

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
COUNTY OF MENDOCINO
FOR FISCAL YEARS 2022-2023 THROUGH 2024-2025**

This Memorandum of Understanding (“MOU”), entered into this 7 day of February 2023, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as “HUMBOLDT,” and the County of Mendocino, a political subdivision of the State of California, hereinafter referred to as “MENDOCINO,” is made upon the following considerations:

WHEREAS, HUMBOLDT, by and through its Department of Health and Human Services – Behavioral Health (“DHHS – Behavioral Health”), desires to retain a qualified professional to provide patients’ rights advocacy services in DHHS – Behavioral Health facilities in accordance with Sections 862, *et seq.* of Title 9 of the California Code of Regulations (“C.C.R.”); and

WHEREAS, Patients’ Rights Advocacy services are needed to conduct probable cause hearings; and

WHEREAS, certain proceedings are scheduled weekly and prohibit adequate usage of vacation and sick benefits, requiring someone to be able to fill in when needed; and

WHEREAS, HUMBOLDT finds the proposed project is in the public interest and that MENDOCINO is able to provide these services on a situational basis; and

WHEREAS, HUMBOLDT has no employees available to perform such services and is unable to hire employees for the performance thereof for the situational basis; and

WHEREAS, each county is required to perform PRA services and providing situational coverage is of benefit to both counties; and

WHEREAS, all parties acknowledge and agree to the laws governing the sharing and privacy of information including the U.S. Health Insurance Portability and Accountability Act (HIPAA) 42 U.S.C. Section 17921, *et seq.*, The Lanterman-Petris-Short (LPS) Act, California Welfare and Institutions Code Section 5000, *et seq.*, The Confidentiality of Medical Information Act (CMIA): California Civil Code Section 56.10, *et seq.*; and

WHEREAS, all parties are Covered Entities as defined by HIPAA and agree to use and disclose PHI only as required or permitted by law; and acknowledge that the disclosure of PHI between them is only for treatment, payment and health care operations; and

WHEREAS, PHI may be disclosed without authorization to licensed healthcare providers and Behavioral Health staff responsible for coordinating care and services; and

WHEREAS, it is in HUMBOLDT and MENDOCINO’s mutual interest and advantage that patients’ rights advocate services are available regardless of employee schedules;

NOW THEREFORE, the parties hereto mutually agree as follows:

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1. RIGHTS AND RESPONSIBILITIES OF HUMBOLDT:

A. When hearings are being covered for HUMBOLDT, the HUMBOLDT Patients' Rights Advocate (PRA) will:

1. Complete report regarding pending client issues to provide to MENDOCINO PRA.
2. Email the Certification, Certification Review Hearing Order, and Nurse's Note forms to the MENDOCINO PRA prior to 9:00 a.m. on the hearing day.
3. Provide a Mental Health Worker to facilitate the interview and assist in obtaining a release of information for each client.
4. Create and send the Zoom link for the hearing(s) to the MENDOCINO PRA prior to 1:00 p.m. on the hearing day.
5. Provide MENDOCINO with an overview of the hearing process, relevant individuals, contact numbers, and any other necessary information to participate in the hearing.

B. HUMBOLDT will provide coverage to MENDOCINO, as staffing allows, by phone or virtual platform, when requested by MENDOCINO.

1. Receive phone calls from the PRA published phone line, create a record of messages received, return calls made, and actions taken. Provide record to the MENDOCINO PRA upon return.
2. Participate in Probable Cause Hearings once established.
3. Provide hand-off to HUMBOLDT PRA upon return.
4. HUMBOLDT PRA will keep records of calls and provide the detailed information to the MENDOCINO PRA upon MENDOCINO PRA return to work.

2. RIGHTS AND RESPONSIBILITIES OF MENDOCINO:

A. Provide coverage to HUMBOLDT, as staffing allows, by phone or virtual platform, as requested, and during coverage, perform the following duties:

1. Receive hand-off from the HUMBOLDT PRA regarding pending client issues.
2. Receive phone calls from the PRA published phone line, create a record of messages received, return calls made, and actions taken. Provide record and warm hand off to the HUMBOLDT PRA upon return.
3. Participate in Probable Cause Hearings that occur on Tuesday and Thursday each week at 1:00 p.m.
 - i. Call the Hearing Officer at 10:00 a.m. (according to the schedule provided) and inform them of how many hearings to expect at 1:00 p.m.
 - ii. Contact the Sempervirens Nurse's Station at 707-445-7710 to schedule Zoom interviews

with each client scheduled for a hearing.

- iii. Review the information on Patient Advisement with the client and continue interview to determine client's expressed wishes.
- iv. Complete the top portion of the Certification Review Hearing Order (to The Patient) and send to the Hearing Officer with the Nurse's Note Hearing Order form number 2048, Nurses Note form number 2026.
- v. Forward Zoom link to the Hearing Officer at 1:00 p.m.
- vi. Assist the client with their expressed wishes throughout the hearing following protocols set forth by the Hearing Officer.
- vii. If the client contests the hold and loses the hearing, follow up with the client concerning the Writ of Habeas Corpus process.
- viii. Keep a record of who contested and who did not, and the Hearing Officer's decision. Provide this information to the HUMBOLDT PRA.
- ix. Provide hand-off to HUMBOLDT PRA upon return.

