



# WASHOE COUNTY

Integrity Communication Service

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CM/ACM	<u>        </u>
Finance	<u>VG</u>
DA	<u>LA</u>
Risk Mgt	<u>DE</u>
HR	<u>~</u>
Other	<u>GE</u>

## STAFF REPORT

BOARD MEETING DATE: February 14, 2017

**DATE:** Wednesday, February 01, 2017

**TO:** Board of County Commissioners

**FROM:** Amber Howell, Director, Social Services  
785-8600, [ahowell@washoecounty.us](mailto:ahowell@washoecounty.us)

**THROUGH:** Kevin Schiller, Assistant County Manager

**SUBJECT:** Recommendation to approve an Intrastate Interlocal Contract Between the State of Nevada Department of Health and Human Services Aging and Disability Services Division and Washoe County for payment, approximately \$1,000,000 annually, pursuant to NRS 435.010 requiring County Commissioners to make provisions for support, education, and care for children with developmental disabilities retroactive from July 1, 2016 and to continue year to year with an automatic renewal unless sooner terminated by either party. (All Commission Districts)

### SUMMARY

The Department is recommending the Board approve an intrastate interlocal contract between the State of Nevada Department of Health and Human Services Aging and Disability Services Division and Washoe County to support, education, and care for children with developmental disabilities as required by NRS 435.010. The department is requesting the agreement automatically renew on an annual basis unless terminated by either party or NRS 435.010 is changed or repealed to remove the fiscal responsibility for support serviced from the County.

Department staff has been reviewing all contracts and agreements in place for Social Services. Staff noted the intrastate interlocal contract between the State of Nevada Department of Health and Human Services Aging and Disability Services Division and Washoe County had expired on June 30, 2015 and worked with the State to negotiate an acceptable agreement retroactive to July 1, 2016, thus prompting the request for retroactive approval by the Board.

**Washoe County Strategic Objective supported by this item:** Safe, Secure and Healthy Communities

### PREVIOUS ACTION

On November 8, 2011, the Board approved an Interlocal Contract between the Department of Health and Human Services Division of Mental Health and Developmental Services and Washoe County to authorized payment, approximately \$1,686,000 annually, pursuant to

AGENDA ITEM # 6

NRS 435.010 requiring County Commissioners to make provision for support, education and care for children with mental retardation and children with related conditions from July 1, 2011 until June 30, 2013.

On June 11, 2013, the Board approved an Interlocal Contract between the Department of Health and Human Services Division of Mental Health and Developmental Services and Washoe County to authorized payment, approximately \$1,686,000 annually, pursuant to NRS 435.010 requiring County Commissioners to make provision for support, education and care for children with mental retardation and children with related conditions from July 1, 2013 until June 30, 2015.

### **BACKGROUND**

The Governor's budget, approved by the 2011 Legislature, included shifting the costs for developmental services from the State to the Counties, enforcing NRS 435.010 requiring County Commissioners to make provision for support, education, and care for children with developmental disabilities and children with related conditions. Historically, although the statutory provision was enacted in 1929 no charges had occurred for payment of these services. Ultimately the recommended budget was approved with a requirement for payment in the amount of approximately \$1,686,000 annually.

Department staff has been reviewing all contracts and agreements in place for Social Services. Staff noted the intrastate interlocal contract between the State of Nevada Department of Health and Human Services Aging and Disability Services Division and Washoe County had expired on June 30, 2015 and worked with the State to negotiate an acceptable agreement retroactive to July 1, 2016, thus prompting the request for retroactive approval by the Board.

### **FISCAL IMPACT**

The Department's adopted budget for FY17 includes the estimated \$1,000,000 in funding to support these costs in CostCenter 210100—Indigent Assistance G/L 710400. No budget amendment is necessary.

### **RECOMMENDATION**

The Department recommends the Board approve an intrastate interlocal contract between the State of Nevada Department of Health and Human Services Aging and Disability Services Division and Washoe County to support, education, and care for children with developmental disabilities as required by NRS 435.010.

### **POSSIBLE MOTION**

Should the Board agree with staff's recommendation, a possible motion would be "Move to approve an Intrastate Interlocal Contract Between the State of Nevada Department of Health and Human Services Aging and Disability Services Division and Washoe County for payment, approximately \$1,000,000 annually, pursuant to NRS 435.010 requiring County Commissioners to make provisions for support, education, and care for children with developmental disabilities retroactive from July 1, 2016 and to continue year to year with an automatic renewal unless sooner terminated by either party."

