential data maintained by State to the extent necessary to carry out its responsibilities under this contract. Service Contractor must comply with all the requirements of the Kansas Open Records Act in providing services under this contract. Service Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Service Contractor must agree to return any or all data furnished by the State promptly at the request of

State in whatever form it is maintained by Service Contractor. On the termination of expiration of this contract, Service Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by State, will destroy or render it unreadable.

KDHE/DHCF shall not disclose Private Health Information to the County or Service Contractor.

- H. Attachments: The provisions found in Attachments A, Contractual Provisions Attachment (DA-146a), B (KDHE Quarterly Report), C (Certification of Non-Federal Match Form), D (Sample Invoice), E (Compliance With The Enhancement of Contractor Protection from Reprisal For Disclosure of Certain Information and Non-Debarment Certification and Warranty form), F (Business Associate Agreement) and G (Policy Regarding Sexual Harassment) which are attached hereto, are hereby incorporated in this contract and made a part thereof.
- I. Modifications: Modification or amendment to this agreement shall be in writing and executed with the same formality as the original.
- J. Assignment: Neither the County nor the Service Contractor may assign or delegate its duties or obligations under this agreement without prior written consent of the KDHE/DHCF.

IN WITNESS HEREOF, the parties hereby execute this agreement on the day and year identified by the signatures below.

SEDGWICK COUNTY

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

\_\_\_\_\_  
David Dennis, Chairman  
Board of County Commissioners

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jeff Andersen, Secretary

\_\_\_\_\_  
Date

ATTESTED TO:

\_\_\_\_\_  
Kelly B. Arnold, County Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael L. Fessinger,  
Assistant County Counselor

\_\_\_\_\_  
Date



**ATTACHMENT A 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. 06-12), 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."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

<b>Attachment B</b>				
<b>Outreach, Prevention and Early Intervention Services</b>				
<b>Kansas Department of Health and Environment</b>				
<b>QUARTERLY REPORT</b>				
<b>Fiscal Year</b>				
<b>COUNTY HEALTH DEPARTMENT</b>				
<b>NEW PARTICIPANTS IN REPORTING QUARTER</b>	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>
Total new participants				
Total prenatal referrals				
Total referrals at birth				
Total referrals at discharge				
Total of pregnant teens				
Total of post delivery teens				
Total home visits				
Total enrolled in Medicaid at first contact				
Total of applicants to Medicaid				
Total participating in family planning, if applicable				
Total with private health insurance				
<b>TEEN PREGNANCY PARTICIPANTS IN REPORTING QUARTER</b>	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>
Total pregnant teens in program				
Total teen mothers in program				
Total teen mothers with more than one child				
Total of pregnant teens receiving prenatal care				
Total enrolled in Medicaid at first contact				
Total of applicants to Medicaid				
Total participating in family planning, if applicable				
Total with private health insurance				
<b>OVERALL PROGRAM PARTICIPATION</b>	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>
Total enrolled in program				
Total enrolled in Medicaid				
Total participating in EPSDT				
Total number of home visits				
Total participants actively utilizing program services				
Total number unresponsive to outreach efforts				
Total number completing program through age 2				
Total number completing program through age 3				
Total number completing program through age 5				
Total number dropping out of program or inactive for three or more months				
Total with private health insurance				
Total with drug/alcohol abuse history				
Total with daily tobacco use				

<b>Attachment B</b>
<b>Outreach, Prevention and Early Intervention Services</b>
<b>Kansas Department of Health and Environment</b>
<b>QUARTERLY REPORT</b>
<b>Fiscal Year</b>
<b>COUNTY HEALTH DEPARTMENT</b>

**PROGRAM SUMMARY/COMMENTS:**

**Attachment C**  
**Certification of Non-Federal Match Form**  
**(To be used to certify Medicaid Matching Funds)**

**INSTRUCTIONS:** Complete items 1 through 4 below, sign and date, and return the form to the address at the top of the second page. Please refer to your Invoice - Total Program Expenditures for this Quarter section when completing this form. **Please round dollar amounts to the nearest dollar.**