3. TERM:

This MOU shall begin on upon execution and shall remain in full force and effect until December 31, 2024, unless sooner terminated as provided herein. This Agreement may be extended by the parties at any time during the term of the MOU through a signed written amendment.

4. TERMINATION:

- A. Termination for Cause. Either party may immediately terminate this MOU, upon written notice, in the event that the other party materially defaults in performing any obligation under this MOU, or violates any laws, regulations or standards applicable to its performance hereunder.
- B. Termination without Cause. Either party may terminate this MOU without cause upon thirty (30) days advance written notice which states the effective date of the termination.

5. NOTICES:

Any and all notices required to be given pursuant to the terms and conditions of this MOU shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County DHHS – Behavioral Health
Attention: Emi Botzler-Rodgers, Behavioral Health Director
720 Wood Street
Eureka, California 95501

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MENDOCINO: Behavioral Health and Recovery Services
Attention: Jenine Miller, Psy.D. BHRS Director
1120 S. Dora Street
Ukiah, CA, 95482

6. REPORTING REQUIREMENTS:

Each party hereto agrees to prepare and submit any and all reports that may be required by local, state and/or federal agencies for compliance with this MOU. Any and all reports required hereunder shall be prepared in a format that complies with the Americans with Disabilities Act, and any other applicable local, state and federal accessibility laws, regulations and standards, and submitted in accordance with any and all applicable timeframes.

7. RECORD RETENTION AND INSPECTION:

- A. Maintenance and Preservation of Records. Each party hereby agrees to timely prepare accurate and complete records, documents and other evidence relating to its performance hereunder, and to maintain and preserve said records for a period of three (3) years after expiration or termination of this MOU, or as otherwise required by any and all applicable local, state and federal laws, regulations and standards, except that if any litigation, claim, negotiation, audit or other action is pending, such records shall be retained until completion and resolution of all issues arising therefrom.
- B. Inspection of Records. Each party hereby agrees to make all records, documents and other evidence relating to its performance hereunder available during normal business hours to inspection, audit and reproduction by any duly authorized local, state and/or federal agencies for a period of three (3) years after expiration or termination of this MOU, or as otherwise required by any and all local, state and federal laws, regulations or standards. Each party further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized local, state and/or federal agencies. All examinations and audits conducted pursuant to the terms and conditions of this MOU shall be strictly confined to those matters connected with its performance hereunder, including, without limitation, the costs of administering this MOU.
- C. Audit Costs. In the event of an audit exception or exceptions related to the performance of this MOU, the party responsible for not meeting the requirements set forth herein shall be responsible for the cost of the audit.

8. CONFIDENTIAL INFORMATION:

- A. Disclosure of Confidential Information. In the performance of this MOU, each party may receive information that is confidential under local, state or federal law. Each party hereby agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, without limitation: Division 19 of the California Department of Social Services Manual of Policies and Procedures – Confidentiality of Information; California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act (“CMIA”); the United States Health Information Technology for Economic and Clinical Health Act (“HITECH Act”); the United States Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and any current and future implementing regulations

promulgated thereunder, including, without limitation, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations (“C.F.R.”) Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.

- B. Continuing Compliance with Confidentiality Laws. Each party hereby acknowledges that local, state and federal laws, regulations and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this MOU may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this MOU embodying written assurances consistent with the requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws, regulations or standards.

9. NON-DISCRIMINATION COMPLIANCE:

- A. Nondiscriminatory Delivery of Social Services. Neither party shall unlawfully discriminate in the administration of public assistance and social services programs. Each party hereby assures that no person shall be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving local, state or federal financial assistance because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by local, state or federal laws or regulations. COUNTY reserves the right to monitor the services provided hereunder in order to ensure compliance with the requirements of this provision.
- B. Professional Services and Employment. In connection with the execution of this MOU, neither party shall unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of: race; religion or religious creed; color; age (over forty (40) years of age); sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any applicable local, state or federal laws, regulations or standards. Nothing herein shall be construed to require employment of unqualified persons.
- C. Compliance with Anti-Discrimination Laws. Each party further assures that it will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq.*; California Government Code Sections 4450, *et seq.*; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations,

all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq.* of Title 2 of the California Code of Regulations are incorporated herein by reference as if set forth in full.

10. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this MOU, MENDOCINO certifies that it is not a Nuclear Weapons Contractor, in that MENDOCINO is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. MENDOCINO agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this MOU if it determines that the foregoing certification is false or if MENDOCINO subsequently becomes a Nuclear Weapons Contractor.

11. INDEMNIFICATION:

- A. Mutual Indemnity. Each party hereto shall hold harmless, defend and indemnify the other party and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party or its agents, officers, officials, employees or volunteers.
- B. Comparative Liability. Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorney's fees.
- C. Effect of Insurance. Acceptance of the insurance required by this MOU shall not relieve either party from liability under this provision. This provision shall apply to all claims for damages related to either party's performance hereunder, regardless of whether any insurance is applicable or not.