BRIAN SANDOVAL  
Governor



RICHARD WHITLEY, MS  
Director

EDWARD ABLESER, Ph.D.  
Administrator

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
AGING AND DISABILITY SERVICES  
3416 Goni Road, Suite D-132  
Carson City, NV, 89706  
Telephone (775) 687-4210 • Fax (775) 687-0574  
<http://adsd.nv.gov>

January 17, 2017

MEMORANDUM

To: Bessie Wooldridge  
Budget Analyst  
Budget Division

From: Julie Kotchevar  
Deputy Administrator  
Aging and Disability Services Division

Subject: **Request for Retroactive start date approval-Washoe County Revenue contract**

This memorandum requests that the above referenced Aging and Disability Services Division (ADSD) revenue contract with Washoe County be approved for a retroactive start date effective July 1, 2016. This contract requires this retroactive start date to continue the needed services for support and service coordination for residents with intellectual and developmental disabilities.

ADSD has spent many months working with Washoe County to get this contract and the revisions they requested approved. State and County legal staff have agreed upon language terms, so do not anticipate terms of contract being disputed further. Additionally the county commission meetings are held monthly, which does delay the approval and signature process.

Thank you for your consideration.

cc: Jamie Pruneau-Contract Manager  
Aging and Disability Services Division

## INTRASTATE INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada  
Acting By and Through Its

Department of Health and Human Services  
Aging and Disability Services Division  
3416 Goni Road, Suite D-132  
Carson City, NV 89706

and

Washoe County  
PO Box 11130  
Reno, NV 89520

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, it is deemed that the services of Washoe County and Aging and Disability Services Division (ADSD) hereinafter set forth are both necessary to the County and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
3. CONTRACT TERM. This Contract shall be effective July 01, 2016 and will continue year to year with an automatic renewal unless sooner terminated by either party as set forth in this Contract.
4. TERMINATION. This Contract may be terminated by either party prior to the date set forth in paragraph (3), provided that a termination shall not be effective until 30 days after a party has served written notice upon the other party. This Contract may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Contract shall be terminated immediately if for any reason State and/or federal funding ability to satisfy this Contract is withdrawn, limited, or impaired.
5. NOTICE. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth above.
6. INCORPORATED DOCUMENTS. The parties agree that the services to be performed shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence:  
ATTACHMENT A: SCOPE OF WORK

ATTACHMENT B: SERVICE BILLING RATES  
ATTACHMENT C: BUSINESS ASSOCIATE AGREEMENT

7. CONSIDERATION. ADSD agrees to provide the services set forth in paragraph (6) as outlined in attachment B. Any intervening end to an annual or biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

8. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations expressly provided.

9. INSPECTION & AUDIT.

a. Books and Records. Each party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the other party, the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with any applicable regulations and statutes.

b. Inspection & Audit. Each party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the other party, the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained by each party for a minimum of three years and for five years if any federal funds are used in this Contract. The retention period runs from the date of termination of this Contract. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. BREACH; REMEDIES. Failure of either party to perform any obligation of this Contract shall be deemed a breach. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing party reasonable attorneys' fees and costs.

11. LIMITED LIABILITY. The parties will not waive and intend to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. To the extent applicable, actual contract damages for any breach shall be limited by NRS 353.260 and NRS 354.626.

12. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

13. INDEMNIFICATION.

a. To the fullest extent of limited liability as set forth in paragraph (11) of this contract, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

b. The indemnification obligation under this paragraph is conditional upon receipt of written notice by the indemnified party within 30 days of the indemnified party's actual notice of any actual or pending claim or cause of action. The indemnified party shall not be liable to hold harmless any attorney's fees and costs for the indemnified party's chosen right to participate with legal counsel.

14. INDEPENDENT PUBLIC AGENCIES. The parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to performance of services pursuant to this Contract, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

15. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

16. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

17. ASSIGNMENT. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other party.

18. OWNERSHIP OF PROPRIETARY INFORMATION. Unless otherwise provided by law or this Contract, any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by either party in performance of its obligations under this Contract shall be the joint property of both parties.

19. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

20. CONFIDENTIALITY. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Contract.

21. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the services set forth in paragraph (6).

22. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

23. ENTIRE AGREEMENT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the State of Nevada Office of the Attorney General. IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

**COUNTY OF WASHOE**

\_\_\_\_\_  
Signature Date Title

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
AGING AND DISABILITY SERVICES DIVISION**

\_\_\_\_\_  
Edward Ableser, Ph. D. Date Administrator, Aging and Disability Services  
Title

\_\_\_\_\_  
Richard Whitley Date Director, Department of Health and Human Services  
Title

\_\_\_\_\_  
Signature – Nevada State Board of Examiners

APPROVED BY BOARD OF EXAMINERS

On \_\_\_\_\_  
(Date)

Approved as to form by:

\_\_\_\_\_  
Deputy Attorney General for Attorney General, State of Nevada

On \_\_\_\_\_  
(Date)

## ATTACHMENT A SCOPE OF WORK

### A. PURPOSE AND OBJECTIVES:

The Aging and Disability Services Division (ADSD) is the State agency responsible for support services and service coordination for residents with intellectual and developmental disabilities pursuant to NRS 433 and NRS 435. ADSD's services are consistent with the standards of Person Centered Planning as advocated by the Centers for Medicare and Medicaid and the Olmstead Supreme Court decision.

This Interlocal Agreement authorizes ADSD to contract with the County to continue to provide services to children with intellectual and developmental disabilities and the County to reimburse ADSD the non-federal share of funding as payment for services. This agreement can serve as a transition from state to county operated services or as an on-going agreement between ADSD and the County for the provision of the services described below.

#### Definitions:

*Developmental disability* is a severe, chronic disability accompanied by substantial developmental delay or specific congenital or acquired condition, that is manifested before the individual attains age 22; is likely to continue indefinitely; results in substantial functional limitations in three or more areas of major life activities; and reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or for an extended duration.

*Intellectual disability* is characterized by significant limitations both in intellectual functioning and in adaptive behavior which covers many everyday social and practical skills. This disability originates before the age of 18.

*In Home Supported Living Environment* – children living with family members who receive intermittent provider supports and services based on an assessment of individual need and to assure health and welfare. Services compliment but do not replace the natural and informal support system within the family.

*Person Centered Planning* – planning based upon goals that are desired by the person/child/parent/guardian and used as a basis to develop an individual support plan.

*Related condition* – a developmental disability (e.g. cerebral palsy, epilepsy, autistic disorder), occurring prior to the age of 22. This condition must have a high association with intellectual disability, in that the impairment is similar to a person with an intellectual disability; the person requires similar services or treatment; the condition results in substantial functional limitation in at least three areas of major life activities that include self-care, understanding and use of language, learning, mobility, self-direction and capacity for independent living.

*Service coordination* – service delivery consisting of assessment, referral, planning, linkage and monitoring provided by a service coordinator who is qualified by educational background and training to assist, advise, direct and oversee services to eligible children.



*Support services* – those services identified in the assessment and planning process to address specific goals, mitigate health and safety issues and facilitate skill development that enables a child to live successfully in the home and community

*Supported Living Arrangement* – supports provided to children living in homes usually with roommates, by staff of contracted provider agencies or individuals to develop and maintain skills needed to live independently in the home and community.

*Qualified providers* – providers that have completed the agency certification process successfully and have been determined to have appropriately skilled staff to provide services to a specific child.

