

FY 2016-2017

SERVICE DEVELOPMENT AGREEMENT

BETWEEN

NORTH LOS ANGELES COUNTY REGIONAL CENTER

15400 Sherman Way, Suite 170

Van Nuys, CA 91406

AND

[Vendor Name]

[Street Address]

[City, State, ZIP]

[Phone]

SERVICE CODE: 999

VENDOR #: PLXXXX

TAX ID #: XX-XXXXXX

TERM OF AGREEMENT: [Month, Day, Year] through [Month, Day, Year]

Development of one (1) Specialized Adult Residential Facility, Designed to Accommodate a Maximum of Four (4) Consumers who are moving from a State Developmental Center into the Community or who are at risk for placement into a State Developmental Center.

**SERVICE DEVELOPMENT AGREEMENT
FY 2016-2017**

This Service Development Agreement dated as of [Date], is entered into by and between NORTH LOS ANGELES COUNTY REGIONAL CENTER, INC., a California nonprofit corporation (“NLACRC”) and [Name and Type of Entity] (“Contractor”), in accordance with the following facts:

RECITALS

Whereas, NLACRC provides services to persons with developmental disabilities (hereinafter called consumers) pursuant to a contract- with the State of California, Department of Developmental Services (DDS);

Whereas, NLACRC is desirous of developing one (1) Specialized Adult Residential Facility to serve consumers who are at risk of placement in a State Developmental Center or who are moving from a State Developmental Center into the community;

Whereas, NLACRC has agreed to provide up to \$200,000.00 of funds for the Specialized Adult Residential facility appropriated in FY2016-2017 (the “FY2016 Funds”) for use by Contractor to acquire, renovate, and operate one (1) specialized adult residential facility to serve a maximum of four (4) consumers in the facility.

Whereas, NLACRC is desirous of assisting consumers by making quality residential service options available in the community;

Whereas, the Contractor is qualified to establish and provide quality services for consumers in the community under the applicable provisions of Title 17 of the California Code of Regulations, and is desirous of establishing such services pursuant to the terms herein;

Whereas, NLACRC is desirous of aiding Contractor in establishing the services pursuant to the terms and conditions set forth herein;

THEREFORE, NLACRC and the Contractor hereto mutually agree as follows:

1. TERM OF AGREEMENT:

- 1.1 Subject to the provisions for termination contained herein, the term of this Agreement shall be for the period [Month, Day, Year] through [Month, Day, Year].
- 1.2 For purposes of the Agreement, any and all references herein to the term of this Agreement shall include any renewals and /or extensions hereof unless specifically provided to the contrary.

- 1.3 For the purposes of enforcing any terms of this Agreement which are to be performed after termination, the representations and promises of the parties, as set forth herein shall survive the termination of this Agreement.

2 DESCRIPTION OF SERVICES:

- 2.1 Contractor shall develop one (1) Specialized Adult Residential Facility (Service Code 113) to serve a maximum of four (4) adult consumers per facility who are moving from a State Developmental Center into the community or who are at risk for placement into a State Developmental Center. Contractor shall be responsible for the following activities associated with the development of the Specialized Residential Facilities including but not limited to, identification of appropriate property, securing control of the property, submission of licensing applications and completion of all requirements applicable to obtaining a license from the Department of Social Services as an Adult Residential Facility with a capacity of four (4) non-ambulatory residents per facility, completion of building improvements to meet licensing requirements and to enhance consumer safety and quality of life, furnishings, and staff training to ensure competency of staff to deliver services as specified in the program design. In order to assist Contractor with the development of said property to serve consumers who are at risk of Developmental Center placement, NLACRC shall reimburse Contractor for certain start-up activities necessary to meet licensing requirements and to enhance consumer safety and quality of life.

3 DUTIES OF CONTRACTOR:

- 3.1 Contractor shall submit by [Month, Day, Year] a detailed proposal (“Proposal”) consisting of a start-up plan with timelines, start-up activities, and an estimated start-up budget. The approved Proposal will become ATTACHMENT A - DESCRIPTION OF PROJECT and hereby incorporated by reference.
- 3.2 Contractor shall submit by [Month, Day, Year] a budget proposal for use of start up funds, as stated in 3.1 and a budget proposal for the on-going rate, subject to negotiation and approval by NLACRC, but not to exceed the maximum DDS median rate allowed for this program.
- 3.3 Contractor is responsible for completing all project/service activities as identified in ATTACHMENT A.
- 3.4 Contractor will submit by [Month, Day, Year] a program design that is acceptable to NLACRC, subject to revision. The approved program design will become ATTACHMENT B – PROGRAM DESIGN and hereby incorporated by reference.

- 3.5 The agency and services shall meet any applicable requirements of vendorization by NLACRC in accordance with the relevant provisions of Title 17 of the California Code of Regulations, Chapter 3 - Community Services.
- 3.6 The agency and services shall meet any applicable requirements of the Department of Social Services, Community Care Licensing or other licensing/certification entity if required for the service to be provided.
- 3.7 Contractor acknowledges that it is familiar with, and is in possession of a copy of, DDS's Guidelines for Regional Center Community Placement Plan for FY 2016-17 (the "CPP Guidelines"). Contractor shall at all times comply with the CPP Guidelines in connection with all services Contractor provides under this Agreement. If any inconsistency exists between this Agreement and the CPP Guidelines, the provisions in the CPP Guidelines shall prevail.
- 3.8 Contractor agrees to have said services in operation and serving consumers no later than the end of the term of this Agreement.

4 FISCAL PROVISIONS:

- 4.1 In consideration for some or all of Contractor's project costs incurred under this Agreement, NLACRC agrees to pay the Contractor a limited and specified amount for such costs as agreed upon including, but not limited to, costs of equipment and furnishings, building modifications necessary to meet licensing requirements, enhance consumer safety, ensure accessibility for non-ambulatory consumers, and provision of staff training.
- 4.2 The maximum amount payable by NLACRC to the Contractor under this Agreement shall not exceed \$200,000.00 of funds for the facility and shall also be subject to NLACRC's written approval of the Contractor's start-up budget. After the parties reach agreement on the total amount of Contractor's start-up budget, NLACRC will complete the payment section of the START-UP PAYMENT AGREEMENT attached hereto as ATTACHMENT C, which will identify the particular start-up funds NLACRC will remit to Contractor after its completion of various milestones as described in such agreement. The START-UP PAYMENT AGREEMENT is incorporated herein by this reference. All performance milestones must be completed and funds claimed by the Contractor by the end of the term of this Agreement.
- 4.3 Payment of funds to Contractor is contingent upon its performance of the services herein in a manner acceptable to NLACRC and in accordance with the conditions set forth in the START-UP PAYMENT AGREEMENT.
- 4.4 Milestone payments by NLACRC will be paid based upon Contractor's submission to NLACRC of required documentation which substantiates Contractor's completion

of each milestone, including but not limited to receipts for purchases and paid invoices. Contractor may engage contractors, subcontractors, design professionals and others (collectively, "Subcontractors") to perform work at the Property or for the benefit of the Property. Contractor shall insure that any other Subcontractor who performs work at the Property shall be properly licensed at all times in the State of California to perform such work, and that such licensee shall retain its license in good standing during the entirety of such work. Contractor shall provide to NLACRC copies of its Subcontractors' contracts within 5 days after each are signed.

4.4.1 Contractor shall only hire Subcontractors who maintain adequate general liability insurance (or E&O insurance, for design professionals and engineers) provided by insurers rated "A" or better in the most recent edition of Best's Insurance Guide. NLACRC recommends that Contractor require all Subcontractor(s) to name Contractor as an additional insured (to the extent they carry CGL insurance) and provide Certificate(s) of Insurance to Contractor before any work begins at property.

4.4.2 NLACRC requires, as a condition of payment to Contractor for any work performed by Subcontractors, that each applicable Subcontractor execute applicable Waivers and Releases of Liens (under the applicable provisions of California Civil Code sections 8132-8138) for each progress payment as well as for the final payment under each Subcontractor's contract. Contractor shall deliver respective Unconditional Waivers and Releases of Liens from all Subcontractors with each applicable respective invoice. NLACRC recommends that Contractor insert into each contract with their respective Subcontractors a holdback of 10 percent, as a retention for all work to be performed by each of their respective Subcontractors, which shall be released upon full completion of the applicable work and Contractor's receipt of applicable Waiver and Release of Liens. Such lien waiver forms are published by the Contractors State License Board and can be found at: <http://www.cslb.ca.gov/consumers/legalissuesforconsumers/mechanicslien/conditionalandunconditionalwaiverreleaseform.asp>

4.5 Contractor shall submit monthly written progress reports identifying progress made toward completion of all items identified in ATTACHMENT C, and invoices in a format and manner agreed upon by NLACRC to: North Los Angeles County Regional Center, 9200 Oakdale Ave., Suite 100, Chatsworth, CA 91311, Attention: CPP Resource Developer.

4.5.1 Complete invoices submitted by the third (3rd) day of the month shall be paid by the twentieth (20th) day of the month.

4.5.2 NLACRC reserves the right to withhold all or part of any payment on invoices submitted until acceptable documentation is received.

- 4.6 Contractor agrees it shall not bill NLACRC under the terms of this Agreement for any costs funded by any other regional center, private insurance or public funding source.
- 4.7 NLACRC may elect to disburse certain funds to third parties for Contractor's benefit, rather than to Contractor directly. NLACRC may also condition Contractor's uses of NLACRC's disbursements on the satisfaction of certain conditions; provided, however, all such disbursements are conditioned on Contractor's compliance with the terms of this Agreement.
- 4.8 Contractor understands and agrees that upon completion or termination of this Agreement, referrals or any subsequent regional center ongoing funding is not guaranteed and that the decision for such funding is within the discretion of NLACRC.
- 4.9 Upon completion of the project and the reconciliation of all payments, if NLACRC determines that the total amount it remitted to Contractor exceeded Contractor's approved costs, Contractor shall within 10 business days of demand remit all excess funds to NLACRC for return to the State.

5 OTHER COSTS AND EXPENSES:

- 5.1 Contractor shall be solely responsible for all costs, overhead, salaries and other expenses incurred in establishing and maintaining the services contemplated herein. This Agreement is made solely for the benefit of the parties hereto and is not intended to, and shall not, confer any benefits on any person or entity not a party hereto. Under no circumstances shall NLACRC be responsible for payments of any kind, directly or indirectly, to any Subcontractors, agents, certified homes or employees of the Contractor.

6. REPAYMENT PROVISIONS:

- 6.1 By no later than the end of the term of this Agreement, Contractor shall have satisfied and completed all of the obligations in this Agreement (including the Performance Milestones) subject to Documented Delays. A delay shall only be a "Documented Delay" if (1) such delay is an event described in Section 15 below (entitled "Force Majeure") or is otherwise beyond Contractor's reasonable control, (2) Contractor notifies NLACRC in writing within 10 days after Contractor encounters such delay, (3) Contractor notifies NLACRC in writing of the date such delay no longer applies and (4) NLACRC reasonably approves such delay and its length in writing.
- 6.2 If Contractor fails to have satisfied and completed all of its obligations in this Agreement (including the Project Milestones) by [Month, Day, Year] (subject to

Documented Delays), Contractor shall repay to NLACRC all funds previously remitted by NLACRC to Contractor under this Agreement. Contractor shall repay such funds within 10 business days from the receipt of such written demand for repayment by NLACRC.

- 6.3 Contractor acknowledges that the sole purpose and use of the housing is to serve consumers moving out of a State Developmental Center, at risk for placement in a State Developmental Center or who otherwise qualify for housing under DDS's Guidelines. Thus, if a consumer initially placed in the housing leaves the housing, for whatever reason, Contractor will immediately take steps to place another qualifying consumer into the housing as soon as possible, in coordination with NLACRC. This obligation shall survive for each facility for six years after the date the first consumers have moved into the applicable facility.
- 6.4 If Contractor completes all the Project Milestones and admits consumers, but terminates services at any of the facilities before six years of service (calculated from the date the first consumer moves into the applicable facility), Contractor shall pay back a portion of the start up funds received for that service as follows: one sixth (1/6th) of the total start up funds received for the service for the applicable facility will be forgiven for each year of service, rounded to the nearest half year of service. For example, if Contractor terminates service at a facility two years and ten months from the start date of the services, the amount to be forgiven shall be calculated as three years, inclusive of rounding the half year, and therefore 50% of the total start up payment for the facility shall be due from Contractor to NLACRC within 10 business days from the last day of the performance of Contractor's service at the applicable facility. In addition, NLACRC may offset payments it otherwise owes to Contractor against the sums owed by Contractor to NLACRC under this paragraph (and under Paragraph 6.3 as well).
- 6.5 This right to repayment is in addition to any other rights NLACRC may have in law or equity, or under this Agreement, and in addition to the repayment rights NLACRC has under Section 16 of this Agreement, entitled Termination and Amendment.

7. FUNDING CONTINGENCY:

- 7.1 Notwithstanding anything in this Agreement to the contrary, the validity of this Agreement (including NLACRC's obligation to remit payments to Contractor) is conditioned on NLACRC's receipt of adequate funds from the California Department of Developmental Services ("DDS") to pay for the services described in this Agreement (the "Funding Contingency"). The Funding Contingency is a part of this Agreement because NLACRC's annual funding agreement with DDS provides that such funding agreement is subject to the appropriation of funds by the Legislature, and that if such funds are not appropriated for any fiscal year into which such funding agreement extends, the funding agreement is of no force and effect. NLACRC shall

therefore have the right and option to terminate this Agreement without liability, and such termination shall be deemed a failure of the Funding Contingency, if (1) DDS for any reason fails to deliver funds to NLACRC for any period covered by this Agreement or (2) NLACRC receives funds from DDS for a period covered by this Agreement but NLACRC determines that such funds are inadequate to pay for all of the Contractor services and other expenses which NLACRC expects to incur in such fiscal year, and therefore elects to fund other services rather than the services identified in this contract. When insufficient funds exist for NLACRC to pay for all potential services to its consumers, NLACRC shall have the right, under clause (2) above, in its sole and arbitrary discretion to fund services other than the services identified in this contract, based on which services NLACRC believes are in the best interests of its consumers. If there is a failure of the Funding Contingency, then (1) NLACRC shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and (2) neither party shall be obligated to further perform any provisions of this contract.