**COUNTY:** \_\_\_\_\_

**Federal Employer Identification Number:** \_\_\_\_\_

**QUARTER:** (MO/YY – MO/YY) \_\_\_\_\_

**1. TOTAL FUNDS ALLOWABLE\*:** \_\_\_\_\_

\*Note-This amount should come from the Quarterly Invoice and MUST equal the Total Expenses submitted for the Quarter

**2. TOTAL MEDICAID EXPENDITURES:** \_\_\_\_\_

(Amount Expended - FEDERAL SHARE ONLY)

**3. NON FEDERAL MATCH REQUIRED = (#1 – #2)** \_\_\_\_\_

(Certified Funds that the County must identify in #4 below)

**4. NON FEDERAL MATCH FUNDS provided by County.** Designate the source and amount of funds in your County budget that you are using to match the federal funds received from Medicaid. The total amount of the certified funds that you identify **must** equal the amount shown in item #3 above.

**SOURCE AMOUNT**

\_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_

I, on behalf of the Board of County Commissioners, certify that, to the best of my knowledge, the Non-Federal Match identified in #3 above, for the Quarter ending \_\_\_\_\_ represents funds expended or to be expended for Outreach, Prevention and Early Intervention Services. The amount expended or to be expended is from the sources identified and is eligible for federal match and does not duplicate any Federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation. The funds sought from federal financial participation and the certified funds expended or to be expended as the non-federal match requirement have been or will be expended for Medicaid activities related to the delivery or coordination of outreach, screening, diagnosis, treatment, intervention or other program services, and I certify that to the best of my knowledge the Sedgwick County Division of Health has records on file documenting that there were allowable paid claims for these services that were actually delivered to program beneficiaries during the quarter.

**CERTIFICATION OF FUNDS BY THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS  
 OR OTHER AUTHORIZED ELECTED OFFICIAL OR EMPLOYEE OF THE COUNTY:**

**Signature** \_\_\_\_\_  
**Chairperson of the Board of County Commissioners**

**Name (Printed):** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Or other authorized elected official or employee of the County whose title is:**

\_\_\_\_\_

**RETURN THIS COMPLETED FORM TO:**  
**Kansas Department of Health and Environment**  
**Division of Health Care Finance**  
**Attention: Contracts Unit**  
**900 SW Jackson St., Room 900-N**  
**Topeka, KS 66612**

The County hereby requests that the Kansas Department of Health and Environment, Division of Health Care Finance (KDHE/DHCF) draw down and distribute to the County, on behalf of the Lawrence-Douglas County Health Department the amount identified in paragraph 2., on the preceding page, for Program related services that are eligible for reimbursement by the federal share only of the Medicaid allowed amount. The County is responsible for "matching" the federal payment with certifiable funds already in their budgets. This involves identifying the certifiable funds in the County budget being designated to match the federal Medicaid payment received by the County. Certifiable funds include, but are not limited to, taxes levied and received by the County, fees, bona fide donations, and other funds received by the County from non-federal sources (generally, although there may be exceptions) that are not already used for other federal financial participation (FFP) funds.

The County must certify the availability of the matching non-federal share of service expenditures, using this form. This form should be submitted to KDHE/DHCF for expenditures incurred in a calendar quarter (Ex: Jan-Mar, April-Jun, July-Sept, or Oct-Dec).

**Procedure for Completing the Certification Form**

1. **Total Medicaid Allowable** - All costs that Medicaid will allow as certifiable Medicaid expenditures. This amount is shown in the quarterly invoice as "Total Expense" and should be equal to the total in that column. Please round all amounts to the nearest dollar.
2. **Total Medicaid Expenses** - The amount of expenses reimbursable by federal funds received or to be received in support of the Medicaid program. This amount is shown in the invoice as "Medicaid Expenses" and should be equal to the total in that column. Please round all amounts to the nearest dollar.
3. **Non-Federal Match Required** – These are the matching funds that the County must identify. The amount is shown in the invoice as "County Expenses" and should be equal to the total in that column.
4. **Non-Federal Match Funds** – Designate the source and the amount of funds in your County budget that you are using to match the federal funds received by Medicaid. This amount should be equal to the amount in #3.
5. **The Chairman of the County's Board of County Commissioners or other authorized elected official or employee of the County** must sign and date this form, certifying the accuracy and completeness of the amounts listed.
6. **The County's Budget Officer or other authorized officer or employee of the County** must sign and date the Quarterly Invoice.