**B. ADSD AGREES:**

- 1) To perform all intake services for children (age 18 and under) with an intellectual disability and/or a related condition to determine eligibility for Developmental Services (DS). ADSD agrees to accept all eligible children based on criteria established and set forth per NRS 433.174, NRS 433.211, NAC 435.400, and ADSD policy: Qualification Guidelines for Developmental Services. The criteria DS uses to determine eligibility includes, but is not limited to:
  - a. A confirmed diagnosis of intellectual disability;
  - b. Developmental delays (if under age 6) with eligibility re-determined at age 6;
  - c. Another diagnosed condition closely related to an intellectual disability that results in substantial functional limitations (42CFR 435.1009) (NRS 433.211);
  - d. Residency in Nevada.
- 2) To provide a written social assessment, if requested, completed by a Qualified Intellectual Disability Professional along with a statement of qualification completed by a licensed psychologist for each child determined eligible for DS.
- 3) To assure each family, as appropriate, submits a Medicaid application and required supporting documentation during the intake process prior to authorization of service.
- 4) To verify the family's Medicaid eligibility/ineligibility status via disposition letters or electronic means.
- 5) To comply with the Health Insurance Portability and Accountability Act (HIPAA) and Nevada confidentiality regulations regarding healthcare information.
- 6) To coordinate and manage support services selected by the funding agent to qualified children living in their natural home environment or an in-state out of home supported living environment. To determine financial eligibility of each child based on the child's family gross income not exceeding 300% of the Federal Poverty Guidelines, or as specified by the County ( \_\_\_\_%).
- 7) To determine county of residence in accordance with NRS 428.020. Disputes concerning county of residence will be referred by the disputing county to the Nevada Association of Counties (NACO), which it is specifically agreed has authority to issue a final decision.
- 8) To notify the county of responsibility of any pending applications for services within ten (10) business days as requested by the County.
- 9) To use existing ADSD processes in reviewing applications for those individuals or their guardians/authorized representatives who disagree with the eligibility determination.
- 10) Perform case management services and authorize appropriate services available to the child as specified by the County for each qualified child.
- 11) To reimburse qualified providers for services provided to qualified children as authorized by the County.
- 12) To resolve provider inquiries and complaints regarding reimbursement.
- 13) To process Targeted Case Management (TCM) claims through the Medicaid fiscal agent.

- 14) To submit monthly claims and supporting documents to the County for services provided as authorized by the County per Attachment B not covered by Medicaid, and for the non-federal share of Medicaid paid claims. Supporting documents are defined as the fiscal Excel workbook attached to each invoice that delineates services provided.
- 15) To hold telephonic or in person meetings with county representatives quarterly upon request for discussion regarding this scope of work.
- 16) To respond to email questions within 10 work days.

**C. THE COUNTY AGREES:**

- 1) To accept ADSD's criteria for DS eligibility.
- 2) Eligibility disputes will be appealed through the ADSD's hearing process by the applicant or authorized representative/guardian.
- 3) To refer disputes concerning county of residence to NACO whose decision will be final. The disputing county originally billed is responsible for payment of claims until the dispute is resolved at which time NACO will issue a written determination to notify the counties involved in the dispute and to notify ADSD to make adjusting entries.
- 4) To fund the county selected services specifically identified in Attachment B at the identified level and that funds transferred to ADSD are derived from non-federal funds.
- 5) To comply with the Health Insurance Portability and Accountability Act (HIPAA) and Nevada confidentiality regulations regarding healthcare information and submit a Business Associate Agreement.
- 6) To submit billing or program questions via email to designated staff.
- 7) Eligible recipients, pursuant to this Agreement, will be entitled to receive TCM and the full range of services authorized in this Agreement by the funding agent.
- 8) To develop, along with ADSD, criteria to be used to determine eligibility for each specific service.
- 9) All Agreements establishing this program will be terminated if the County does not comply with the terms of this Agreement, fails to sign this Interlocal Agreement, or terminates the Agreement. The County will be notified thirty (30) calendar days prior to termination for breach of this Agreement, specifying the nature of the breach.
- 10) No state appropriation is available to fund this program. Payment will be made to "Aging and Disability Services Division" and processed electronically through the Nevada State Treasurer's Office within 15 business days of receipt of invoice.
- 11) Upon termination of this Agreement, ADSD will close out the program.

**CI. ALL PARTIES AGREE:**

- 1) It is specifically understood this Agreement is designed to provide services to children with qualifying developmental disabilities and all non-federal share costs will be paid by the County.

**ATTACHMENT B  
SERVICE BILLING RATES**

The nature and scope of services currently provided by ADSD will remain unchanged _____
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OR

<b>The county will <u>not</u> fund the following services</b>
Clinical Services _____
In-Home Habilitation _____
Purchase of Service _____
Supported Living Arrangements _____
Respite _____
Jobs and Day Training _____
Behavioral Consultation _____

MY SIGNATURE INDICATES THAT I AGREE TO ALL CONDITIONS OF THIS AGREEMENT

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Signature _____	Date _____	Title/County _____
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ADSD will bill CMS for Medicaid reimbursement and the county will be responsible for any costs not reimbursed by CMS. Rates are subject to regular change and services will be billed at the rate current on the date of service. Current rates are as follows:

Targeted Case Management is \$56.00 (billed in 15 minute increments at \$14.00 each) and is a required service for all eligible persons.

Clinical Services hourly rate is \$102.28 (billed in 15 minute increments at \$25.57 each). Clinical Services include individual and group therapy (counseling), behavioral therapy, and assessments.