7.2 In addition to the above, if there are insufficient funds available from DDS to pay for all of the Contractor services and other Community Placement Plan expenses which NLACRC expects to incur in any fiscal year, as determined by NLACRC in its sole and absolute discretion, NLACRC shall have the option at any time, on 30 days notice to Contractor, to reduce the amount of services being provided under this contract. In such event, the parties will in good faith negotiate to attempt to agree on Contractor's new amount of compensation under the modified contract. If the parties are unable to agree on Contractor's new compensation for its reduced services within such 30 day period, NLACRC shall then either (1) terminate this contract, because of the failure of a Funding Contingency or (2) rescind its reduction of Contractor's services, in which event this Agreement shall continue in full force and effect without such reduction in services or compensation.

7.3 Notwithstanding anything in this Agreement to the contrary, the payments to Contractor under this Agreement are subject to the any payment reduction that may be implemented by the California State Legislature, as such reduction may be further increased or reduced, and will remain in effect until withdrawn by the State of California.

8. REPORTING AND MONITORING:

8.1 NLACRC shall be entitled to monitor Contractor's progress in the timely pursuit of the objectives of this Agreement, and Contractor shall promptly respond to all inquiries, and in all other ways cooperate and comply with NLACRC's requests to that end.

8.2 The Contractor shall agree to the following reporting requirements:

- 8.2.1 Submission of signed invoices and documentation as required in Section 4.
- 8.2.2 Submission of any other report(s) related to the implementation of the residence as may be identified in the project design or requested by NLACRC.
- 8.3 Contractor shall immediately notify NLACRC if any part of the project becomes inoperable or requires change. Contractor may submit a written request to NLACRC for a change in the project, but shall not implement any changes prior to written approval in accordance with this Agreement. Such request shall include, but not be limited to, a complete justification and description of how the change will affect the original project proposal and its intended outcome. NLACRC reserves the right to approve or deny any requests for change.
- 8.4 Contractor agrees to permit access by NLACRC to all fiscal and program-related records pertaining to any and all services provided pursuant to this Agreement in accordance with the provisions of Subchapter 6, Service Provider Accountability, Sections 50602 et seq. of Title 17, California code of Regulations.
- 8.4.1 Contractor shall maintain and make available to NLACRC or any duly authorized State or Federal agency or representative all books, records, documents and other evidence pertaining to those matters connected with the performance of this Agreement for inspection, audit or reproduction at all reasonable times during the term of the Agreement and for five years from the date of final payment by NLACRC or, if longer, for such period as may be required by applicable law. Notwithstanding the above, Contractor agrees to retain all records which relate to any litigation, claims, disputes, or other controversies arising out of the performance of its obligations under this Agreement until such time as the applicable statute of limitations with respect to such litigation, claim, dispute or controversy has expired.
- 8.5 Contractor Reviews and Audits. This Section shall only apply if all payments Contractor cumulatively receives from NLACRC and other regional centers during Contractor's fiscal year (as determined on the commencement date of this Agreement) equals or exceeds Two Hundred Fifty Thousand Dollars (\$250,000).
- 8.5.1 Contractor shall, at NLACRC's request and at the Contractor's cost, cause an independent Certified Public Accountant to annually (1) provide either an independent review report of the Contractor's financial statements when the amount received from the regional centers during the Contractor's fiscal year is more than or equal to two hundred fifty thousand dollars (\$250,000), but less than five hundred thousand dollars (\$500,000), or provide an independent audit if the amount received from regional centers during the Contractor's fiscal year is equal to or more than five hundred thousand

dollars (\$500,000); and (2) provide a copy of either the review results (the "Review Report") or the annual audit results (the "Audit Report") to NLACRC.

- 8.5.2 If the Contractor engages an independent Certified Public Accountant to review (but not audit) Contractor's financial statements, (i) the review shall, at minimum, comply with the provisions set forth in Welfare and Institutions Code Section 4652.5(e) and (ii) the Review Report shall, at minimum, comply with the provisions set forth in Welfare and Institutions Code Section 4652.5(f).
- 8.5.3 Contractor shall commence the independent audit or review within 120 days after the end of Contractor's fiscal year. Contractor shall complete the audit or review within nine months after the end of the Contractor's fiscal year.
- 8.5.4 In accordance with Welfare and Institutions Code Section 4652.5(b), Contractor shall provide copies of the independent Audit Report or Review Report to NLACRC within 30 days after completion of the audit or review.
- 8.5.5 If NLACRC believes that any issues identified in the Audit Report or Review Report have an impact on services the Contractor provides to NLACRC's Consumers, NLACRC will so notify the Contractor and provide the Contractor with 30 days to resolve such issues. Contractor's failure to resolve such issues to NLACRC's reasonable satisfaction within such 30-day period shall constitute a material breach of this Agreement. As a result of such uncured breach, NLACRC may, among its other remedies, terminate this Agreement.

9 INSURANCE:

- 9.1 Contractor acknowledges that since Contractor is not an employee of NLACRC, Contractor has no right to receive workers compensation for any injury or death arising out of services to be performed by Contractor under this Agreement. Accordingly, Contractor agrees to hold NLACRC harmless and indemnify NLACRC from any and all claims arising out of any injury, disability, or death which might be suffered by Contractor or its employees or agents. Contractor shall also obtain and maintain during the term of this Agreement workers compensation insurance with statutory limits of coverage.
- 9.2 Contractor agrees to procure and maintain in full force and effect during the term of this Agreement, and for as long as Contractor provides services to NLACRC consumers, an insurance policy or policies protecting NLACRC and Contractor against any loss, liability or expense (i) arising out of Contractor's professional

negligence and (ii) due to personal injury, death or property damage, arising out of or in any way connected with the services to be performed by Contractor or its personnel for the benefit of NLACRC. NLACRC shall be an additional named insured in each such policy of insurance. The minimum liability under each such policy shall be \$1,000,000 per occurrence and \$3,000,000 in the aggregate. Each insurer shall be rated XI and A or better in the most recent edition of Bests Insurance Guide. Upon the request of NLACRC, Contractor shall furnish adequate evidence of insurance coverage to NLACRC.

- 9.3 Contractor shall at all times comply with NLACRC's Service Provider Insurance Policy requirements attached hereto as **Attachment G**, which are incorporated herein by reference.

10. INDEMNIFICATION:

- 10.1 To the fullest extent permitted by law, Contractor agrees to indemnify NLACRC and hold harmless NLACRC and its agents, employees, officers and directors from and against any and all claims, damages, personal injury, costs, judgments, penalties, attorneys fees and/or liabilities arising out of or connected with (i) the conduct of Contractor's business, (ii) Contractor's performance of its duties under this Agreement or (iii) any act, omission or neglect of Contractor, its agents or employees in the performance of their duties. The foregoing indemnity shall include, but not be limited to, the defense or pursuit of any claim or proceeding involved therein, whether or not litigated. If any action is brought against NLACRC, Contractor upon notice from NLACRC shall defend the same at Contractor's expense by counsel reasonably satisfactory to NLACRC. NLACRC need not have first paid any such claim in order to be so indemnified.

11. RELATIONSHIP OF THE PARTIES:

- 11.1 The Contractor, and the agents and employees of Contractor, in the performance of this Agreement shall act in an independent capacity and not as officers or employees or agents of NLACRC or the State of California.

12. GOVERNING LAW:

- 12.1. It is the intent of the parties that the law of the State of California shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties.
- 12.2. No terms of this Agreement shall be construed in such a way as to excuse compliance with existing statutes or regulations.

- 12.3. Contractor shall comply with the Service Provider Accountability provisions in Title 17, which are also cited on **Attachment E**.
- 12.4. **HIPAA**. Both parties shall at all times comply with the mandatory provisions of the HIPAA Privacy Rule (Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A & E). In this respect, Contractor shall sign the Business Associate Agreement (attached as **Attachment F**) upon its execution of this Agreement.
- 12.5. **HCBS Provider Agreement**: Contractor represents and warrants that it has signed the State Department of Health and Human Services' Home and Community Based-Services Provider Agreement and submitted such Agreement to NLACRC.
- 12.6. **Applicant/Vendor Disclosure Statement, DS 1891 Form**: Contractor represents and warrants that it has completed and signed the State Department of Health and Human Services' Applicant/Vendor Disclosure Statement (DS 1891 Form) and submitted such Statement to NLACRC. Contractor shall submit a new signed and dated DS 1891 Form to NLACRC within thirty (30) days of any change in the information previously submitted pursuant to this section or upon written request by NLACRC.

13. WAIVER:

- 13.1. No waiver of a breach of any provisions of this Agreement by NLACRC shall constitute a waiver of any other breach of any provision of this Agreement and shall not be construed as a waiver thereof. Failure of NLACRC to enforce at any time, or from time to time, any provisions of this Agreement shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in the law or equity.

14. SEVERABILITY:

- 14.1. If any provision of this Agreement shall be found to be inoperative, unenforceable or otherwise invalid, the remaining provisions hereof shall be carried into effect without regard to such inoperative, unenforceable or otherwise invalid provision. If any provision is held to be inoperative, unenforceable or otherwise invalid with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

15. FORCE MAJEURE:

- 15.1. Both NLACRC and the Contractor shall be excused from performance hereunder during the time and to the extent that each is prevented from performing by acts of God, strike and/or other commandeering of resources by the government when evidence thereof is presented to the other party.

16. TERMINATION:

- 16.1. Notwithstanding anything in this Agreement to the contrary, NLACRC has the right to immediately terminate this Agreement, and no payment shall be due to Contractor, if (i) Contractor fails to submit either its Proposal, budget or Program Design to NLACRC, in form and content satisfactory to NLACRC, by the applicable deadlines set forth in Paragraphs 3.1, 3.2 and 3.4 of this Agreement, (ii) NLACRC notifies Contractor of the failure of submission or deficiency in the submission and (iii) Contractor fails to cure the failure or deficiency to NLACRC's satisfaction within 10 days after NLACRC's delivery of notice to Contractor.
- 16.2. NLACRC may also terminate this Agreement upon written notice, and be relieved of the payment of any consideration to Contractor, should Contractor fail to perform any other covenants herein contained at the time and in the manner herein provided.

17. NONDISCRIMINATION:

- 17.1. Contractor shall not deny the contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, sexual orientation, age, physical or mental disability, and shall not discriminate unlawfully against any employee or applicant for employment on such basis.
- 17.2. Contractor shall evaluate and monitor its performance under this Agreement and, if appropriate, take such action as is necessary to ensure that nondiscrimination provisions are enforced.
- 17.3. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900, et seq.) the regulations promulgated thereunder (California Administrative Code Title 2, Section 7285.0, et seq.), the provisions of Article 9.5, chapter 1, Part 1, Division 3, Title 2 of the Government Code (Sections 11135-11139.5), and the regulations and standards adopted by the awarding State agency implementing said Article.

18. DISPUTE AND FEES:

- 18.1. The parties agree that any dispute arising out of this Agreement shall be subject to the following:
- 18.1.1. If the dispute is of a type governed by the vendor appeal process, then the dispute shall be resolved in accordance with Title 17 regulation.

18.1.2. If the dispute is not of a type that is governed by the vendor appeal process, then the dispute shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

18.1.3. In the event of any dispute or litigation, including arbitration, arising out of, or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

19. MISCELLANEOUS PROVISIONS:

19.1. Contractor shall not assign, transfer or delegate any of its rights and obligations under this Agreement without the prior written consent of NLACRC.

19.2. Time is hereby declared to be of the essence of this Agreement and of each and every covenant, term condition and provision hereof.

19.3. All notices, requests, demands and other communications pertaining to this Agreement shall be in writing and shall be deemed to be duly rendered upon personal delivery or ten (10) days after said notice is deposited in the mail, postage prepaid, by nationally recognized overnight carrier (e.g., FedEx), or registered or certified with return receipt requested to the addresses identified above.

20. ENTIRE AGREEMENT:

20.1. This Agreement with attachments constitutes the entire Agreement and contains all the terms and conditions agreed upon by the parties hereto and supersedes all prior agreements, representations, and understandings of the parties, either oral or written. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. This Agreement shall be binding upon the parties hereto, their successors and assigns.

21. DRUG-FREE WORKPLACE POLICY:

Contractor shall at all times comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8350 et seq.). A copy of NLACRC's Drug Free Workplace Policy is attached hereto as (**Attachment "D"**) and is incorporated herein by this reference.

22. ZERO TOLERANCE POLICY:

Contractor shall comply with NLACRC's Zero Tolerance Policy during the term of this Agreement; such policy is attached hereto as **Attachment H** and is incorporated herein by this reference.

23. ATTACHMENTS

- ◆ Attachment A – Description of Project
- ◆ Attachment B – Program Design
- ◆ Attachment C – Start-up Payment Agreement
- ◆ Attachment D – Drug-Free Workplace Policy
- ◆ Attachment E – Service Provider Accountability (Chapter 1, Subchapter 6, Sections 50602 et seq. of Title 17, California Code of Regulations)
- ◆ Attachment F – Business Associate Agreement
- ◆ Attachment G – Service Provider Insurance Policy Requirements
- ◆ Attachment H – Zero Tolerance Policy

Before taking effect this Agreement and any amendment thereto shall be signed by authorized representatives of both parties.

IN WITNESS HEREOF, NLACRC and the CONTRACTOR have executed this Agreement.

[Name and Type of Entity]

North Los Angeles County Regional Center, a
California not-for-profit corporation

Name
Title

Tax Identification Number:
XX-XXXXX

By: _____
George Stevens, Executive Director

**ATTACHMENT A
to SERVICE DEVELOPMENT AGREEMENT**

DESCRIPTION OF PROJECT

Contractor: [Name and Type of Entity].

Term of Agreement: For reference purposes only as in section 1.1

Project: The development of one (1) Specialized Adult Residential Facility to serve a maximum of four (4) consumers who are moving into the community from a State Developmental Center, or who are at risk for placement into a State Developmental Center.

Vendor #: PLXXXX **Service Code:** 999

APPROVED PROPOSAL (AS STATED IN SECTION 3.1 OF THIS AGREEMENT) TO BE ATTACHED HERE

**ATTACHMENT B
to SERVICE DEVELOPMENT AGREEMENT**

PROGRAM DESIGN

Contractor: [Name and Type of Entity]

Term of Agreement: For reference purposes only as in section 1.1

Project: The development of one (1) Specialized Adult Residential Facility to serve a maximum of four (4) consumers who are moving into the community from a State Developmental Center, or who are at risk for placement into a State Developmental Center.