## Attachment D

## SAMPLE INVOICE

**for the**

\_\_\_\_\_ County Contract KDHE2019-\_\_\_\_\_

Quarter\_\_\_\_\_State Fiscal Year: \_\_\_\_\_

[illegible]

I, (Name) \_\_\_\_\_, do hereby certify that the amounts shown as Medicaid and county expenses for the \_\_\_\_\_ quarter, State Fiscal Year \_\_\_\_\_ were or will be incurred and expended by \_\_\_\_\_ County for the purposes required by the contract number indicated above.

I further certify that the amounts shown as county expenses were or will be paid for using certified matching funds provided by \_\_\_\_\_ County and hereby request that Kansas Department of Health and Environment draw down the federal funds required to reimburse \_\_\_\_\_ County for Medicaid funding participation in this program.

Signature of the County Budget Officer

Date

For the County of: \_\_\_\_\_

Bill To:

Kansas Department of Health and Environment  
Division of Health Care Finance  
Attn: Contract Manager  
900 SW Jackson St., Room 900-N  
Topeka, KS 66612

## Attachment E

### COMPLIANCE WITH THE "ENHANCEMENT OF CONTRACTOR PROTECTION FROM REPRISAL FOR DISCLOSURE OF CERTAIN INFORMATION" and NON-DEBARMENT CERTIFICATION AND WARRANTY

Congress has enacted a law, found at 41 U.S.C. 4712, which encourages employees to report fraud, waste, and abuse. This law applies to **all** employees working for contractors, grantees, subcontractors and subgrantees on federal grants and contracts [for the purpose of this document, "Recipient of Funds"].

This program requires all grantees, their subgrantees and subcontractors to:

- Inform their employees working on any Federal award they are subject to whistleblower rights and remedies;
- Inform their employees in writing of employee whistleblower protections under 41 U.S.C. 4712 in the predominant native language of the workforce; and,
- Contractors and grantees will include such requirements in any agreement made with a subcontractor or subgrantee.

Employees of a contractor, subcontractor, grantee [or subgrantee] may not be discharged, demoted, or otherwise discriminated against as reprisal for "whistleblowing." In addition, whistleblower protections cannot be waived by any agreement, policy, form or condition of employment.

Whistleblowing is defined as making a disclosure "that the employee reasonably believes is evidence of any of the following:

- Gross mismanagement of a federal contract or grant;
- A gross waste of federal funds;
- An abuse of authority relating to a federal contract or grant;
- A substantial and specific danger to public health or safety; or,
- A violation of law, rule, or regulation related to a federal contract or grant (including the competition for, or negotiation of, a contract or grant).

To qualify under the statute, the employee's disclosure must be made to:

- A Member of Congress or a representative of a Congressional committee;
- An Inspector General;
- The Government Accountability Office;
- A federal employee responsible for contract or grant oversight or management at the relevant agency;
- An official from the Department of Justice, or other law enforcement agency;
- A court or grand jury; or,
- A management official or other employee of the contractor, subcontractor, grantee, or subgrantee who has the responsibility to investigate, discover, or address misconduct.

For all grants, contracts, sub-grants, and subcontracts funded directly or indirectly and in part or totally by federal funds, the Contractor shall inform all of its employees in writing of employee whistleblower rights and protections stated by 41 U.S.C. 4712.

#### NON-DEBARMENT CERTIFICATION AND WARRANTY

The Recipient of Funds acknowledges that KDHE is required to verify that the Recipient of Funds has not been suspended, debarred or otherwise excluded from receiving federal funds. Verification may be accomplished by 1) checking the Excluded Parties List System (EPLS) maintained by the General Services Administration; 2) obtaining a certification from the entity; or 3) by adding a clause or condition to the transaction.