12. INSURANCE REQUIREMENTS:

- A. General Insurance Requirements. Without limiting the parties' indemnification obligations set forth herein, each party shall maintain in full force and effect, at its own expense, any and all appropriate comprehensive general liability, comprehensive automobile, workers' compensation and professional liability insurance policies.
- B. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms and conditions of this MOU shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

MENDOCINO: Mendocino County
Attention: Heather Correll Rose
501 Low Gap Road
Ukiah, CA 95482

13. RELATIONSHIP OF PARTIES:

It is understood that this MOU is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Each party shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

14. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

- A. General Legal Requirements. Each party hereto agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards, including, without limitation, any and all local, state and federal licensure, certification and accreditation requirements, applicable to its performance hereunder.
- B. Accessibility Requirements. Each party hereto agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 1135 and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.
- C. Conflict of Interest Requirements. Each party hereto agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time.

15. PROVISIONS REQUIRED BY LAW:

This MOU is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this MOU. This MOU shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

16. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

In the event any law, regulation or standard referred to herein is amended during the term of this MOU, the parties agree to comply with the amended provision as of the effective date thereof.

17. PROTOCOLS:

Each party agrees that the inclusion of additional protocols may be required to make this MOU specific. All such protocols shall be negotiated, determined and agreed upon by each party hereto.

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18. SEVERABILITY:

If any provision of this MOU, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this MOU.

19. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment in violation of this provision shall be void, and shall be cause for immediate termination of this MOU. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

20. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this MOU shall be fully binding upon, and shall inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

21. NO WAIVER OF DEFAULT:

The waiver by either party of any breach of this MOU shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this MOU.

22. NON-LIABILITY OF OFFICIALS AND EMPLOYEES:

No official or employee of either party shall be personally liable for any default or liability under this MOU.

23. AMENDMENT:

This MOU may be amended at any time during the term hereof upon the mutual consent of both parties. No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by an authorized representative of each party hereto.

24. STANDARD OF PRACTICE:

Each party warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. Each party's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

25. JURISDICTION AND VENUE:

This MOU shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

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26. ADVERTISING AND MEDIA RELEASE:

Each party shall obtain the written approval of the other party before any informational material related to this MOU may be used as advertising or released to the media, including, without limitation, television, radio, newspapers and internet. Each party shall inform the other party of any and all requests for interviews by media related to this MOU before such interviews take place; and the other party shall be entitled to have a representative present at such interviews. All notices required by this provision shall be given to the Director in accordance with the notice requirements set forth herein.

27. SUBCONTRACTS:

Each party shall obtain prior written approval from the other party, which shall not be unreasonably withheld, before subcontracting any of its duties or obligations hereunder. Any and all subcontracts shall be subject to all applicable terms and conditions of this MOU, including, without limitation, the confidentiality, licensing and certification requirements set forth herein. Each party shall remain legally responsible for the performance of all terms and conditions of this MOU, including, without limitation, any and all duties performed by third parties under subcontracts, whether approved by the other party or not.

28. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 7 – Record Retention and Inspection, Section 8 – Confidential Information and Section 11 – Indemnification shall survive the expiration or termination of this MOU.

29. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this MOU, the terms and conditions set forth herein shall have priority.

30. INTERPRETATION:

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally each of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

31. INDEPENDENT CONSTRUCTION:

The titles of the sections and subsections set forth herein are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this MOU.

32. FORCE MAJEURE:

No party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

33. ENTIRE AGREEMENT:

This MOU contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the parties hereto. In addition, this MOU shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this MOU are hereby ratified.

34. COUNTERPART EXECUTION:

This MOU, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This MOU, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this MOU, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this MOU and any amendments hereto.

35. AUTHORITY TO EXECUTE:

Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each party represents and warrants to the other that the execution and delivery of this MOU and the performance of such party's obligations hereunder have been duly authorized.

[Signatures on Following Page]

In witness whereof, the parties to this Working Agreement through their duly authorized representatives have executed this Working Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Working Agreement as set forth herein. The effective date of this Working Agreement shall be the date of the signature last affixed to this page.

MENDOCINO COUNTY BEHAVIORAL HEALTH AND RECOVERY SERVICES

Jenine Miller, Psy.D., Behavioral Health Director

Date

EXECUTIVE OFFICE/FISCAL REVIEW

APPROVAL RECOMMENDED:

Deputy CEO

Date

FISCAL REVIEW

Deputy CEO/Fiscal

Date

COUNTY COUNSEL REVIEW

APPROVED AS TO FORM:

Deputy

Date

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this agreement, he/she or the entity on behalf of which he/she acted, executed this agreement.

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COUNTY OF HUMBOLDT

Steve Madrone

Steve Madrone, Chair
Humboldt County Board of Supervisors

2-7-2023

Date

RISK MANAGEMENT

Krista Freeman

Risk Manager

01-11-2023

Date