Vendor #: PLXXXX Service Code: 999

PROGRAM DESIGN (AS STATED IN SECTION 3.4 OF THIS AGREEMENT) TO BE ATTACHED HERE.

**ATTACHMENT C
to SERVICE DEVELOPMENT AGREEMENT**

START - UP PAYMENT AGREEMENT

Contractor: [Name and Type of Entity]

Term of Agreement: For reference purposes only as in section 1.1

Vendor Number: PLXXXX **Service Code:** 999

Project: The development of one (1) Specialized Adult Residential Facility to serve a maximum of four (4) consumers who are moving into the community from a State Developmental Center, or who are at risk for placement into a State Developmental Center

Maximum Available Funding: NLACRC has made available funds from its budget from fiscal year ending 2016 in the amount of \$200,000.00 for facility subject to Section 4.2 and Section 7 of this Agreement.

PERFORMANCE MILESTONES:

Per the Agreement between the parties under the above identified vendor number and service code, payment for each milestone is subject to the achievement and timely implementation of the activities and requirements of all items identified in ATTACHMENT A. All activities must be completed and funds claimed by the Contractor by [Month, Day, Year].

Contractor:	[Vendor Name]
Vendor #:	PLXXXX Service Code: 999 CPPST
Term of the Agreement:	For reference purposes only as in section 1.1
Maximum Available Funding:	\$200,000.00
Project:	The development of one (1) Specialized Adult Residential Facility to serve a maximum of four (4) consumers in the facility who are moving into the community from a State Developmental Center, or who are at risk for placement into a State Developmental Center .

No.	Description of Performance Milestones	Amount of funds allocated for Supported Living Services to be developed by Contractor and payable to Contractor upon completion of each Performance Milestone
1	The date Contractor's Proposal and budget are approved by NLACRC. ⁱ	\$20,000.00
2	Upon Contractor's submission and NLACRC's approval of a negotiated rated structure for ongoing supported living services. ⁱⁱ	\$30,000.00
3	Upon submission of documentation acceptable to NLACRC that Contractor has a signed lease agreement or has control of the property designated for development under the Service Development Agreement. ⁱⁱⁱ	\$30,000.00
4	Upon submission to NLACRC of documentation that Community Care Licensing (CCL) has accepted an application for licensure of the proposed Facility designated for development under the Service Development Agreement, and that CCL has issued a facility number for the Facility associated with that application. ^{iv}	\$30,000.00
5	Upon NLACRC's approval of the Program Design submitted by Contractor for each Facility. ^v	\$30,000.00
6	Upon submission to NLACRC of documentation of costs expended and associated with facility development, including but not limited to furnishings, appliances, equipment, and household supplies for each Facility. ^{vi}	\$30,000.00
7	Upon submission of documentation that Community Care License has issued an Adult Residential Facility license to Contractor for each facility to be developed under the Service Development Agreement. ^{vii}	\$30,000.00
8	\$2,500.00 per consumer shall be paid to Contractor for the transition activities leading to placement of each consumer (up to a maximum of four consumers) into the Specialized Residential (SRF) Facilities to be developed under the Service Development Agreement. This payment shall constitute full reimbursement for all costs associated with transition activities leading to placement of each consumer into the SRF. ^{viii}	\$30,000.00
	TOTAL MAXIMUM FUNDS ALLOCATED: \$200,000.00	\$200,000.00

ⁱ Upon NLACRC's approval of the Proposal and budget (in accordance with sections 3.1 and 3.2 of the Service Development Agreement) which shall include a start-up plan with timelines, start-up activities, an estimated start-up budget, and a budget proposal for the on-going rate, which remains subject to negotiation and approval by NLACRC. Contractor must submit the Proposal and budget to NLACRC by the deadlines specified in the Service Development Agreement.

ⁱⁱ Upon submission and approval by NLACRC of a cost statement which is at or below the state median rate (Welfare & Institution Code Section 4681.6(a), which remains subject to negotiation and approval by NLACRC.

ⁱⁱⁱ Acceptable documentation of this milestone consists of a copy of the lease agreement from the landlord, escrow paperwork, grant deed, and/or bank mortgage statement for the Adult Residential Facility to be developed pursuant to the Service Development Agreement.

^{iv} Acceptable documentation of this milestone consists of a copy of the letter from Dept. of Social Services, Community Care Licensing (CCL) to Contractor, notifying Contractor that CCL has received a complete application and issued a facility number for the Adult Residential Facility (e.g., #1, #2, or #3) to be developed pursuant to the Service Development Agreement.

^v The amount indicated shall be paid to the Contractor upon NLACRC's review and approval of a final Program Design for each of the Specialized Residential Facilities to be developed and operated pursuant to the Service Development Agreement.

^{vi} The amount indicated shall be paid to the Contractor upon submission of acceptable documentation for costs associated with the purchase of appliances, household supplies, program equipment, and furnishings required for facility licensure, provision of a comfortable living environment, and provision of social/recreational/therapeutic activities for consumers. Acceptable documentation includes, but is not limited to, receipts, invoices, payment records, and cancelled checks. The total costs must support the amount of funding received from NLACRC under this milestone.

^{vii} The amount indicated shall be paid upon NLACRC's receipt of verification from CCL (copy of license or other written confirmation of licensure) that an Adult Residential Facility license with a capacity of four (4) residents, all of whom may be non-ambulatory, has been issued to Contractor for each of the Facilities specified in the Service Development Agreement.

^{viii} \$2,500.00 shall be paid to the contractor for each of a maximum of four (4) consumers **per Facility** for the cost of activities associated with transitioning a consumer from the State Developmental Center into the facility developed per the Service Development Agreement. Transition cost and activities include but are not limited to, the review of referral information, time spent by program Administrator, staff and consultants for pre-placement visits, and any other pre-placement activities that are intended to lead to the placement of each consumer (up to a maximum of four (4) consumers) into each Specialized Residential Facility, prior to the expiration date of the Service Development Agreement. Funds paid under this milestone shall serve as reimbursement to Contractor for any and all cost associated with transition activities for all consumers placed in the facility developed under the Service Development Agreement. Contractor must submit a record of all pre-placement activities and associated cost for each consumer for whom reimbursement is required under this milestone at the time the payment invoice is submitted to NLACRC.

NOTE: Defined terms herein have the same meaning as in the Service Development Agreement.

NLACRC reserves the right to withhold all or part of any payment on invoices submitted until acceptable documentation is received. Within thirty (30) days of the placement of the first consumer in each facility, the Contractor shall provide invoices and other evidence of start-up costs. If the Contractor's actual start-up costs do not support the awarded amount, NLACRC shall have the right to require immediate repayment of any funds which have been disbursed under the Agreement, in which case the Contractor shall repay all such funds to NLACRC within ten (10) business days of delivery of demand from NLACRC.

[Name, Type of Entity]

**North Los Angeles County Regional Center,
a California nonprofit corporation**

By: _____

Name

Title

Tax Identification Number:

XX-XXXXX

By: _____

George Stevens, Executive Director

**ATTACHMENT D
to SERVICE DEVELOPMENT AGREEMENT**

Drug Free Workplace Policy

Purpose and Goal

NLACRC receives Federal funds and is required to comply with the Drug Free Workplace Act. We are committed to the safety, health, and wellbeing of all employees and other individuals in our workplace. We have established a drug-free workplace program that balances our respect for individuals with the need to maintain an alcohol and drug-free environment. This policy recognizes that employee involvement with alcohol and other drugs can be disruptive, adversely affect the quality of work and performance of employees, pose serious health risks to users and others, and have a negative impact on productivity and morale.

Who Is Covered By This Policy

Any individual who conducts business for NLACRC or is conducting business on NLACRC's property is covered by our drug-free workplace policy. Our policy includes, but is not limited to employees, contractors, volunteers, interns, and applicants. Our drug-free workplace policy is intended to apply whenever anyone is representing or conducting business for NLACRC. Therefore, this policy applies during all working hours, while on call, while on organization property and while at company-sponsored events.

Prohibited Behavior

It is a violation of our drug-free workplace policy to use, possess, sell, trade, and/or offer for sale alcohol, illegal drugs, or intoxicants. Prescription and over-the-counter drugs are not prohibited when taken in standard dosage and/or according to a physician's prescription. Any employee taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist to ascertain whether the medication may interfere with safe performance of his/her job. If the use of a medication could compromise the safety of the employee, fellow employees or the public, it is the employee's responsibility to call in sick, use leave, request change of duty, or consult with a supervisor to avoid unsafe workplace practices. The illegal or unauthorized use of prescription drugs is prohibited. It is a violation of our drug-free workplace policy to intentionally misuse and/or abuse prescription medications.

Notification of Convictions

Any employee who is convicted of a criminal drug violation in the workplace must notify NLACRC in writing within five calendar days of the conviction. NLACRC will take appropriate action within 30 days of notification. Federal contracting agencies will be notified when appropriate.

Searches

If an individual is suspected of violating the drug-free workplace policy, he or she may be asked to submit to a search or inspection. Searches can include desks and workstations and may extend to personal property, if necessary.

Consequences

An employee who violates this policy will be subject to progressive disciplinary action and may be required to enter rehabilitation. An employee who fails to successfully complete rehabilitation and/or repeatedly violates the policy will be terminated from employment. Normal disciplinary action will be taken if job performance deterioration and/or other accidents occur, and nothing in this policy prohibits the employee from being disciplined or discharged for other violations and/or performance problems.

Assistance

NLACRC recognizes that alcohol and drug abuse and addiction are treatable illnesses. We encourage employees to seek help and allow the use of accrued paid leave while seeking treatment for alcohol and other drug problems. Treatment for alcoholism and/or other drug use disorders are covered as described in PERS healthcare publications. Free or for-fee assistance is also available through community hotlines, self-help groups, community mental health centers, private therapists or counselors, and addiction treatment centers. The ultimate financial responsibility for recommended treatment belongs to the employee.

Confidentiality

All information reported through the drug-free workplace program is confidential communication. Access to this information is limited to those who have a legitimate need to know in compliance with relevant laws and management policies.

Shared Responsibility

All employees are required to not report to work or be subject to duty while their ability to perform job duties is impaired due to on-or-off-duty use of alcohol or other drugs. In addition, employees are encouraged report dangerous behavior to their supervisors. It is the supervisor's responsibility to: Investigate reports of dangerous practices, document negative changes and problems in performance, and counsel employees as to expected performance improvement.

Communication

To ensure all employees are aware of their role in supporting our drug-free workplace program, all employees will receive a written copy of this policy and the policy will be reviewed in orientation sessions with new employees. Educational materials about the dangers of alcohol and drug use and the availability of help will be available to all employees.

**ATTACHMENT E
to SERVICE DEVELOPMENT AGREEMENT**

SERVICE PROVIDER ACCOUNTABILITY

**California Code of Regulations
Title 17, Division 2
Chapter 1 - General Provisions
SubChapter 6 - Service Provider Accountability**

Article 1 - General Provisions

§50601. Meaning of Words.

Words shall have their usual meaning unless the context or a definition clearly indicates a different meaning. Words used in their present tense include the future tense and words in the singular form include the plural form. Use of the word “shall” denotes mandatory conduct.

Note

Authority cited: Section 4648.2, Welfare and Institutions Code. Reference:
Section 4648.1, Welfare and Institutions Code.

History

1. New subchapter 6 (article 1, sections 50601-50612) filed 9-22-89; operative 10-22-89 (Register 89, No. 40). For prior history, see Register 88, No. 29.
2. Editorial correction of article heading (Register 92, No. 21).

§50602. Definitions.

The following definitions govern the construction of sections within this subchapter unless the context requires otherwise:

- (a) “Administrative Overhead Allocations” means the division of administrative overhead among the various affiliate or commonly-owned programs and/or services. Administrative overhead includes such expenses as salaries for management staff and accountants, legal fees, office space and equipment, and utility costs.
- (b) “Affiliate or Commonly-Owned Organizations” means two or more programs and/or services that are owned by the same person, corporation or entity.
- (c) “Auditing” means any examination of records and source documentation, pertaining to the service program and/or the provision of services to persons with developmental disabilities of any individual, group, or entity by the Department, regional center, or any authorized agency representative. This examination is conducted for purposes of determining compliance with fiscal or fiscally related program or service provisions of applicable statute, regulations, contracts, or agreements governing the service program and/or the provision of services to persons with

developmental disabilities. Such examination shall include any procedures as considered necessary by the auditor under the circumstances to perform the examination.

(d) “Authorized Agency Representative” means a person authorized to act on behalf of the Department or regional center by law, by court order, or by a written statement signed by the Director of the Department or the executive director of a regional center.

(e) “Department” means the State Department of Developmental Services.

(f) “Draft Audit Report” means the written document summarizing the audit findings and recommendations that is prepared by the regional center and is forwarded to the service provider for response pursuant to Section 50606(d)(1).

(g) “Emergency Services” means those services which must be provided or purchased by a regional center in order to protect a consumer from immediate danger to his/her physical or mental health or safety.

(h) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

(i) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(j) “Final Audit Report” means the written document prepared by the regional center pursuant to Section 50606(f). “Final audit report” is synonymous with “audit report” as defined in Section 50701(g).

(k) “Parent Organization” means a separate and distinct corporation or entity which operates two or more programs and/or services.

(l) “Preliminary Audit Report” means the written document prepared by the regional center and forwarded to the Department pursuant to Section 50606(e)(1) when the audit involves the review of documentation relied upon as the basis for establishing a rate of payment for a service provider. Preliminary audit reports include the following items:

- (1) The regional center's draft audit report;
- (2) The service provider's response to the draft audit report; and
- (3) The regional center's reply to the service provider's response.

(m) “Record” means any book or document evidencing operational, financial, and service activities of a service provider or regional center pertaining to the service program and/or the provision of services to persons with developmental disabilities. Examples include books of account, general ledgers, subsidiary ledgers, check registers, canceled checks, contracts, correspondence, financial statements, internal reports, bank statements, standard cost statements,

consumer files, purchase of service authorizations, and documents evidencing consumer services. All consumer records shall be treated as confidential.

(n) “Service” means the process by which the regional center, or service provider, delivers a service directed towards the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability, and consistent with the requirements set forth in Title 17, California Code of Regulations Section 56551(d) and Welfare and Institutions Code, Sections 4646.5(a)(4) and 4648(a). Such services include, but are not limited to those specified in Section 4512 of the Welfare and Institutions Code.