**The Recipient of Funds, as a condition of receiving funds, certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency, or by any department or agency of the State of Kansas**

## Attachment F

### **BUSINESS ASSOCIATE AGREEMENT**

THIS AGREEMENT is made and entered into by and between the Kansas Department of Health and Environment (hereinafter referred to as “KDHE”) and the Sedgwick County Division of Health (hereinafter referred to as “Business Associate”).

Notwithstanding Section V of this Business Associate Agreement (hereinafter referred to as “BAA”), the term of this BAA shall run concurrently with the Underlying Contract between the parties and shall have the same effective date and termination date as the Underlying Agreement.

### **RECITALS**

The Parties to this BAA have a relationship whereby KDHE may provide Business Associate access to Protected Health Information (hereinafter referred to as “PHI”), which may include electronic Protected Health Information, that Business Associate will use to fulfill its contractual obligations to KDHE.

KDHE and Business Associate acknowledge that each party has certain obligations under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended, including those provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”), specifically the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and the statutes implementing regulations to maintain the privacy and security of PHI, and the parties intend this BAA to satisfy those obligations including, without limitation, the requirements of 45 CFR 164.504(e).

KDHE is a Hybrid Entity under HIPAA, specifically the Division of Health Care Finance within KDHE containing the Covered Entity functions. Therefore Business Associate is not permitted to use or disclose health information in ways that KDHE could not. This protection continues as long as the data is in the hands of Business Associate. Business Associate acknowledges that for the purposes of this BAA, Business Associate is a “business associate” as that term is defined in 45 CFR § 160.103, and therefore the requirements of HIPAA apply to Business Associate in the same manner that they apply to KDHE pursuant to 42 USC § 17931(a).

NOW THEREFORE, in consideration of the mutual promises below and other good and valuable consideration the parties agree as follows:

#### **I. DEFINITIONS**

- a) “Administrative Safeguards” shall mean the administrative actions, policies and procedures to manage the selection, development, implementation and maintenance of security measures to protect PHI and to manage the conduct of Business Associate’s workforce in relation to the protection of that PHI.
- b) “Business Associate” shall have the same meaning as the term “Business Associate” as defined in 45 CFR 160.103.
- c) “Data Aggregation Services” shall mean, with respect to PHI created or received by Business Associate in its capacity as a Business Associate of KDHE, the combining of such PHI by the Business Associate with the PHI received by the



Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities, as defined in 45 CFR § 164.501 and as such term may be amended from time to time in this cited regulation.

- d) "Designated Record Set" shall mean a group of records maintained by or for KDHE that consists of the following: (a) medical records and billing records about Individuals maintained by or for a health care provider; (b) enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) records used in whole or in part, by or for KDHE to make decisions about Individuals. For these purposes, the term "record" means any item, collection, or group of information that includes PHI and is maintained, collected, used, or disseminated by or for KDHE.
- e) "Disclosure" shall mean the release, transfer, provision of, access to, or divulging in any other manner of PHI outside the entity holding the information.
- f) "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, the implementation regulations promulgated thereunder by the U.S. Department of Health and Human Services, the HITECH (as defined below) and any future regulations promulgated thereunder, all as may be amended from time to time.
- g) "HITECH Act" shall mean the Health Information Technology for Economic Clinical Health Act, Title VIII of Division A and Title VI of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub.L.111-5).
- h) "Individual" shall have the same meaning as the term "individual" as defined in 45 CFR 160.103, and any amendments thereto, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- i) "Physical Safeguards" shall mean the physical measures, policies and procedures to protect KDHE's electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.
- j) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164.
- k) "Protected Health Information" shall have the same meaning as the term "protected health information", as defined in 45 CFR 160.103 and any amendments thereto, limited to the information created or received by Business Associate from or on behalf of KDHE.
- l) "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- m) "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his/her designee.
- n) "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.

