



# MARIPOSA COUNTY

Human Services/Behavioral Health & Recovery Services



## **RESOLUTION - ACTION REQUESTED 2018-47**

MEETING: February 6, 2018  
TO: The Board of Supervisors  
FROM: Chevon Kothari, Human Services Director  
RE: Heather Bernikoff HIPAA Business Associate Agreement - Whole Person Care

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### **RECOMMENDATION AND JUSTIFICATION:**

Approve a Health Insurance Portability and Accountability Act (HIPAA) Business Associate Agreement (BAA) with Heather Bernikoff to govern the exchange of Protected Health Information (PHI) in connection with a Services Agreement with the County of San Benito to act as a fiscal agent for Mariposa County Human Services; and authorize the Board of Supervisors Chair to sign the Agreement.

Heather Bernikoff has been contracted to provide third party administrative services and PHI data exchange for the Whole Person Care Small County Collaborative. Mariposa County Human Services is working in collaboration with two other small counties, Plumas County and San Benito County, through a Small County Collaborative for the purpose of implementing the Whole Person Care (WPC) Pilot grant. As the fiscal agent for WPC, San Benito County will complete the Inter-Governmental Transfer (IGT) and act as main liaison for the contracting third party administrative services. The WPC Small County Collaborative has contracted with Heather Bernikoff for third party administrative services which can include PHI data exchange. Heather Bernikoff's access to PHI data requires a separate BAA with each participating entity.

### **BACKGROUND AND HISTORY OF BOARD ACTIONS:**

The Mariposa County Board of Supervisors approved the WPC Services Agreement with County of San Benito by Resolution No. 2017-605 on September 12, 2017.

The Board approved a similar HIPAA Business Associate Agreement (BAA) with the California Institute for Behavioral Health Solutions (CIBHS) by Resolution No. 2017-713 on October 17, 2017.

### **ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

If this contract is not approved, the Department will not be able to efficiently implement the Whole Person Pilot grant approved by the Board.

### **FINANCIAL IMPACT:**

**There is no cost to this Business Associate Agreement. There is no impact to the County General Fund.**

## Resolution - Action Requested 2018-47

**ATTACHMENTS:**

**Heather Bernikoff HIPAA Business Associate Agreement - WPC (PDF)**

**WPC - Mariposa and San Benito - BOS signature (PDF)**

**RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]**

**MOVER:** Merlin Jones, District II Supervisor

**SECONDER:** Marshall Long, District III Supervisor

**AYES:** Smallcombe, Jones, Long, Cann, Menetrey

## HIPAA BUSINESS ASSOCIATE AGREEMENT

**THIS HIPAA BUSINESS ASSOCIATE AGREEMENT** (the "Agreement") is entered into effective January 1, 2018 (the "Effective Date"), by and between **Heather Bernikoff**, ("Business Associate") and **Mariposa County** (the "Covered Entity").

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

### Definitions

#### Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

#### Specific definitions:

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean **Heather Bernikoff**.

(b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean **Mariposa County**.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

## **Obligations and Activities of Business Associate**

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- (b) Use, and document the implementation of, appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement;
- (c) Report to covered entity as soon as practicable within two (2) business days of business associate becoming aware of any use or disclosure of protected health information not provided for by the Agreement. Business associate shall also report to covered entity within the same time-frame any breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree in writing to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Within five (5) business days of a request by the covered entity, make available protected health information in a designated record set as necessary to satisfy covered entity's obligations under 45 CFR 164.524. In the event an individual delivers directly to the business associate a request for access to protected health information, the business associate shall within two (2) business days forward such request to the covered entity;
- (f) Within five (5) business days of request of a covered entity, make amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526. This includes, but is not limited to, the business associate providing such information to the covered entity for amendment and incorporation of any such amendment(s) in the protected health information. In the event an individual delivers directly to the business associate a request for amendment(s) to protected health information, the business associate shall within two (2) business days forward such request to the covered entity;
- (g) Maintain a record of all disclosures of protected health information and information related to such disclosures, including the name of the recipient and the date of disclosure. If known, the records shall also include, the address of the recipient of the protected health information, a brief description of the protected health information disclosed, and the purpose of the disclosure which includes an explanation of the basis of such disclosure;
- (h) Make available to the covered entity the information required to provide an accounting of disclosures within five (5) business days of notice by the covered entity to the business

associate. The information provided by the business associate should be that which is necessary to satisfy the covered entity's obligations under 45 C.F.R. 164.528. In the event the request for an accounting is delivered directly to the business associate, the business associate shall within two (2) business days forward the request to the covered entity;

(i) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, business associate shall comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and

(j) Make its internal practices, books, and records relating to the use and disclosure of protected health information available to the Secretary for purposes of determining compliance with the HIPAA Rules. Business associate shall notify the covered entity upon receipt of such a request for access by the Secretary, and shall provide the covered entity with a copy of the request as well as a copy of all materials disclosed.

#### **Permitted Uses and Disclosures by Business Associate**

(a) Business associate may only use or disclose protected health information:

1. To carry out its duties to the covered entity pursuant to the terms of the Relationship;
2. For its own proper management and administration; and
3. To carry out its legal responsibilities.

(b) Business associate may use or disclose protected health information as required by law.