(o) “Service Provider” means a person, program, or any other entity, or any other person connected therewith, vendored to provide services to regional center consumers. Service providers do not include those applicants specified in Title 17, California Code of Regulations, Section 54310(d) and (e).

(p) “Service Record” means a book or document evidencing the service activities provided by a service provider or regional center.

(q) “Source Documentation” means the medium upon which evidence of a transaction is initially recorded. Examples of source documents include, but are not limited to, purchase requisitions, purchase orders, purchase of service authorizations, staffing schedules, employee hourly time reports, invoices and attendance documents for regional center consumers and all other persons provided services. Source documents are used to prepare records and reports.

(r) “Unique Consumer Identifier” means a unique number assigned to identify each regional center consumer which is used instead of the consumer name to maintain confidentiality.

(s) “Units of Service” means increments of service provided to regional center consumers which are used to charge and invoice the regional center for services provided. The increment of service is specified as hours, days or transportation mileage or any other increment of service agreed to by the Department, regional center and service provider. It is used by the Department to determine a rate of reimbursement.

(t) “Vendored” means the successful completion of the process used to determine whether an applicant meets all legal and regulatory requirements to provide service to regional center consumers. This process must be completed in order for a person, program or facility to receive payment from a regional center for services rendered a regional center consumer.

(u) “Vendoring Regional Center” means the regional center in the service catchment area in which the service provider is located, and to which a potential service provider must submit an application for vendorization. Service catchment area is defined in Section 50501(a)(18).

Note

Authority cited: Chapter 722, Statutes of 1992, Section 147; and Sections 4648(a), 4648.2 and 4791(i), Welfare and Institutions Code. Reference: Sections 4512(b), 4641.5, 4646.5, 4648, 4648.1 and 4791, Welfare and Institutions Code.

History

1. New section filed 9-22-89; operative 10-22-89 (Register 89, No. 40).
2. Amendment of subsection (m) and Note filed 11-5-91 as an emergency; operative 11-5-91 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL by 3-4-92 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (m) and NOTE refiled 3-4-92 as an emergency; operative 3-4-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 7-2-92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 3-4-92 order including amendment of Note and History 3 transmitted to OAL 6-25-92 and filed 8-6-92 (Register 92, No. 33).
5. Amendment of section filed as an emergency 6-17-93; operative 6-17-93. Submitted to OAL for printing only pursuant to SB485 (Chapter 722, Statutes of 1992) Section 147(a) (Register 93, No. 26).
6. Amendment of subsection (m) filed 4-22-94; operative 4-22-94. Submitted to OAL for printing only (Register 94, No. 16).
7. Amendment of subsection (m) filed 6-20-94 as an emergency; operative 6-20-94. Submitted to OAL for printing only pursuant to Chapter 722, Statutes of 1992, Section 147 (Register 94, No. 25).
8. Certificate of Compliance as to 6-17-93 order transmitted to OAL 6-20-94 and filed 8-2-94 (Register 94, No. 31).
9. Certificate of Compliance as to 6-20-94 order, including amendment of subsection (m), transmitted to OAL 2-20-96 and filed 3-29-96 (Register 96, No. 13).
10. Change without regulatory effect amending subsections (g), (k), (m), and (o)-(r) filed 1-17-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 3).
11. New subsections (h) and (i), subsection relettering and amendment of Note filed 1-17-2012; operative 2-16-2012 (Register 2012, No. 3).

§50603. Access to Service Provider Records.

(a) The service provider shall permit right of access to:

(1) Any books, documents, papers, computerized data, source documents, consumer records, or other records of the service provider pertaining to the service program and/or provision of services to persons with developmental disabilities. All consumer records

shall be treated as confidential.

(2) Any facilities belonging to or used by the service provider pertaining to the service program and/or the provision of services to persons with developmental disabilities.

(b) The right of access referred to in Section 50603 (a) shall be applicable to the Department, regional center, or any other authorized agency representative and to the California Department of Health Services and the United States Department of Health and Human Services when federal government funds are involved in the payment for services.

(c) Such access shall be permitted after proper identification is provided and the reason for the visit stated.

(d) The right of access in this section shall be used to audit, review, examine, excerpt, reproduce, and/or make transcripts.

(e) The rights of access in this section shall not be limited to the required record retention period as specified in Section 50605 (a).

(f) All service provider records, including corporate records, shall be made immediately available to persons specified in Section 50603 (b) for purposes specified in Section 50603 (d) above.

(g) The rights of access in this section shall not be limited by a requirement of prior notice. Access without prior notice shall be limited to situations where the Department or regional center determines that the purpose of the access would be thwarted if advance notice were given such as in the case of suspected fraud, imminent destruction of records or similar circumstances.

(h) Access to any records pertaining to any regional center consumer in the facility or to the operation of the facility, to the extent such operation pertains to the service program and/or the provision of services to persons with developmental disabilities, shall be provided upon request and in accord with confidentiality statutes.

(i) If requested by regional center staff, the service provider shall make provision for a regional center consumer to be interviewed in private. The written consent of the consumer or, where appropriate, the parent, guardian or conservator shall be obtained before the interview is conducted. A third party of the consumer's choice may be present during the interview if the consumer so desires.

Note

Authority cited: Sections 4405 and 4648.2, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Section 4648.1, Welfare and Institutions Code; Section 11152, Government Code; and Section 1902(a)(4) and (a)(27), Social Security Act, Title 42 CFR, Code of Federal Regulations, CFR 431.107(b).

History

1. New section filed 9-22-89; operative 10-22-89 (Register 89, No. 40).
2. Amendment of subsection (b) and Note filed 11-5-91 as an emergency; operative 11-5-91 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 3-4-92 or emergency language will be repealed by operation

of law on the following day.

3. Amendment of subsection (b) and NOTE refiled 3-4-92 as an emergency; operative 3-4-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 7-2-92 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 3-4-92 order including amendment of Note and History 3 transmitted to OAL 6-25-92 and filed 8-6-92 (Register 92, No. 33).

5. Amendment of section filed as an emergency 6-17-93; operative 6-17-93. Submitted to OAL for printing only pursuant to SB485 (Chapter 722, Statutes of 1992) Section 147(a) (Register 93, No. 26).

6. Editorial correction of printing error deleting duplicate section (Register 94, No. 17).

7. Certificate of Compliance as to 6-17-93 order transmitted to OAL 6-20-94 and filed 8-2-94 (Register 94, No. 31).

8. Change without regulatory effect amending subsections (a)(1), (h) and (i) filed 1-17-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 3).

§50604. Service Provider Record Maintenance Requirements.

(a) Service providers shall maintain financial records which consistently use a single method of accounting. These financial records shall clearly reflect the nature and amounts of all costs and all income. All transactions for each month shall be entered into the financial records within 30 days after the end of that month.

(b) Subsection (a) shall apply to residential facilities for the purposes described in subsection (c), day programs, transportation companies, and other non-medical service providers which provide ongoing services to regional center consumers on a regular basis each month, except that the following service providers shall be exempt:

(1) Residential facilities in which regional center consumers represent less than ten percent of the total consumers served by the facility during the last 12 month period.

(2) Residential facilities in which regional center consumers represent more than ten percent of the total consumers served by the facility; however, no Departmental funds are received for the care and services provided to those consumers.

(c) Subsection (a) shall apply to residential facilities not exempted pursuant to subsections (b)(1) and (2) only for the following purposes:

(1) To facilitate residential cost studies performed by the Department or authorized agency representative;

(2) To ensure that staffing schedules in conformance with staffing level requirements, if any, are supported by payroll records and source documents;

(3) To ensure that revenue and cost information are available to support administrative overhead allocations of parent organizations, if applicable; and

(4) To ensure that revenue and cost information are available to support intercompany transactions with affiliate or commonly-owned organizations, if applicable.

(d) All service providers shall maintain complete service records to support all billing/invoicing for each regional center consumer in the program. This requirement may be satisfied by retaining an electronic record of the information in the record, if the record reflects accurately the information set forth in the record at the time it was first generated in its final form as an electronic record or otherwise, and the electronic record remains accessible for later reference. Service records used to support service providers' billing/invoicing shall include, but not be limited to:

(1) Information identifying each regional center consumer including the Unique Consumer Identifier and consumer name;

(2) Documentation for each consumer reflecting the dates for program entrance and exit, if applicable, as authorized by a regional center.

(3) A record of services provided to each consumer. The record shall include:

(A) For the purchase of medical equipment and/or supplies, and/or other merchandise, the date of the purchase, name of the entity/individual from whom the equipment, supplies, and/or merchandise is purchased, the item(s) purchased, and the cost of each item; or

(B) For transportation services, the dates of service, city or county where service was provided, and the number of miles driven or trips provided; or

(C) For community-based day programs, the dates of service, place where service was provided, the start and end times of service provided to the consumer, and the daily or hourly units of service provided. For community-based day program services provided solely in natural environments, the city and county where service was provided shall be reported as the place where service was provided. For community-based day programs whose services are provided at the facility only or at both the facility and in the community, the street address of the facility shall be reported as the place where service was provided; or

(D) For all other services, the date, the start and end times of service provided to the consumer, street address where service was provided, and daily or hourly units of service provided.

(E) For goods and/or services purchased utilizing a voucher or Participant-Directed Services, as described in California Code of Regulations, Title 17, Section 58884(a)(1), in addition to the information specified above, the name of the actual provider of the goods and/or services. For services provided by an individual selected by the consumer or family member, the date of birth, social security number (or a copy of any document accepted by the federal government which establishes identity and employment eligibility which has been compared to the original by the vendored family member and declared under penalty of perjury to be a true and correct copy),

address, and telephone number of the individual who actually provided the service must also be maintained.

(F) For contracts reimbursed based on units of service other than as specified above, units of service shall also be maintained pursuant to (A), (B), (C), or (D) above, as applicable.

(e) All service providers' records shall be supported by source documentation.

(f) Nothing specified in this section shall be construed as superseding other record maintenance requirements set forth in statute or regulation.

Note

Authority cited: Sections 4631(a)(2) and 4648.12(c)(1)(B), Welfare and Institutions Code.

Reference: Sections 4631, 4641.5, 4648.1 and 4648.12(c), Welfare and Institutions Code.

History

1. New section filed 9-22-89; operative 10-22-89 (Register 89, No. 40).
2. Change without regulatory effect amending subsections (b)-(b)(2) and (d)-(d)(2) filed 1-17-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 3).
3. Amendment of subsections (d)(2)-(3), new subsections (d)(3)(A)-(E) and amendment of Note filed 10-9-2003 as an emergency; operative 10-9-2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-6-2004 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (d)(2)-(3), new subsections (d)(3)(A)-(E) and amendment of Note refiled 2-3-2004 as an emergency; operative 2-3-2004 (Register 2004, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-2-2004 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (d)(2)-(3), new subsections (d)(3)(A)-(E) and amendment of Note refiled 6-1-2004 as an emergency; operative 6-1-2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9-29-2004 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsection (d)(3)(D) filed 8-27-2004 as an emergency; operative 8-27-2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-27-2004 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 6-1-2004 order, including amendment of subsection (d)(3)(B), new subsection (d)(3)(C), subsection relettering and amendment of newly designated subsections (d)(3)(D) and (F), transmitted to OAL 9-15-2004 and filed 10-28-2004 (Register 2004, No. 44).
8. Refiling of 8-27-2004 order, including incorporation of relettering of subsection (d)(3)(D) to (d)(3)(E) in intervening action, 12-22-2004 as an emergency; operative 12-22-2004 (Register

2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-21-2005 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 12-22-2004 order, including further amendment of subsection (d)(3)(E), transmitted to OAL 4-19-2005 and filed 5-18-2005 (Register 2005, No. 20).

10. Amendment of subsection (d)(3)(E) and Note filed 8-29-2011 as a deemed emergency pursuant to Welfare and Institutions Code section 4648.12; operative 8-29-2011 (Register 2011, No. 35). A Certificate of Compliance must be transmitted to OAL within 18 months or emergency language will be repealed by operation of law on the following day.

11. Amendment of subsection (d) and Note filed 1-17-2012; operative 2-16-2012 (Register 2012, No. 3).

12. Certificate of Compliance as to 8-29-2011 order transmitted to OAL 1-25-2013 and filed 3-11-2013 (Register 2013, No. 11).

§50605. Service Provider Record Retention Requirements.

(a) All service providers' financial and service records, including source documentation, shall be retained for a minimum of five years from the date of final payment for the State fiscal year in which services were rendered. This requirement may be satisfied by retaining an electronic record of the information in the record, if the record reflects accurately the information set forth in the record at the time it was first generated in its final form as an electronic record or otherwise, and the electronic record remains accessible for later reference.

(b) If an audit is in progress or an appeal pursuant to Subchapter 7 (commencing with Section 50700) is pending at the end of the time specified in Section 50605(a), the service providers' records shall be retained until all audit exceptions have been resolved.

(c) Copies made by microfilming or electronic data processing methods may be substituted for any original record.

Note

Authority cited: Section 4648.2, Welfare and Institutions Code. Reference: Sections 4641.5 and 4648.1, Welfare and Institutions Code.

History

1. New section filed 9-22-89; operative 10-22-89 (Register 89, No. 40).

2. Amendment of subsection (a) filed 8-27-2004 as an emergency; operative 8-27-2004 (Register 2004, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-27-2004 or emergency language will be repealed by operation of law on the following day.

3. Amendment of subsection (a) refiled 12-22-2004 as an emergency; operative 12-22-2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-21-2005 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 12-22-2004 order transmitted to OAL 4-19-2005 and filed 5-18-2005 (Register 2005, No. 20).

5. Amendment of subsections (a) and (c) and Note filed 1-17-2012; operative 2-16-2012 (Register 2012, No. 3).

§50606. Regional Center Auditing Requirements.

(a) To the extent that regional centers determine that it is necessary, regional centers shall audit records of service providers. Such audits shall be:

- (1) Performed utilizing existing personnel resources; and
- (2) Commenced within three years following the final payment for the fiscal year under audit.

(b) Audits shall be performed to accomplish any or all of the following objectives as applicable to the specific service provider:

(1) Verification that the service provider's documentation submitted to the regional center as a basis for establishing a rate of payment by the Department is:

(A) Complete, including other sources of revenue related to the service program or provision of services to persons with developmental disabilities;

(B) Accurate; and

(C) Supported by the service providers' records and source documents.