- o) "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information at 45 CFR Parts 160, 162 and 164.
- p) "Technical Safeguards" shall mean the technology and the policy and procedures for its use that protect PHI and control access to it.
- q) "Underlying Contract" means Contract KDHE2018-046 for services between KDHE and or the Kansas State Employees Health Care Commission and Business Associate commencing on August 1, 2017.
- r) "Unsecure Protected Health Information (PHI)" means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5.
- s) "Use" shall mean, with respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within any entity that maintains such information.
- t) Capitalized terms used, but not otherwise defined, in this BAA shall have the same meaning ascribed to them in HIPAA, the Privacy Rule, the Security Rule, or HITECH or any future regulations promulgated or guidance issued by the Secretary.

## II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a) Use and Disclosure. Business Associate agrees to not use or disclose PHI other than as permitted or required by this BAA or as Required by Law.
- b) Safeguards to be in Place. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this BAA. Additionally, Business Associate shall implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of KDHE as required by the Security Rule.
- c) HIPAA Training. Business Associate agrees to ensure all members of its workforce, including subcontractor workforce members that will or potentially will provide services pursuant to the Underlying Agreement will be appropriately trained on the requirements of HIPAA.
- d) Duty to Mitigate. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA or the Privacy Rule and to communicate in writing, such procedures to KDHE.
- e) Business Associate's Agents and Subcontractors. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of KDHE agrees, in writing in the form of a Business Associate Agreement, to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such

information, including implementation of reasonable and appropriate safeguards to protect PHI. Business Associate agrees that it is directly liable for any actions of its subcontractors that results in a violation of this Agreement. Business Associate also agrees to make available to KDHE any contracts or agreements Business Associate has with any subcontractors Business Associate provides PHI under this BAA.

- f) Duty to Provide Access. To the extent Business Associate has PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of KDHE, to the PHI in the Designated Record Set to KDHE or, as directed by KDHE, to the Individual, in order to meet the requirements under 45 CFR 164.524. Any denial by Business Associate of access to PHI shall be the responsibility of, and sufficiently addressed by, Business Associate, including, but not limited to, resolution of all appeals and/or complaints arising therefrom.
- g) Amendment of PHI. Business Associate agrees to make any amendment(s) to PHI in its possession contained in a Designated Record Set that KDHE directs or agrees to pursuant to 45 CFR 164.526 at the request of KDHE or an Individual, and within a reasonable time and manner.
- h) Duty to Make Internal Practices Available. Business Associate agrees to make its internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI, and any PHI received from, or created or received by Business Associate on behalf of KDHE, available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining KDHE's compliance with the Privacy Rule.
- i) Documenting Disclosures/Accounting. Business Associate agrees to document any disclosures of PHI and information in its possession related to such disclosures as would be required for KDHE to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate agrees to provide to KDHE information collected in accordance with Section II(h) of this BAA, to permit KDHE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- j) Reporting Disclosures to KDHE. In addition to the duty to mitigate under Section II(c), Business Associate agrees to report to KDHE any unauthorized use or disclosure of unsecured PHI not provided for by this BAA or the Privacy Rule of which it or its officers, employees, agents or subcontractors discover, including any breach of unsecured PHI of which it becomes aware, as soon as practicable but no longer than five (5) business days after the discovery of such disclosure. Notice to KDHE shall consist of notifying the KDHE Privacy Officer by phone or email of the occurrence of an unauthorized use, disclosure or security incident.
- k) Notification of Breach. Business Associate shall notify Covered Entity within five (5) business days after it, or any of its employees, subcontractors, or agents, discovers that a breach of unsecured PHI as defined by 45 CFR 164.402 may have occurred, irrespective of any occurrence or non-occurrence of harm. Notice to KDHE shall consist of notifying the KDHE Privacy Officer by phone or email of the occurrence of a Breach or suspected occurrence of a Breach. Business Associate shall exercise reasonable diligence to become aware of whether a breach of unsecured PHI may