(c) Business associate agrees to limit uses and disclosures and requests for protected health information to the minimum amount necessary to accomplish the purpose of the request, use, or disclosure, and consistent with the covered entity's minimum necessary policies and procedures.

(d) Business associate may disclose protected health information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person.

(e) Additionally, business associate must obtain an agreement from the receiving party to immediately notify the business associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(f) Business associate may provide data aggregation services relating to the health care operations of the covered entity.

## **Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions**

(a) Covered entity shall notify business associate within five (5) business days of notice of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.

(b) Covered entity shall notify business associate within five (5) business days of notice of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate's use or disclosure of protected health information.

(c) Covered entity shall notify business associate within five (5) business days of notice of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

## **Permissible Requests by Covered Entity**

Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity, except for the exceptions set out at paragraph (d) above under "Permitted Uses and Disclosures By Business Associate"

## **42 CFR Part 2**

(a) To the extent that in performing its services for or on behalf of Covered Entity, Business Associate uses, discloses, maintains, or transmits protected health information that is protected by 42 CFR, Part 2, Business Associate acknowledges and agrees that it is a QSO for the purpose of such federal law. Business Associate acknowledges that in receiving, storing, processing or otherwise dealing with any PHI from the Covered Entity, it is fully bound by 42 C.F.R. Part 2. Business Associate will resist efforts to obtain PHI except as provided in 42 C.F.R. Part 2.

(b) Business Associate may use and/or disclose PHI for the proper management and administration of its business, except as otherwise limited by the Agreement or 42 C.F.R. Part 2. Business Associate may use and/or disclose PHI to carry out its legal responsibilities, except as otherwise limited by the Agreement or 42 C.F.R. Part 2. Business Associate may use PHI to report violations of law as permitted by HIPAA and 42 C.F.R. Part 2.

- (c) Covered Entity will notify Business Associate of any changes in or revocation of, authorization by an Individual to use or disclose PHI. Covered Entity will notify Business Associate of any Individual requests for restrictions to the use or disclosure of PHI. Business Associate acknowledges it is fully bound by HIPAA and 42 C.F.R. Part 2.
- (d) Mandatory provisions of HIPAA preempt provisions of the Agreement. Provisions of the Agreement not mandated by HIPAA but nonetheless permitted by HIPAA will control. In the event of inconsistencies between HIPAA and 42 C.F.R. Part 2, the more restrictive rule will control.
- (e) Parties will comply with any and all federal, state and local laws pertaining to client confidentiality including, but not limited to, state mental health and developmental disability confidentiality law, state and federal drug and alcohol confidentiality laws and state AIDS/HIV confidentiality laws.

### **Term and Termination**

- (a) Term. The Term of this Agreement shall be effective as of January 1, 2018 and shall terminate at the time Heather Bernikoff ceases to provide evaluation services for Mariposa County or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- (b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement. At the covered entity's option, the covered entity may permit the business associate to cure or end any such violation within the time specified by the covered entity.
- (c) Obligations of Business Associate Upon Termination.
  - (i). Upon termination of this Agreement for any reason, business associate shall return to covered entity or, at the covered entity's discretion and direction, destroy all protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, that the business associate still maintains in any form. This provision shall apply to protected health information that is in the possession of the business associate or agents of the business associate. Business associate shall retain no copies of the protected health information.
  - (ii). Upon termination of this Agreement for any reason, business associate may retain certain protected health information for its own management and administration or to carry out its legal responsibilities at the discretion of the covered entity. With respect to such protected health information necessary for business associate's own management and administration or to carry out its legal responsibilities which was received from covered

entity, or created, maintained, or received by business associate on behalf of covered entity, business associate shall:

1. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to covered entity, or if agreed to by covered entity, destroy the remaining protected health information that the business associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
4. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at paragraph (d) above under "Permitted Uses and Disclosures By Business Associate" which applied prior to termination; and
5. Return to covered entity or, if agreed to by covered entity, destroy the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

(d)Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

## **Miscellaneous**

(a)Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b)Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c)Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

(d)Injunctive Relief. Business associate stipulates that its unauthorized use or disclosure of protected health information while performing services pursuant to this Agreement would cause irreparable harm to covered entity, and in such event, covered entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.



(e) Indemnification. Business associate shall indemnify and hold harmless covered entity and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by covered entity arising from a violation by business associate of its obligations under this Agreement.

(f) Exclusion from Limitation of Liability. To the extent that business associate has limited its liability under the terms of this Agreement, whether with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, all limitations shall exclude any damages to covered entity arising from business associate's breach of its obligations relating to the use and disclosure of protected health information.

(g) Owner of Protected Health Information. Under no circumstances shall business associate be deemed in any respect to be the owner of any protected health information used or disclosed by or to business associate by covered entity.

(h) Third Party Rights. The terms of this Agreement do not grant any rights to any parties other than business associate and covered entity.

(i) Independent Contractor Status. For the purposes of this Agreement, business associate is an independent contractor of covered entity, and shall not be considered an agent of covered entity.

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

**Heather Bernikoff**

By:  \_\_\_\_\_

Name: Heather Bernikoff

Title: Consultant to Calif. Small County  
Collaborative

**Mariposa County**

By:  \_\_\_\_\_

Name: Rosemarie Smallcombe

Title: Board Chair

**APPROVED AS TO FORM:**

  
**STEVEN W. DAHLEM  
COUNTY COUNSEL**