(2) Verification that the service billings/invoices submitted by the service provider to the regional center for payment are supported by the service providers' consumer attendance and service records.

(3) Verification that the service providers' handling and accounting of the consumers' personal and incidental funds is in accordance with applicable regulations including, but not limited to, Title 17, California Code of Regulations, Sections 56557(b)(3)(G) and 56602(d), and Title 22, California Code of Regulations, Section 80026 .

(4) Verification through analysis of payroll and consumer service records that staff-to-consumer ratios required by regulation, contract, or agreement are met.

(A) Verification that the required staff-to-consumer ratios are being met shall be determined as follows:

1. For activity centers, adult development centers, and behavior management programs:

a. For each month of the audit period multiply the number of actual consumer days of attendance by the number of direct service hours operated per day;

b. Divide the total computed in a. by the approved staffing ratio to compute the number of direct care staff hours required during the approved program hours each month to maintain the approved staffing ratio; and

c. Compare the number of direct care staff hours actually provided during the approved program hours for each month with the number of direct care staff hours required for each month computed pursuant to b.

2. For social recreation programs, independent living programs, and infant development programs:

a. For each month of the audit period determine the actual hours of consumer attendance for each month;

b. Divide the actual hours of attendance pursuant to a. by the approved staffing ratio to compute the number of direct care staff hours required during the approved program hours each month to maintain the approved staffing ratio; and

c. Compare the number of direct care staff hours actually provided during the approved program hours for each month with the number of direct care staff hours required for each month computed pursuant to b.

(B) If a determination is made that the approved staff-to-consumer ratio has not been met, the amount of any overpayments shall be determined as follows:

1. Subtract the number of direct care staff hours actually provided during the audit period from the number of direct care staff hours required pursuant to (A)1. or (A)2.;

2. Multiply the amount computed in 1. by the average hourly salary and wage and fringe benefit costs reported pursuant to Sections 57434 (a)(1)(A) and (a)(2) and which were utilized to calculate the vendor's rate of reimbursement received during the audit period.

(5) Verification of compliance with other provisions of applicable statute, regulations, contracts, or agreements governing the service program and/or the provision of services to persons with developmental disabilities.

(c) If an audit of a service provider not vendored by the auditing regional center is proposed, such audit shall be coordinated with the vendoring regional center. If the service provider has already been audited for the same time period, the auditing regional center shall rely, to the extent possible, on the work performed by the vendoring regional center.

(d) Upon completion of an audit, the regional center shall process the audit findings and/or recommendations defined in Title 17, California Code of Regulations, Section 50701 , as follows:

(1) A draft of the audit report shall be forwarded to the service provider for comment within sixty (60) days of completion of work performed at the service provider's location.

(2) The service provider shall be given thirty (30) days in which to respond to the audit report draft from time of its receipt.

(e) If an audit of a service provider involves review of documentation submitted to either the regional center or the Department and relied upon as the basis for establishing a rate of payment for that service provider, the regional center shall forward its preliminary audit report to the Department.

(1) The preliminary audit report shall include the service providers' response to the audit findings and/or recommendations as an attachment.

(2) The preliminary audit report shall include the regional center's reply to the providers' response as an attachment.

(3) The Department shall consider the preliminary audit report in establishing a rate. If an adjustment to the rate is proposed:

(A) The effective date of the adjusted rate of payment shall be determined by the Department based on information contained in the preliminary audit report and supporting audit working papers.

(B) The adjusted rate of payment shall be calculated and submitted by the Department to the regional center for use in determining any amounts which may be due from or due to the service provider.

(4) The Department shall notify the regional center if it is determined that an adjustment to the rate of payment is not necessary after considering the preliminary audit report.

(f) The final audit report shall be issued by the regional center, within 90 days of the deadline for the service provider's response.

(1) The final report shall notify the service provider of its right to appeal the audit findings pursuant to Title 17, California Code of Regulations, Section 50730 .

(2) The final report shall incorporate the response of the service provider and the regional center's reply to the response.

(3) A copy of the rate letter issued by the Department adjusting the rate of payment shall be enclosed with the final report, if applicable.

(4) The final report shall include a breakdown of any amounts due the regional center and Department by fiscal year and require remittance in accordance with Section 50705 . If an amount is due the service provider, the final report shall include a breakdown of any amounts due by State fiscal year. Procedures for requesting payment of the amount due from the regional center shall also be included.

(5) When a remittance pursuant to subsection (4) is made, a copy of the check and any transmittal document shall be sent to the Department.

(6) Upon issuance, a copy of the final report shall be sent to the Department.

(g) The auditing work performed by the regional center shall, to the maximum extent that the auditor determines practicable, follow the standards for financial and compliance audits, as listed in the "Standards for Audit of Governmental Organizations, Programs, Activities and Functions," 1981 Revision, sued by the Comptroller General of the United States, United States General Accounting Office, which is incorporated by reference herein.

(1) The auditing work performed by the regional center shall, at a minimum, meet the following standards:

(A) In all matters relating to the audit work, the regional center staff involved shall be free from conflicts of interest as defined in Title 17, California Code of Regulations, Section 54521 , and in Section 4627 of the Welfare and Institutions Code.

(B) Due professional care shall be used in conducting the audit and in preparing related reports.

(C) When factors external to the audit organization and the auditor restrict the audit or interfere with the auditor's ability to form objective opinions and conclusions, the auditor shall attempt to remove the limitation or, failing that, disclose the limitation in the audit report.

(D) A review shall be made of compliance with applicable statutes and regulations governing the service program and/or the provision of services to persons with developmental disabilities.

(E) A written record of the auditor's work shall be retained in the form of working papers.

(F) Final audit reports shall be submitted to the appropriate officials of the organization

audited and to the appropriate officials of the regional center and the Department. Copies of the reports shall also be:

1. Sent to the other officials who may be responsible for taking action and to others authorized to receive such reports.
2. Made available for public inspection, unless restricted by law or regulations; and
3. Accompanied by a transmittal document which specifies that the report is subject to appeal and includes the status of any such appeal.

(G) For purposes of subsection (F) “other officials” and “others” authorized to receive such reports include, but shall not be limited to, those designated by law or regulation to receive such reports, legislators, and those of other levels of government that have provided funds to the audited entity.

(h) The reports specified in this section shall be written reports.

Note

Authority cited: Chapter 722, Statutes of 1992, Section 147; Sections 4405, 4631, 4648.2, 4791(i), Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4629(f), 4631, 4648.1 and 4791, Welfare and Institutions Code.

History

1. New section filed 9-22-89; operative 10-22-89 (Register 89, No. 40).
2. Amendment of section filed as an emergency 6-17-93; operative 6-17-93. Submitted to OAL for printing only pursuant to SB485 (Chapter 722, Statutes of 1992) Section 147(a) (Register 93, No. 26).
3. New subsections (b)(4)(A)-(B)2 filed 6-20-94 as an emergency; operative 6-20-94. Submitted to OAL for printing only pursuant to Chapter 722, Statutes of 1992, Section 147 (Register 94, No. 25).
4. Certificate of Compliance as to 6-17-93 order transmitted to OAL 6-20-94 and filed 8-2-94 (Register 94, No. 31).
5. Certificate of Compliance as to 6-20-94 order transmitted to OAL 2-20-96 and filed 3-29-96 (Register 96, No. 13).
6. Change without regulatory effect amending section filed 1-17-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 3).

§50607. Regional Center Contracting Requirements.

When a regional center enters into a contract with a service provider, the contract shall include, but not be limited to, the following general provisions.

- (a) Contract provisions stating the parties, the general purpose, the services to be provided, the date of execution, and the applicable statutes and regulations applying to the contract.
- (b) A contract provision requiring a signature by authorized representatives of all contracting parties.
- (c) A contract provision setting forth the definite effective dates, representing the

beginning and ending date.

(d) Contract provisions to include the definitions of terms unique to the contract or contracted service.

(e) A contract provision stating that the execution of any amendment or modification to the regional center/service provider contract shall comply with the requirements of applicable statutes and regulations.

(f) A provision stating that the service provider and the agents and employees of the service provider, in the performance of the contract, shall act in an independent capacity, and not as officers or employees or agents of the State of California or the regional center.

(g) A provision stating that assignment of the contract for consumer services shall not be allowed.

(h) A contract provision indicating that all services shall be rendered in accordance with specifically identified provisions of statute, and Federal and State regulations.

(i) A contract provision stating that the terms of the contract shall not be construed to excuse compliance with existing statutes or regulations.

(j) A contract provision stating that subcontracting of services for which the service provider is vendored shall not be permitted except for contracts for transportation services or community-based day program services pursuant to Title 17, California Code of Regulations, Section 56710(b) .

Note

Authority cited: Sections 4405, 4631 and 4648.2, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4629(f), 4631, 4648.1, 4690.1 and 4691, Welfare and Institutions Code.

History

1. New section filed 9-22-89; operative 10-22-89 (Register 89, No. 40).
2. Amendment of subsection (k) filed 9-26-91; operative 9-26-91 pursuant to Government Code section 11346.2(d) (Register 92, No. 10).
3. Repealer of subsection (h) and relettering, amendment of subsection (j) and Note filed 11-5-91 as an emergency; operative 11-5-91 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 3-4-92 or emergency language will be repealed by operation of law on the following day.
4. Repealer of subsection (h) and relettering, amendment of subsection (j) and NOTE refiled 3-4-92 as an emergency; operative 3-4-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL 7-2-92 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-4-92 order including amendment of Note and History 4 transmitted to OAL 6-25-92 and filed 8-6-92 (Register 92, No. 33).
6. Amendment of section filed as an emergency 6-17-93; operative 6-17-93. Submitted to OAL for printing only pursuant to SB485 (Chapter 722, Statutes of 1992) Section 147(a) (Register 93, No. 26).
7. Certificate of Compliance as to 6-17-93 order transmitted to OAL 6-20-94 and

filed 8-2-94 (Register 94, No. 31).

8. Change without regulatory effect amending subsection (g) filed 1-17-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 3).

§50608. Contract Duties and Responsibilities.

When a regional center enters into a contract with a service provider, the contract shall include, but not be limited to, the following provisions specifying the duties and responsibilities of the service provider.

(a) A contract provision requiring that the level of service provided shall, at a minimum, be consistent with the service provider's program design, if applicable, and any other program related documentation relied upon by the Department as a basis for establishing rates of payment.

(1) The service provider's program design shall be made a part of the contract.

(2) The service provider's program design shall include, but not be limited to:

(A) A written statement of the facility's purpose and goals;

(B) A description of the services provided;

(C) A description of program methods;

(D) Consumer entrance and exit criteria;

(E) Job descriptions of all positions;

(F) Staff qualifications for each job description;

(G) A staffing plan which indicates the staff-to-consumer ratio for delivery of direct care services for all hours the consumers are under the supervision of the facility;

(H) A staff training plan, if any; and

(I) Hours and location of service.

(b) A contract provision requiring the service provider to maintain books, records, documents and other evidence pertaining to all income, expenses, and services relating to and/or affecting the performance of the contract.

(c) A contract provision requiring the service provider to maintain service records to support all billings/invoicing as specified in Section 50604 (d)(1) through (3)(F), as applicable.

(d) A contract provision requiring the service provider to submit to the regional center with their billings/invoices the information specified in (c) above for the billing period.

(e) A contract provision requiring the service provider to adopt and periodically review, a written internal procedure to resolve consumer grievances pursuant to Welfare and Institutions Code Section 4705.

Note

Authority cited: Chapter 157, Statutes of 2003; Sections 4405, 4631 and 4648.2, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4525, 4629(f), 4631 and 4648.1, Welfare and Institutions Code.

History

1. New section filed 9-22-89; operative 10-22-89 (Register 89, No. 40.)
2. Amendment of Note filed 8-6-92; operative 8-6-92 (Register 92, No. 33).
3. Change without regulatory effect amending subsections (a)(2)(D), (a)(2)(G) and (c) filed 1-17-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 3).
4. New subsections (c)-(d), subsection relettering and amendment of Note filed 10-9-2003 as an emergency; operative 10-9-2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-6-2004 or emergency language will be repealed by operation of law on the following day.
5. New subsections (c)-(d), subsection relettering and amendment of Note refiled 2-3-2004 as an emergency; operative 2-3-2004 (Register 2004, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-2-2004 or emergency language will be repealed by operation of law on the following day.
6. New subsections (c)-(d), subsection relettering and amendment of Note refiled 6-1-2004 as an emergency; operative 6-1-2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9-29-2004 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 6-1-2004 order, including amendment of subsection (c), transmitted to OAL 9-15-2004 and filed 10-28-2004 (Register 2004, No. 44).

§50609. Contract Fiscal Provisions.

The regional center/service provider contract shall include, but not be limited to, the following fiscal or fiscally related provisions:

(a) Provisions specifying details for the payment of services rendered including, but not limited to:

(1) The method of payment;

(2) The time of payment;

(3) a requirement that the rate of payment, in accordance with referenced contract exhibits, contains one of the following:

(A) An exhibit displaying Departmental or regional center documentation reflecting the proposed rate of payment per unit of service; the definition of a unit of service; and the necessary data and mathematical computation used to establish the proposed rate of payment per unit of service.

(B) An exhibit displaying Departmental documentation reflecting the various ranges of proposed rates of payment for residential care services and other applicable services subject to such maximum limitations.

(4) A detailed description of the method to be used in determining the units of service allowed for billing/invoicing in accordance with the referenced contract exhibits required under Section 50609 (a)(3).

(b) A provision specifying the basis used by the Department to establish the rate of payment for services.

(1) A provision identifying a contract exhibit which shall contain the service provider's fiscal and program related documentation relied upon as the basis for establishing the rate of payment.

(A) A provision indicating that both parties to the contract have come to a full understanding and agreement of a specified method used to accumulate data contained in the service provider's documentation.

1. A provision indicating that the service provider attests that the method referred to in Section 50609 (b)(1)(A) was used to accumulate data contained in the service provider's documentation.

(B) A provision indicating that the service provider attests that such fiscal and program related documentation is:

1. complete;
2. accurate to the best of the service provider's knowledge;
3. supported by records and source documentation;
4. prepared in accordance with the instructions provided by the Department and;
5. subject to audit.

(c) A provision specifying that payment under the contract is dependent upon availability of State funding.