have occurred and, except as stated to the contrary in this Section, shall otherwise comply with 45 CFR 164.410 in making the required notification to Covered Entity. Business Associate shall cooperate with Covered Entity in the determination as to whether a breach of unsecured PHI has occurred and whether notification to affected individuals of the breach of unsecured PHI is required by 45 CFR 164.400 *et seq.*, including continuously providing the Covered Entity with additional information related to the suspected breach as it becomes available. In the event that Covered Entity informs Business Associate that (i) Covered Entity has determined that the affected individuals must be notified because a breach of unsecured PHI has occurred and (ii) Business Associate is in the best position to notify the affected individuals of such breach, Business Associate shall immediately provide the required notice (1) within the time frame defined by 45 CFR 164.404(b), (2) in a form and containing such information reasonably requested by Covered Entity, (3) containing the content specified in 45 CFR 164.404(c), and (4) using the method(s) prescribed by 45 CFR 164.404(d). In addition, in the event that Covered Entity indicates to Business Associate that Covered Entity will make the required notification, Business Associate shall promptly take all other actions reasonably requested by Covered Entity related to the obligation to provide a notification of a breach of unsecured PHI under 45 CFR 164.400 *et seq.* Business Associate shall indemnify and hold Covered Entity harmless from all liability, costs, expenses, claims or other damages that Covered Entity, its related corporations, or any of its or their directors, officers, agents, or employees, may sustain as a result of a Business Associate's breach, or Business Associate's subcontractor or agent's breach, of its obligations under this Agreement.

### III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

a) General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, Covered Entity for the purposes set forth in III(b), if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity.

b) Specific Use and Disclosure Provisions.

1. Business Associate may use and disclose PHI to perform services for Covered Entity, including specific services, as set out in the Underlying Agreement, and any additional services necessary to carry out those specific services in the Underlying Agreement.
2. Business Associate may use PHI in its possession for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.

Business Associate may disclose PHI in its possession for the proper management and administration of Business Associate, provided that disclosures are required by Law.

Business Associate may only de-identify PHI in its possession obtained from Covered Entity with Covered Entity's prior written consent, in accordance with all de-identification requirements of the Privacy Rule.

3. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1). Covered Entity shall be furnished with a copy of all correspondence sent by Business Associate to a federal or state authority.
4. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation Services to Covered Entity.
5. Any use or disclosure of PHI by Business Associate shall be in accordance with the minimum necessary policies and procedures of Covered Entity and the regulations and guidance issued by the Secretary on what constitutes the minimum necessary for Business Associate to perform its obligations to Covered Entity under this Agreement and the Underlying Agreement.

#### IV. OBLIGATIONS OF COVERED ENTITY

- a) Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b) Covered Entity shall notify Business Associate in a timely manner of any changes in, or revocation of, permission by an Individual to use or disclose PHI to the extent that such change may affect Business Associate's permitted or required use or disclosure of PHI.
- c) Covered Entity shall notify Business Associate in a timely manner of any restriction to the use and/or disclosure of PHI, which the Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

#### V. TERMINATION

- a) Term. The term of this Agreement shall run concurrently with the Underlying Contract with Covered Entity and shall terminate upon termination of the Underlying Contract and when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy the PHI, protections are extended to such information, in accordance with the termination provisions of Section (V)(c)(2).
- b) Termination for Cause. Upon either party's knowledge of a material breach by the other party, such party shall either:
  1. Provide an opportunity for the breaching party to cure the breach, end the violation, or terminate this Agreement if the breaching party does not cure the breach or end the violation within five (5) business days;

2. Immediately terminate the Agreement if the breaching party has breached a material term of this Agreement and cure is not possible; or
3. If neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary.

c) Effect of Termination.

1. Except as provided in paragraph V(c)(2) of this Agreement, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification in writing of the conditions that make return or destruction infeasible. Upon verification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement 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 Business Associate maintains such PHI. If it is infeasible for Business Associate to obtain, from a subcontractor or agent, any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

- d) Judicial or Administrative Proceedings. Notwithstanding any other provision herein, Covered Entity may terminate the applicable Underlying Agreement, effective immediately, upon a finding or stipulation that Business Associate violated any applicable standard or requirement of the Privacy Rule or the Security Rule or any other applicable laws related to the security or privacy of PHI, relating to the Underlying Agreement, in any criminal, administrative or civil proceeding in which the Business Associate is a named party.