(d) A provision specifying that the consideration to be paid the service provider, as provided herein, shall be the total compensation for performance of the contract and its requirements, unless otherwise expressly provided.

(e) When Federal Government funds are involved, a provision requiring service provider compliance with all Federal rules including, but not limited to the applicable sections of the Code of Federal Regulations.

(f) A provision specifying the maximum amount which can be paid under this contract.

Note

Authority cited: Sections 4405, 4631 and 4648.2, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Section 4629(f), 4631 and 4648.1, Welfare and Institutions Code.

History

1. New section filed 9-22-89; operative 10-22-89 (Register 89, No. 40).

§50610. Contract Fiscal Audit.

(a) The regional center/service provider contract shall include, but not be limited to, audit provisions as follows:

(1) A provision that the service provider's records pertaining to the service program and/or the provision of services to persons with developmental disabilities shall be open for audit by the Department, regional center, and any authorized agency representative for a minimum period of three years from the date of the final payment for the State fiscal year.

(2) A provision indicating that the service provider shall agree to utilize and be bound by

Title 17, California Code of Regulations, Sections 50700 , et seq. should the service provider elect to appeal any audit findings and/or recommendations.

(3) A provision indicating that the service provider shall accept financial liability for any audit findings and/or recommendations disclosed by audit and promptly repay amounts owed unless appealed and liquidation is stayed pursuant to Title 17, California Code of Regulations, Section 50705 .

Note

Authority cited: Sections 4405, 4631 and 4648.2, Welfare and Institutions Code and Section 11152, Government Code. Reference: Sections 4629(f), 4631 and 4648.1, Welfare and Institutions Code.

History

1. New section filed 9-22-89; operative 10-22-89 (Register 89, No. 40).

§50611. Contract Termination.

(a) The regional center/service provider contract shall contain the requirements for the termination of the contract.

(b) The provision for contract termination by the regional center shall include:

(1) The methods by which termination will be effected;

(2) The basis for settlement; and

(3) A description of the conditions which shall constitute possible grounds for termination of the contract and/or payment. Such conditions shall include, but not be limited to, those in which it is determined that:

(A) The service provider has not complied with provisions of its contract, the terms of the purchase of service authorization, applicable Federal and State regulations, or statutes governing the service program and/or the provision of services to persons with developmental disabilities.

(4) The Department, regional center, or any authorized representative shall determine whether the conditions, specified in Section 50611 (b)(3) above, exist to constitute possible grounds for contract termination. Such determination shall be:

(A) Conveyed to the service provider 30 days in advance of payment and/or contract termination, pursuant to Welfare and Institutions Code, Section 4710.

(B) In the form of a notice containing the provisions for contract termination specified in subsections (b)(1) through (3).

(c) The provision for contract or service termination by the service provider shall include:

(1) A requirement that notice be given to the regional center in writing; and

(2) A requirement that notice be given at least 30 days prior to contract termination.

(d) In no event, shall a regional center or service provider terminate a contract without complying with the requirements set forth in statute and regulation including, but not limited to, Welfare and Institutions Code, Sections 4502, 4646, 4646.3, 4648, 4710, and 4741.

Note

Authority cited: Chapter 722, Statutes of 1992, Section 147; Sections 4405, 4631, 4648.2 and 4791(i), Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4502, 4629(f), 4631, 4646.5, 4648.1 and 4741, Welfare and Institutions Code.

History

1. New section filed 9-22-89; operative 10-22-89 (Register 89, No. 40).
2. Amendment of section filed as an emergency 6-17-93; operative 6-17-93. Submitted to OAL for printing only pursuant to SB485 (Chapter 722, Statutes of 1992) Section 147(a) (Register 93, No. 26).
3. Certificate of Compliance as to 6-17-93 order transmitted to OAL 6-20-94 and filed 8-2-94 (Register 94, No. 31).

§50612. Regional Center Purchase of Service Requirements.

(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. This requirement may be satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt.

(b) The authorization shall be in advance of the provision of service, except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider:

(A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays);

(B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and

(C) Where the regional center determines that the service was necessary and appropriate.

(c) The authorization for the purchase of service shall be in the following form:

(1) The authorization shall be in writing, except as follows:

(A) A verbal authorization by the regional center director or his authorized agency representative shall be allowed to provide emergency services utilizing the following procedures:

1. An immediate notation is made in the case record showing the date and nature of such authorization; and

2. The verbal authorization is confirmed with a written authorization from the regional center as soon as possible, but no later than the regional center's next cyclical production of purchase of service authorization documents.

(d) All authorizations which are not self-limiting in nature shall be cancelled in writing at the time a consumer case is closed by the regional center.

(e) The regional center purchase of service authorization shall contain the requirements for terminating payments to service providers. The provision for termination shall be consistent with the requirements set forth in Sections 4710, 4715, and 4741, Welfare and Institutions Code.

(1) The circumstances for terminating payments by the regional center shall include:

(A) The relocation of the consumer as a result of consumer or, where appropriate, the parent, guardian or conservator dissatisfaction;

(B) The relocation of a facility resident as a result of the determination of immediate danger or reasonable cause as defined in Title 17, California Code of Regulations, Section 56551(j) and (p); or

(C) The death of the consumer.

(2) In no event, shall a regional center terminate payments to service providers without complying with the requirements set forth in statute and regulation including, but not limited to, Welfare and Institutions Code, Sections 4648, 4710 and 4715.

(f) A copy of the purchase of service authorization shall be retained by the regional center. This requirement may be satisfied by retaining an electronic record of the information in the record, if the record reflects accurately the information set forth in the record at the time it was first generated in its final form as an electronic record or otherwise, and the electronic record remains accessible for later reference.

Note

Authority cited: Sections 4405, 4631 and 4648.2, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4629(f), 4631, 4641.5 and 4648.1, Welfare and Institutions Code.

History

1. New section filed 9-22-89; operative 10-22-89 (Register 89, No. 40).

2. Change without regulatory effect amending subsections (b)(1)(B), (d), (e)(1)(A) and (e)(1)(C) filed 1-17-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 3).

3. Amendment of subsections (a) and (f) and Note filed 1-17-2012; operative 2-16-2012 (Register 2012, No. 3).

Source: California Department of Developmental Services

ATTACHMENT F
to SERVICE DEVELOPMENT AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this “Agreement”), dated as of [Month, Day, Year] is entered into between and among North Los Angeles County Regional Center (“Business Associate” of the Department of Developmental Services (“DDS”)) and [Name, Type of Entity] (“Subcontractor”). Business Associate and Subcontractor are sometimes collectively referred to herein as the “Parties”.

1. Definitions

(a) **“Breach”** shall mean the impermissible, unlawful, or unauthorized acquisition, use, access, or disclosure of Protected Health Information (“PHI”) (defined below) which compromises the security or privacy of PHI as set forth in the HIPAA interim final rule of 2009 and the HIPAA Omnibus Rule of 2013.

(b) **“Business Associate”** shall have the meaning given to such term under HIPAA (45 CFR 160.103). It includes a third party that performs functions for or on behalf of a Covered Entity or another Business Associate and has access to Covered Entity’s PHI and uses such PHI in the performance of its functions. A subcontractor who fulfills this requirement is a Business Associate despite a designation as a “subcontractor.”

(c) **“Covered Entity”** shall have the meaning given to such term under HIPAA (45 CFR 160.103). It includes any health plan, health care clearing house, or health care provider who transmits any health information in electronic form in a manner described under the HIPAA regulations. Under this agreement it means the Department of Developmental Services.

(d) **“Data Aggregation”** shall have the meaning given to such term under HIPAA and shall include the combining of PHI received or created by Subcontractor to permit data analyses relating to healthcare operations of Business Associate.

(e) **“Designated Record Set”** shall have the meaning given to such term under HIPAA and shall include consumers’ (defined below) medical or billing records or any group of records which contains PHI that is used, in whole or in part, by or for Business Associate in rendition or facilitation of services on behalf of consumers.

(f) **“Disclosure”** shall have the meaning given to such term under HIPAA, and includes the release, transfer, provision of access to, or divulging in any manner of information outside the entity or individual holding the information.

(g) **“HIPAA”** shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005, and regulations promulgated thereunder by the U. S. Department of Health & Human Services, as amended from time to time, including the Final Omnibus Rule of 2013.

(h) **“Limited Data Set”** shall have the meaning given such term under HIPAA.

(i) **“Consumer”** shall have the same meaning as the term “individual” under HIPAA (45 CFR 160.103), and it also includes any person designated or serving as a personal representative of a consumer.

(j) **“Minimum Necessary”** shall have the meaning given such term under HIPAA.

(k) **“Protected Health Information”** (“PHI”) shall have the meaning given to such term under HIPAA (45 CFR 160.103). It includes any individually identifiable health information, whether oral or recorded in any form or medium, limited to the information created or received by Subcontractor from or on behalf of Business Associate or Covered Entity (i) that relates to the past, present or future physical or mental health condition of the Consumer; (ii) the provision of health care to Consumer; (iii) or the past, present or future payment for the provision of health care to Consumer.

(l) **“Required by Law”** shall have the meaning given such term under HIPAA, and means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil of an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

(m) **“Secretary”** shall mean the Secretary of the Department of Health and Human Services or her/his designee.

(n) **“Secured”** shall mean protection of PHI by a technology or methodology, which renders the data unreadable, unusable, or indecipherable to unauthorized individuals and is consistent

with guidance published by the Secretary of the Department of Health and Human Services as then in effect.

- (o) **“Security Incident”** shall mean any accidental, malicious or natural act that:
 - (i) Results in a Breach of any of Business Associate's data;
 - (ii) Adversely impacts the functionality of the Business Associate's information network;
 - (iii) Permits unauthorized access to Business Associate's information network;
 - (iv) Impacts the integrity of Business Associate's files or databases including, but not limited to:
 - 1. Interface failures;
 - 2. Inadequate testing or change control procedures;
 - 3. Other failures, which result in the deletion or unauthorized changes to an electronic database.
 - (v) Involves the loss or loss of control of an information technology resource owned or controlled by Business Associate; or
 - (vi) Involves the use of Business Associate's technology resources for illegal purposes or to launch attacks against other individuals or organizations.
 - (vii) Involves a “Breach” of PHI.
- (p) **“Subcontractor”** shall have the meaning given such term under HIPAA, and includes a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate. A subcontractor can also be a business associate.

2. Permitted Uses and Disclosures by Subcontractor

(a) Except as otherwise limited by law, this Agreement or other agreements between the Parties, Subcontractor shall access, use or disclose PHI only for the benefit of Business Associate or Covered Entity, and to perform functions, activities, or services on behalf of Business Associate or Covered Entity. Subcontractor shall use only the minimum amount of PHI necessary to perform

functions, activities, or services on behalf of Business Associate and shall prevent unnecessary use or disclosure of PHI. In the event of inadvertent access by Subcontractor to more than the minimum necessary amount of Business Associate's PHI, Subcontractor will i) treat all such PHI in accordance with this Business Associate Agreement; ii) promptly notify Business Associate, in accordance with paragraph 3(d) below, of such access; iii) erase/delete/permanently destroy, and/or return such PHI, as directed by the Business Associate, as quickly as possible; and iv) take all necessary actions to prevent further unauthorized access to PHI beyond the minimum necessary amount.

(b) Except as otherwise limited in this Agreement or other agreements between the Parties, Subcontractor may use or disclose PHI for its proper management and administration or to carry out its legal responsibilities, provided that (i) the disclosure is required by law, or (ii) the Subcontractor obtains reasonable assurances from the person to whom the information is disclosed that such information shall remain confidential and be used or further disclosed solely as required by law or for the purpose of assisting Subcontractor to meet Subcontractor's obligations to Business Associate or Covered Entity. Subcontractor shall require any person to whom PHI is disclosed under this subsection to notify Subcontractor of any instance of which it is aware in which the confidentiality or security of the PHI has been breached. Subcontractor shall then immediately notify Business Associate of such breach of confidentiality or security.

(c) Except as otherwise limited in this Agreement or other agreements between the Parties, Subcontractor may use PHI to provide data aggregation services only for Business Associate or Covered Entity.

(d) In the event Subcontractor is provided with or is asked to create for Business Associate or Covered Entity a Limited Data Set as defined under HIPAA, Subcontractor shall not use or disclose the Limited Data Set provided to it in a manner that would violate the requirements of HIPAA. Further, Subcontractor agrees that it shall not attempt to actually identify the information, or contact the individuals whose records are contained within the Limited Data Set.

3. Obligations of Subcontractor

(a) Subcontractor shall not use or disclose PHI other than as permitted or required by this Agreement, other agreements between the Parties, or as required by law.

(b) Subcontractor shall use appropriate safeguards to prevent further use or disclosure of PHI other than as provided for by this Agreement, other agreements between the Parties, or as required by law. Subcontractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, security, integrity, and availability of

PHI that it receives, maintains, transmits, or creates on behalf of Business Associate or Covered Entity. All PHI stored or maintained on electronic media (such as servers, laptops, thumb/flash drives, PDAs, CDs, tapes, DVDs, etc.) shall be secured with encryption that satisfies the FIPS 140-2 level or the applicable National Institute of Standard and Technology (“NIST”) minimum level of encryption under HIPAA.

(c) Subcontractor shall promptly mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Subcontractor in violation of this Agreement or other agreements between the Parties.

(d) Subcontractor shall promptly notify Business Associate of any Security Incident or Breach in writing in the most expedient time possible, and not to exceed twenty-four (24) hours in the event of a Breach, following Subcontractor's discovery of such Security Incident or Breach. Notwithstanding any notice provisions in any other agreements between the Parties, such notice shall be made to Yolanda Bosch, Community Services Director or their designee by means of fax to 1-818-756-6140 or by email to ybosch@nlacrc.org. Subcontractor shall cooperate fully in good faith with Business Associate in the investigation of any Breach or Security Incident.

(e) Following notification to Business Associate of a Breach, Subcontractor shall cooperate with Business Associate in determining which entity shall provide any required Breach notification. If the Parties agree that Subcontractor shall provide any required Breach notification, Subcontractor shall provide Business Associate with documentation of Subcontractor's actions, including documentation of the names and addresses of those to whom the notifications were provided.