VI. MISCELLANEOUS

- a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended and for which compliance is required.
- b) Amendment. No change, amendment, or modification of this Agreement shall be valid unless set forth in writing and agreed to by both parties, except as set forth in Section VI(l) below.

- c) Indemnification. Subject to the terms of the underlying contract, Business Associate shall indemnify Covered Entity for any and all claims, inquiries, costs or damages, including but not limited to any monetary penalties, that Covered Entity incurs arising from a violation by Business Associate, or a subcontractor or agent of Business Associate, of its obligations hereunder.
- d) Survival. The respective obligations of Business Associate under this Agreement shall survive the termination of this Agreement.
- e) Interpretation. Any ambiguity or inconsistency in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule, the Security Rule, and the ARRA.
- f) No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity and its respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- g) Notices. Any notices to be given to either party under this Agreement shall be made in writing and delivered via e-mail at the address given below:
 

Business Associate:	Adrienne Byrne, <a href="mailto:Adrienne.byrne@sedgwick.gov">Adrienne.byrne@sedgwick.gov</a>
Covered Entity:	Brian Vazquez, <a href="mailto:Brian.Vazquez@ks.gov">Brian.Vazquez@ks.gov</a>
- h) Headings. The section headings are for convenience only and shall not be construed to define, modify, expand, or limit the terms and provisions of this Agreement.
- i) Governing Law and Venue. This Agreement shall be governed by, and interpreted in accordance with, the internal laws of the State of Kansas, without giving effect to its conflict of law provisions.
- j) Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.
- k) Effect on Underlying Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.
- l) Modification. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as may be necessary to implement the standards and requirements of HIPAA and other applicable state and federal laws relating to the security or confidentiality of PHI as determined solely by Covered Entity.

In the event that a federal or state law, statute, regulation, regulatory interpretation or court/agency determination materially affects this Agreement, as is solely

determined by Covered Entity, the parties agree to negotiate in good faith any necessary or appropriate revisions to this Agreement. If the parties are unable to reach an agreement concerning such revisions within the earlier of sixty (60) days after the date of notice seeking negotiations or the effective date of the change in law or regulation, or if the change in law or regulation is effective immediately, the Covered Entity, in its sole discretion, may unilaterally amend this Agreement to comply with the change in law upon written notice to Business Associate.

## VII. OBLIGATIONS OF BUSINESS ASSOCIATE PURSUANT TO HITECH

- a) Access to PHI in an Electronic Format. If Business Associate uses or maintains PHI in an Electronic Health Record, Business Associate must provide access to such information in an electronic format if so requested by an Individual. Any fee that Business Associate may charge for such electronic copy shall not be greater than Business Associate's labor costs in responding to the request. If an Individual makes a direct request to Business Associate for access to a copy of PHI, Business Associate will promptly inform the Covered Entity in writing of such request.
- b) Prohibition on Marketing Activities. Business Associate shall not engage in any marketing activities or communications with any individual unless such marketing activities or communications are allowed by the terms of the Underlying Agreement and are made in accordance with HITECH or any future regulations promulgated thereunder. Notwithstanding the foregoing, any payment for marketing activities should be in accordance with HITECH or any future regulations promulgated thereunder.
- c) Application of the Security Rule to Business Associate. Business Associate shall abide by the provisions of the Security Rule and use all appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing sentence, Business Associate shall:
  - (i) Adopt written policies and procedures to implement the same administrative, physical, and technical safeguards required of the Covered Entity; and
  - (ii) Abide by the most current guidance on the most effective and appropriate technical safeguards as issued by the Secretary.

If Business Associate violates the Security Rule, it acknowledges that it is directly subject to civil and criminal penalties.