(f) Subcontractor shall ensure that any agent, including another subcontractor, to whom it provides PHI agrees in a written contract with Subcontractor that satisfies all requirements under HIPAA for a Business Associate with the same restrictions and conditions that apply to Subcontractor with respect to such information and that such agent or subcontractor shall implement reasonable and appropriate safeguards for the protection of the PHI which shall be no less than those required of Subcontractor at Section 3(b) above. In performing services under this Agreement, Subcontractor shall use agents, employees, and/or subcontractors that are domiciled only within the United States of America and its territories.

(g) If Subcontractor holds PHI in Designated Record Sets as determined by Business Associate or Covered Entity, Subcontractor shall provide prompt access to the PHI to Business Associate or Covered Entity whenever so requested by Business Associate or Covered Entity, or, if directed by Business Associate or Covered Entity, to a Consumer in order to meet the requirements of HIPAA. If requested, such access shall be in electronic format. If Consumer requests directly from Subcontractor (i) to inspect or copy his or her PHI, or (ii) requests its disclosure to a third party,

the Subcontractor shall promptly notify Business Associate's Community Services Director, Yolanda Bosch or their designee, by the means provided in Section 3(d).

(h) Subcontractor shall promptly make amendment(s) to PHI requested by Business Associate or Covered Entity and shall do so in the time and manner requested by Business Associate or Covered Entity to enable it to comply with HIPAA. If Consumer requests an amendment to his or her PHI, directly from Subcontractor, Subcontractor shall promptly notify Business Associate's Community Services Director, Yolanda Bosch or their designee of such request and await such official's denial or approval of the request, by the means provided in Section 3(d).

(i) Subcontractor shall promptly make its internal practices, books, records, including its policies and procedures, relating to the use, disclosure, or security of PHI that the Subcontractor received from, maintained or created for or on behalf of Business Associate, available to Business Associate, Covered Entity, or the Secretary, in a time and manner designated by Business Associate, Covered Entity, or the Secretary, to enable the Secretary to determine compliance with HIPAA.

(j) Subcontractor shall document all disclosures of PHI and information related to such disclosures as required under HIPAA in order that it may provide an accounting of such disclosures as Business Associate directs. Subcontractor shall:

(i) Provide an accounting as required under HIPAA to those Consumers who direct their requests to Subcontractor ; or

(ii) Provide the accounting information required under HIPAA to Business Associate, if so requested by Business Associate, in the time and manner specified by Business Associate.

(k) Subcontractor shall cooperate with Business Associate to preserve and protect the confidentiality of PHI accessed or used pursuant to this Agreement, other agreements between the Parties, or as required by law and shall not disclose or utilize in any fashion such information during or after the termination of this Agreement or other agreements between the Parties except as required by law.

(l) If, during the term of this Agreement or other agreements between the Parties, Subcontractor wishes to destroy permanently PHI, it shall notify Business Associate in writing about its intent to destroy such data at least ten (10) days before such date of destruction. If Business Associate requests the return of any PHI, Business Associate shall comply as requested.

(m) Subcontractor shall comply with all the obligations required of a Subcontractor and/or Business Associate under all applicable laws, including but not limited to the Health Information Technology for Economic Clinical Health Act ("HITECH Act"), Title XIII of the American

Recovery and Reinvestment Act of 2009. 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316 shall apply to Subcontractor in the same manner that such sections apply to Business Associate. The written policies and procedures and documentation required by 45 CFR Section 164.316 shall be made available to Business Associate, upon Business Associate's request. The additional requirements of the HITECH Act that relate to privacy and security and that are made applicable with respect to covered entities and business associates shall also be applicable to Subcontractor and shall be and by this reference hereby are incorporated into this Agreement.

4. Effect of Violation of Obligations

(a) If Subcontractor violates or in any way fails to comply with any of its obligations under this Agreement, said violation shall also be considered a violation of its obligations under any other agreements between the Parties hereto. In the event of a violation of this Agreement by Subcontractor, Business Associate shall have the option to do the following:

(i) Provide Subcontractor an opportunity to cure the violation, to the extent curable, and end the violation within a reasonable time specified by Business Associate. If Subcontractor does not cure the violation or end the violation as and within the time specified by Business Associate, or if the violation is not curable, Business Associate may terminate its obligations to Subcontractor, including, but not limited to, its future payment obligations and obligations to provide information, materials, equipment or resources to Subcontractor; or

(ii) Immediately terminate this Agreement and any other agreements between the Parties, if Business Associate reasonably determines that Subcontractor (i) has acted with gross negligence in performing its obligations; (ii) is in violation of the law; (iii) willfully has violated or is violating the privacy and security provisions of this Agreement; (iv) is unable to provide, if requested, written assurances to Business Associate of its ability to protect the confidentiality and security of PHI; or (v) is unable to comply with its obligations under this Agreement. Such termination of this Agreement and any other agreements between the Parties shall be without prejudice to other legal remedies available to Business Associate.

(b) Business Associate may also report the violation to the Secretary and Covered Entity, and shall report the violation if neither termination nor cure is feasible.

5. Effect of Termination

(a) Upon termination of this Agreement, Subcontractor shall promptly return to Business Associate one copy of all PHI, including derivatives thereof, and shall take all reasonable steps to promptly permanently destroy all other PHI held by Subcontractor by (i) shredding; (ii) securely erasing, or (iii) otherwise modifying the information in those records to make it unreadable or undecipherable in the future through any means. This provision shall apply to PHI in the possession of subcontractors or agents of Subcontractor. At Business Associate's or Covered Entity's request, Subcontractor shall certify in writing that it has complied with the requirements of this section.

(b) If the return or destruction of PHI is infeasible, Subcontractor shall promptly notify Business Associate of the conditions that make such return or destruction infeasible. Upon mutual agreement by the Parties that return or destruction of PHI is infeasible; Subcontractor shall extend the protections of this Agreement to such data and shall limit its further use or disclosure to purposes that make its return or destruction infeasible. If Subcontractor subsequently wishes to destroy permanently PHI, Subcontractor shall notify Business Associate in writing about its intent to destroy data at least ten (10) days before such date of destruction. If Business Associate requests the return of any PHI, Subcontractor shall comply as requested.

6. Indemnity

(a) Subcontractor shall promptly and fully defend, indemnify and hold harmless Business Associate, its affiliates and respective officers, directors, agents and employees ("Indemnified Parties) against any act or omission of Subcontractor which gives rise to or results in any claim, demand, liability, loss, fine, penalty, assessment, cost, judgment and award, including attorney's fees, made or recovered against Indemnified Parties or issued in favor of a third party, or cost of notification or remediation relating to notification required by law for individuals whose PHI or personal information have been inappropriately accessed or disclosed.

(b) In the event that either party is required by law to notify individuals whose PHI was inappropriately accessed, used, or disclosed by Subcontractor or its agents, and the PHI contains i) the individual's first initial or first name, last name, and social security number; ii) the individual's first initial or first name, last name, and driver's license or state identification card; iii) the individual's first initial or first name, last name, account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; or iv) any information which under federal or state law requires that credit monitoring be provided, then Subcontractor and Business Associate shall work together to structure a credit monitoring offering commensurate to the risk posed by the breach. All costs and

expenses of such credit monitoring and required notification shall be paid by Subcontractor, and the credit monitoring will extend for a minimum of one (1) year or longer as determined by Business Associate. In the event of a Breach of PHI by Subcontractor or one of its agents, Subcontractor will also be responsible for paying all costs, including legal fees, incurred in assuring compliance with the law with respect to such Breach.

7. Insurance

Subcontractor shall obtain insurance for itself and all its employees, agents and independent contractors in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate of Commercial General Liability insurance and One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate of Errors and Omissions insurance. The Errors and Omissions insurance shall cover, among other things, Breaches. Subcontractor shall name Business Associate as an “additional insured”. Subcontractor shall provide Business Associate with certificates of insurance or other written evidence of the insurance policy or policies required herein prior to execution of this Agreement and other agreements between the Parties (or as shortly thereafter as is practicable) and as of each annual renewal of such insurance policies during the period of such coverage. Further, in the event of any modification, termination, expiration, non-renewal, or cancellation of any of such insurance policies, Subcontractor shall give written notice thereof to Business Associate not more than ten (10) days following Subcontractor's receipt of such notification. In the event Subcontractor fails to procure, maintain, or pay for the insurance required under this section, Business Associate shall have the right, but not the obligation, to obtain such insurance. Should that occur, Subcontractor shall promptly upon written request (within 14 days) reimburse Business Associate for the cost of the insurance, and failure to repay the cost within 14 days upon demand by Business Associate shall constitute a material violation of this Agreement and other agreements between the Parties.

8. No Third-Party Beneficiary

The provisions and covenants set forth in this Agreement are expressly entered into only by and between Subcontractor and Business Associate, and are only for their benefit. Neither Subcontractor nor Business Associate intends to create or establish any third party beneficiary status or right (or the equivalent thereof) in any other third party and no such third party shall have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.

9. Amendment

The parties agree to promptly modify or amend this Agreement to permit Business Associate to comply with any new laws, rules, or regulations that might modify the terms and conditions herein.

10. Conflict With Other Agreements

This Agreement is intended to be construed in harmony with any other agreements between the Parties, but in the event that any provision in this Agreement conflicts with the provisions of any other agreement, the provisions in this Agreement shall be deemed to control and such conflicting provision or part thereof shall be deemed removed and replaced with the governing provision herein to the extent necessary to reconcile the conflict.

11. Applicable Law & Enforcement

The Parties agree that this Agreement is made, executed and entered into and is intended to be governed, construed and performed in accordance with the laws of the State of California and the laws of the United States of America, and any action to enforce or for breach of this Agreement shall be brought in the Los Angeles County Superior Court.

12. Benefit of Agreement

This Agreement shall inure to the benefit of the Parties, their affiliates and respective officers, directors, agents and employees, and shall be binding upon each of the Parties and their affiliates and respective officers, directors, agents and employees.

13. Warranty of Execution

The Parties warrant that they have read and understand the terms of this Agreement and have been given the opportunity to have this Agreement reviewed by an attorney representing their sole and separate interest prior to the signing hereof. Each of the Parties signing this Agreement warrants that they have the legal power and capacity to bind themselves and any other persons or entities on whose behalf this Agreement is executed.

14. Integration

This Agreement supersedes and replaces all prior negotiations and agreements between the Parties and constitutes the entire agreement of the Parties regarding the subject matter hereof. No other oral or written representations have been made to the Parties or any of their agents. The terms of this Agreement are contractual and not mere recitals.

15. Waiver, Modification, and Amendment

No breach of this Agreement or of any provision herein may be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. This Agreement may be amended, altered, modified, or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

16. Mutual Contribution

Each Party hereto has jointly reviewed this Agreement, and as a result, the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

17. Counterparts

This Agreement may be executed in multiple counterparts, with each of the counterparts, taken together, deemed to be an original. Facsimiles and photocopies of this Agreement shall have the same force and effect as an original.

Executed in Van Nuys, California as of the date first written above.

“SUBCONTRACTOR”

[Name, Type of Entity]

By: _____

Name

Title

Tax Identification Number:

XX-XXXXX

“BUSINESS ASSOCIATE”

NORTH LOS ANGELES COUNTY
REGIONAL CENTER, INC., a California
nonprofit corporation

By: _____

George Stevens, Executive Director

918367.1 revised April 6, 2015

SAMPLE

ATTACHMENT G

Service Provider Insurance Policy

1. Scope

This policy applies to all NLACRC service providers that provide direct services and supports as defined by Welfare & Institutions Code, section 4512(b) or California Code of Regulations, section 54356, have access to Consumer assets, transport Consumers, or have hired one (1) or more employees.

2. General

The purpose of the Service Provider Insurance Policy is to protect the interest of the center's Consumers and their families to ensure a safe and healthful environment to all individuals with a developmental disability that are provided services by a vendor or service provider. The Service Provider Insurance Policy establishes the minimum insurance requirements for all service providers utilized by the center to serve Consumers.

3. Responsibility

The Community Services Department shall have the overall responsibility to monitor compliance of the Service Provider Insurance Policy. All service providers shall ensure that they comply with the Service Provider Insurance Policy as outlined below.

4. Policy

- A. All service providers shall obtain and maintain General Liability insurance with at least \$1 million limit of liability and name NLACRC as "additional insured."
- B. All service providers who have hired one (1) or more employees shall maintain Worker's Compensation insurance for their employees.
- C. All service providers that provide direct care services and support shall maintain Professional Liability insurance of at least \$1,000,000 limit of liability and name NLACRC as "additional insured."
- D. All service providers that provide direct care services and supports shall maintain Abuse & Molestation Liability insurance of at least \$1,000,000 limit of liability and name NLACRC as "additional insured." Notwithstanding the foregoing, an individual who is a Professional Provider (defined below) is not required to provide such insurance if the Professional Provider delivers evidence satisfactory to NLACRC that it is not commercially reasonable to obtain such insurance. For

purposes of this paragraph a “Professional Provider” means a Physician, Psychiatrist, Psychologist, Registered Nurse (RN), Licensed Vocational Nurse (LVN), Occupational Therapist (OT), Physical Therapist (PT), Speech Therapist (ST), Licensed Marriage & Family Therapist, Licensed Clinical Social Worker (LCSW), Pharmacologist, Dentist or similar type of licensed professional who provides licensed professional services to a Consumer.

- E. All service providers that have access to Consumer assets shall maintain Bond insurance that provides sufficient coverage for the amount of the Consumer’s assets the service provider has control over.
- F. All service providers that own or use vehicles in the course of their operations shall maintain Auto insurance that complies with the state of California’s financial responsibility law(s).
- G. In accordance with WIC, section 4648.3, all service providers of transportation services to regional center Consumers for the regional center shall maintain protection against liability for damages for bodily injuries or death and for damage to or destruction of property, which may be incurred by the provider in the course of providing those services. The protection shall be maintained at the level established by the regional center to which the transportation services are provided.
- H. The center may require some service providers that own or use vehicles in the course of their operations to obtain Non-Owned & Hired Auto Liability insurance of a least \$1,000,000 limit of liability per accident.
- I. The center may require service providers to provide a higher level of insurance coverage to ensure the health and safety of Consumers.
- J. Service providers whose services are paid for by vouchers, as that term is defined in Welfare and Institutions Code 4512(i), are exempt from the requirement of maintaining General Liability insurance, Professional Liability insurance, Abuse & Molestation Liability insurance, and Bond insurance.

5. Procedures

- A. Service providers shall provide a copy of their “certificate of insurance,” which demonstrates compliance with the Service Provider Insurance Policy, to the center upon request of NLACRC’s Community Services Department.
- B. Upon request of the Community Services Department, service providers shall provide a copy their “certificate of insurance” either within ten (10) business days or within the terms established in the service provider’s contract with NLACRC.

6. Definitions

- A. “Voucher” means any authorized alternative form of service delivery in which the Consumer or family member is provided with a payment, coupon, chit, or other form of authorization that enables the Consumer or family member to choose his or her own service provider. Welfare and Institutions Code 4512(i).

SAMPLE

ATTACHMENT H
North Los Angeles County Regional Center
Board of Trustees

Zero Tolerance Policy for Consumer Abuse or Neglect

1. Scope

Pursuant to the requirements in Article 1, section 17 of NLACRC's master contract with the State of California, the Board of Trustees hereby adopts the following Zero Tolerance Policy for Consumer Abuse or Neglect. This policy applies to:

- A. All of NLACRC's vendored service providers that provide direct services and supports (as defined by Welfare & Institutions Code (WIC) section 4512(b)) to individuals with developmental disabilities within NLACRC's catchment area (consumers).
- B. All long-term health care facilities serving NLACRC's consumers.
- C. NLACRC employees, if any, who are considered "mandatory reporters" under either of the reporting laws described in sections 4 and 5 below.

2. Background

The California Legislature has adopted various laws to protect all children, dependent adults, and elders from various types of abuse and neglect. These laws also apply to individuals with developmental disabilities. This policy concerns the application of such laws to consumers.

3. The Adult Reporting Law

California WIC sections 15600-15675, known as the Elder Abuse and Dependent Adult Civil Protection Act (adult reporting law) provides (among other things) that any person who has assumed responsibility for the care or custody of an adult consumer, including administrators, supervisors, and any licensed staff of a facility that provide care or services for adult consumers, is a mandated reporter.¹ Under

¹The definition of "mandated reporter" under the Adult Reporting Law is found in Welfare and Institutions Code

the adult reporting law, any mandated reporter who experiences any of the following shall report the abuse to the applicable governmental authorities (subject to certain limited exceptions described in the adult reporting law).²

- A. Has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of an adult consumer.
- B. Is told by an adult consumer that he or she has experienced adult abuse.
- C. Reasonably suspects the existence of adult abuse.

4. The Child Reporting Law

California Penal Code sections 11164 – 11174.3., known as the Child Abuse and Neglect Reporting Act (child reporting law) provides (among other things) that various categories of persons who interact with a consumer under the age of 18 are mandated reporters.³ Under Penal Code section 11166, any mandated reporter who has knowledge of or observes a person under 18 whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect (child abuse), shall report the abuse to the applicable government authorities (subject to certain limited exceptions described in the child reporting law).⁴ It is important to note that the list of mandated reporters who are obligated to report child abuse is different than the list of mandated reporters obligated to report adult abuse.

5. Purpose

The purpose of this policy is to protect the interests of NLACRC’s consumers and their families by:

(WIC) section 15630(a). The list of care custodians who are mandated reporters is found in WIC section 15610.17.

2 Definitions of elder and adult abuse are found in WIC sections 15610-15610.67.

3 Penal Code section 11165.7 identifies those individuals who are mandated reporters under the child reporting law.

4 “Child abuse or neglect” is defined in Penal Code section 11165.6, which in turn references specific forms of abuse and neglect, which are defined in Penal Code sections 11165.1-11165.5.

- A. Educating all mandated reporters about their legal obligation to report adult and child abuse (consumer abuse).
- B. Requiring mandated reporters to fully comply with the adult and child reporting laws (reporting laws).
- C. Providing information to assist mandated reporters in reporting consumer abuse to the proper authorities.
- D. Describing the consequences resulting from a mandated reporter's failure to comply with the reporting laws and this policy. The implementation of this policy will assist in ensuring a safe and healthful environment to all individuals with a developmental disability who are provided services or supports by a service provider or a long-term health care facility.

6. **Responsibility for Enforcement of Policy**

NLACRC's Board of Trustees has general oversight of this policy. The Board of Trustees delegates the oversight and implementation of this policy to NLACRC's executive director.

8. **The Policy**

- A. Duty to Comply with Reporting Laws. All service providers and long-term health care facilities shall ensure all of their employees and contractors who are mandated reporters strictly comply with the reporting laws at all times. All of NLACRC's employees who are mandated reporters (if any) shall also strictly comply with the reporting laws at all times. A mandated reporter must (unless exempt under law) report all consumer abuse to the applicable governmental authorities immediately, or as soon as practically possible, after his or her discovery or reasonable belief of consumer abuse.
- B. Service Provider/Health Care Facility Compliance Policies. Each service provider and long-term health care facility shall ensure maximum compliance with the reporting laws by developing its own written compliance policy for its respective employees and contractors (provider compliance policy) within 120 days after the effective date of this policy. Each provider compliance policy shall incorporate all of the following information:
 - 1. The types and signs of consumer abuse.

2. The responsibility to protect consumers from consumer abuse.
 3. The process for reporting consumer abuse to applicable authorities under the reporting laws.
 4. Identification of the entities entitled to receive reports of consumer abuse under the reporting laws.
 5. A requirement that this policy be provided to all employees upon hire.
 6. A requirement that this policy be reviewed annually by all employees.
 7. The consequences of failing to follow the reporting laws and this policy.
- C. Delivery of Provider Compliance Policy to NLACRC. All service providers and long-term health care facilities shall provide their provider compliance policies to NLACRC upon request.
- D. Taking Action to Ensure Consumer Health and Safety. If NLACRC, a service provider, or a long-term health care facility becomes aware of consumer abuse, such entity shall take immediate action, to the extent permitted by law, to ensure the health and safety of the affected consumer and all other consumers receiving services and supports from NLACRC, such service provider or long-term health care facility. This obligation is in addition to a mandated reporter's obligation to report consumer abuse under the reporting laws.

9. Procedures

- C. NLACRC's Annual Notice. NLACRC shall notify its employees, service providers and long-term health care facilities of this policy on an annual basis.
- D. NLACRC's Posting of this Policy on its Website. NLACRC shall promptly post and maintain this policy on its website.
- E. Vendor's Distribution of Policies to its Employees and Contractors. Each service provider and long-term health care facility shall:
1. Provide a copy of this policy and its own provider compliance policy to each of its respective employees and contractors upon hire/engagement, as well as annually thereafter.

2. Retain documentation of its compliance with this requirement (such as signed and dated receipts from its employees). Each service provider or long-term health care facility shall provide such compliance documentation to NLACRC upon request.

F. Incorporation of this Policy into Vendor Contracts. This policy shall be attached as an exhibit and/or incorporated by reference into all NLACRC contracts and contract amendments that are entered into after the effective date of this policy with NLACRC's service providers and long-term health care facilities.

10. How to Report Adult Abuse Under the Adult Reporting Law

A. Reporting rules for a consumer in a long-term care facility. When adult abuse occurs in a long-term care facility (as defined by the reporting law), the scope of the mandated reporter's duties depends on the nature of abuse.

1. **Serious Bodily Injury.** If a consumer suffers physical abuse which results in serious bodily injury (as defined in WIC section 15610.67), the mandated reporter must:
 - Immediately report such abuse by phone to the local law enforcement agency, and
 - Submit a written report on Department of Social Services (DSS) form SOC 341 (defined in section 10E. below) to law enforcement, the local ombudsman, and the applicable licensing agency within 2 hours.
2. **Other Physical Abuse.** If a consumer suffers physical abuse which does not result in serious bodily injury, the mandated reporter must:
 - Report such abuse by phone to law enforcement within 24 hours and
 - Submit a written report on DSS form SOC 341 to law enforcement, the ombudsman, and the applicable licensing agency within 24 hours.
3. **Other Non-Physical Adult Abuse.** If a consumer suffers other types of adult abuse, the mandated reporter must:
 - Report such abuse by phone to law enforcement or the ombudsman immediately, or as soon as practically possible, and

- Submit a written or Internet report to law enforcement or the ombudsman within 2 working days.
- B. **Reporting Rules for a Consumer Not in a Long-Term Care Facility.** When a consumer suffers adult abuse at any place other than a long-term care facility⁵, the mandated reporter shall immediately, or as soon as practically possible, submit such report to the county adult protective services agency or law enforcement. The mandated reporter shall submit either:
1. A confidential Internet report (as noted in section 10.C. below) or
 2. Both a telephonic and written report (as noted in sections 10.D. and 10.E. below).
- C. **Internet Report.** To report suspected adult abuse to APS via the Internet, the mandated reporter should complete a confidential Internet report. For consumers residing in Los Angeles County, the reporting website is: <https://apslive.lacss.harmonyis.net/lacssliveintake/>.
- D. **Telephonic Report.** To report suspected adult abuse to APS via telephone, the mandated reporter should call the office of APS in the county where the consumer is located. In Los Angeles County, the reporting phone number is: (877)477-3646. Within two working days after the mandated reporter submits a telephonic report, the mandated reporter shall submit either the Internet report described in section 10.C above or the written report described in section 10.E below.
- E. **Written Report.** To report suspected adult abuse to APS in writing, the mandated reporter should file a report on California Department of Social Services (DPSS) Form SOC 341 (entitled, “Report of Suspected Dependent Adult/Elder Abuse”). The form can be found on the following website: <http://www.dss.cahwnet.gov/cdssweb/entres/forms/English/SOC341.pdf>.
- F. **Contents of Report.** A telephonic report or Internet report of adult abuse shall include, if known:
1. The name of the person making the report.
 2. The name and age of the consumer.

5 Other than developmental centers and state mental health hospitals, which have separate reporting requirements.

3. The present location of the consumer.
 4. The names and addresses of family members or any other adult responsible for the consumer's care.
 5. The nature and extent of the consumer's condition.
 6. The date of the incident, and any other information, including information that led that person to suspect adult abuse, as requested by the agency receiving the report.
- G. Review the Law in Full to Understand Your Responsibilities. This policy only highlights a portion of the adult reporting law. All service providers, long term health care facility providers, and mandated reporters are encouraged to read the adult reporting law in full. A copy of the adult reporting law can be downloaded from the Internet at <http://www.leginfo.ca.gov/calaw.html> by checking the box next to "Welfare and Institutions" and looking for the appropriate section numbers.
- H. Additional Resources. The California Office of the Attorney General has published two videos and a related training document, entitled, "Your Legal Duty...Reporting Elder and Dependent Adult Abuse," which contain additional information. The videos are on the web at: <http://oag.ca.gov/bmfea>. The training document is on the web at: http://oag.ca.gov/sites/all/files/pdfs/bmfea/yld_text.pdf.

11. **How to Report Child Abuse Under the Child Reporting Law**

- A. Recipient of Report. Mandated reporters shall make reports of suspected child abuse to:
1. Any police department or sheriff's department (not including a school district police or security department),
 2. A county probation department, if designated by the county to receive mandated reports, or
 3. The county welfare department.
- B. Telephonic Report. The mandated reporter shall make an initial report of child abuse by telephone to the applicable agency immediately or as soon as is practically possible. For example, the emergency response child abuse reporting telephone number for Los Angeles County is: (800)540-4000.
- C. Written Report. The mandated reporter shall prepare and send, fax, or electronically transmit a written follow-up report (on CDSS Form SS 8572)

within 36 hours of receiving the information concerning the incident. The report form, entitled “Suspected Child Abuse Report,” can be found at: http://oag.ca.gov/sites/all/files/agweb/pdfs/childabuse/ss_8572.pdf.

D. Contents of Report. Reports of suspected child abuse shall include:

1. The name, business address, and telephone number of the mandated reporter.
2. The capacity that makes the person a mandated reporter.
3. The information that gave rise to the reasonable suspicion of child abuse and the source or sources of that information.

If a report is made, the following information, if known, shall also be included in the report:

4. The child’s name.
5. The child’s address, present location, and, if applicable, school, grade, and class.
6. The names, addresses, and telephone numbers of the child’s parents or guardians.
7. The name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child.

The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

E. Review the Law in Full to Understand Your Responsibilities. This policy only highlights a portion of the child reporting law. All service providers, long term health care facility providers, and mandated reporters are encouraged to read the child reporting law in full. A copy of the Child Abuse Law and Neglect Reporting Act can be downloaded from the Internet at <http://www.leginfo.ca.gov/calaw.html> by checking the box next to “Penal Code” and looking for the appropriate section numbers.

F. Additional Resources. The CDSS publishes a booklet entitled, “The California Child Abuse & Neglect Reporting Law: Issues and Answers for Mandated Reporters,” which contains additional information. The booklet is on the web at: www.cdss.ca.gov/cdssweb/entres/forms/English/PUB132.pdf.

12. Consequence of Failure to Comply

- A. NLACRC's Intention to Enforce. NLACRC expects all service providers and long-term health care facilities to comply with this policy and the reporting laws. To the extent they fail to do so, NLACRC will utilize all remedies available to it in statute and regulations to protect the health and safety of its consumers.
- B. Breach of Contract. The failure of a service provider or a long-term health care facility to strictly comply with this policy or either of the reporting laws shall constitute a material breach of its contract with NLACRC, and shall give NLACRC the right and option to terminate such contract.
- C. Statutory Penalties For Failure to Report Adult Abuse (WIC section 15630(h)) A mandated reporter's failure to report, or impeding or inhibiting a report of, adult abuse, in violation of the adult reporting law, is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, adult abuse, in violation of the adult reporting law (if that abuse results in death or great bodily injury), shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment.
- D. Statutory Penalties for Failure to Report Child Abuse (Penal Code sections 11166(c) and 11166.01(b)). Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse as required by the child reporting law is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. Any mandated reporter who willfully fails to report child abuse in violation of the child reporting law (where that abuse or neglect results in death or great bodily injury to the child) shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment.
- E. Statutory Penalties for Impeding a Report of Child Abuse (Penal Code section 11166.01. Any supervisor or administrator who impedes or inhibits the reporting duties of a mandated reporter concerning child abuse shall be

punished by not more than six months in a county jail, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. However, such punishment shall be increased to up to one year in a county jail, or by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment, where that abuse or neglect results in death or great bodily injury to the child.

13. Inconsistencies

If any inconsistency exists between this policy and the reporting laws, the provisions in the reporting laws shall prevail.

[policy.bd.zt] Approved: September 11, 2013