## VIII. ADDITIONAL OBLIGATIONS OF BUSINESS ASSOCIATE

Business Associate shall not receive any remuneration, directly or indirectly, in exchange for any PHI, unless so allowed by the terms of the Underlying Agreement and in accordance with HITECH and any future regulations promulgated thereunder.



**IX. ENFORCEMENT**

Business Associate acknowledges that, in the event it, or its subcontractor or agent, violates any applicable provision of the Security Rule or any term of this Agreement that would constitute a violation of the Privacy Rule, Business Associate will be subject to and will be directly liable for any and all civil and criminal penalties that may result from such violation.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement as of the date reflected below.

**BUSINESS ASSOCIATE**

  
\_\_\_\_\_  
Adrienne Byrne, Director  
Sedgwick County Division of Health

5/22/18  
\_\_\_\_\_  
Date

**KANSAS DEPARTMENT OF HEALTH  
AND ENVIRONMENT**

\_\_\_\_\_  
Jeff Andersen  
Secretary

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

  
\_\_\_\_\_

**Attachment G**  
**Policy Regarding Sexual Harassment**

**WHEREAS**, sexual harassment and retaliation for sexual harassment claims are unacceptable forms of discrimination that must not be tolerated in the workplace; and

**WHEREAS**, state and federal employment discrimination laws prohibit sexual harassment and retaliation in the workplace; and

**WHEREAS**, officers and employees of the State of Kansas are entitled to working conditions that are free from sexual harassment, discrimination, and retaliation; and

**WHEREAS**, the Governor and all officers and employees of the State of Kansas should seek to foster a culture that does not tolerate sexual harassment, retaliation, and unlawful discrimination.

**NOW THEREFORE**, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby order as follows:

1. All Executive Branch department and agency heads shall have available, and shall regularly review and update at least every three years or more frequently as necessary, their sexual harassment, discrimination, and retaliation policies. Such policies shall include components for confidentiality and anonymous reporting, applicability to intern positions, and training policies.
2. All Executive Branch department and agency heads shall ensure that their employees, interns, and contractors have been notified of the state's policy against sexual harassment, discrimination, or retaliation, and shall further ensure that such persons are aware of the procedures for submitting a complaint of sexual harassment, discrimination, or retaliation, including an anonymous complaint.
3. Executive Branch departments and agencies shall annually require training seminars regarding the policy against sexual harassment, discrimination, or retaliation. All employees shall complete their initial training session pursuant to this order by the end of the current fiscal year.
4. Within ninety (90) days of this order, all Executive Branch employees, interns, and contractors under the jurisdiction of the Office of the Governor shall be provided a written copy of the policy against sexual harassment, discrimination, and retaliation, and they shall execute a document agreeing and acknowledging that they are aware of and will comply with the policy against sexual harassment, discrimination, and retaliation.
5. Matters involving any elected official, department or agency head, or any appointee of the Governor may be investigated by independent legal counsel.
6. The Office of the Governor will require annual mandatory training seminars for all staff, employees, and interns in the office regarding the policy against sexual harassment, discrimination, and retaliation, and shall maintain a record of attendance.
7. Allegations of sexual harassment, discrimination, or retaliation within the Office of the Governor will be investigated promptly, and violations of law or policy shall constitute grounds for disciplinary action, including dismissal.

8. This Order is intended to supplement existing laws and regulations concerning sexual harassment and discrimination, and shall not be interpreted to in any way diminish such laws and regulations. The Order provides conduct requirements for covered persons, and is not intended to create any new right or benefit enforceable against the State of Kansas.
9. Persons seeking to report violations of this Order, or guidance regarding the application or interpretation of this Order, may contact the Office of the Governor regarding such matters.

**Agreement to Comply with the Policy Against Sexual Harassment, Discrimination, and Retaliation.**

I hereby acknowledge that I have received a copy of the State of Kansas Policy Against Sexual Harassment, Discrimination, and Retaliation established by Executive Order 18-04 and agree to comply with the provisions of this policy.

*Adrienne Byrne*

Signature and Date

5/22/18

Adrienne Byrne

Printed Name