In Home Habilitation is a legislated hourly rate of \$18.86.

Purchase of Service is a onetime allotment of \$250 per child per year for emergency services.

Supported Living Arrangements is a legislated hourly rate of \$18.86.

Respite is \$125 per month per child.

Jobs and Day Training has a legislated variable rate schedule between \$25.01 and \$150.06 per day.

Behavioral Consultation is currently an hourly rate of 84.92.

ATTACHMENT C  
STATE OF NEVADA  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

**BUSINESS ASSOCIATE ADDENDUM BETWEEN**

The Aging and Disability Services Division  
Herein after referred to as the "Covered Entity"

and

Washoe County  
Herein after referred to as the "Business Associate"

PURPOSE. In order to comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191, and the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, Public Law 111-5 this Addendum is hereby added and made part of the Contract between the Covered Entity and the Business Associate. This Addendum establishes the obligations of the Business Associate and the Covered Entity as well as the permitted uses and disclosures by the Business Associate of protected health information it may possess by reason of the Contract. The Covered Entity and the Business Associate shall protect the privacy and provide for the security of protected health information disclosed to the Business Associate pursuant to the Contract and in compliance with HIPAA, the HITECH Act, and regulation promulgated there under by the U.S. Department of Health and Human Services ("HIPAA Regulations") and other applicable laws.

WHEREAS, the Business Associate will provide certain services to the Covered Entity, and, pursuant to such arrangement, the Business Associate is considered a business associate of the Covered Entity as defined in HIPAA Regulations; and

WHEREAS, Business Associate may have access to and/or create, receive, maintain or transmit certain protected health information from or on behalf of the Covered Entity, in fulfilling its responsibilities under such arrangement; and

WHEREAS, HIPAA Regulations require the Covered Entity to enter into a contract containing specific requirements of the Business Associate prior to the disclosure of protected health information; and

THEREFORE, in consideration of the mutual obligations below and the exchange of information pursuant to this Addendum and to protect the interests of both Parties, the Parties agree to all provisions of this Addendum.

- I. DEFINITIONS. The following terms in this Addendum shall have the same meaning as those terms in the HIPAA Regulations: Breach, Data Aggregation, Designated Record Set, Disclosure, Electronic Health Record, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Subcontractor, Unsecured Protected Health Information, and Use.
1. **Business Associate** shall mean the name of the organization or entity listed above and shall have the meaning given to the term under the Privacy and Security Rule and the HITECH Act. For full definition refer to 45 CFR 160.103.
  2. **Contract** shall refer to this Addendum and that particular Contract to which this Addendum is made a part.
  3. **Covered Entity** shall mean the HIPAA covered components of the Department listed above (Aging & Disability Services, Child and Family Services, Division of Public and Behavioral Health, Division of Health Care Financing & Policy) and shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to 45 CFR 160.103.
  4. **Parties** shall mean the Business Associate and the Covered Entity.

## II. OBLIGATIONS OF THE BUSINESS ASSOCIATE

1. **Access to Protected Health Information.** The Business Associate will provide, as directed by the Covered Entity or an individual, access to inspect or obtain a copy of protected health information about the individual that is maintained in a designated record set by the Business Associate or its agents or subcontractors, in order to meet the requirements of HIPAA Regulations. If the Business Associate maintains an electronic health record, the Business Associate, its agents or subcontractors shall provide such information in electronic format to enable the Covered Entity to fulfill its obligations under HIPAA Regulations.
2. **Access to Records.** The Business Associate shall make its internal practices, books and records relating to the use and disclosure of protected health information available to the Covered Entity and to the Secretary for purposes of determining Business Associate's compliance with HIPAA Regulations.
3. **Accounting of Disclosures.** Upon request, the Business Associate and its agents or subcontractors shall make available to the Covered Entity or the individual information required to provide an accounting of disclosures in accordance with HIPAA Regulations.
4. **Agents and Subcontractors.** The Business Associate must ensure all agents and subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to such information. The Business Associate must implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation as outlined under HIPAA Regulations.
5. **Amendment of Protected Health Information.** The Business Associate will make available protected health information for amendment and incorporate any amendments in the designated record set maintained by the Business Associate or its agents or subcontractors, as directed by the Covered Entity or an individual, in order to meet the requirements of HIPAA Regulations.
6. **Audits, Investigations, and Enforcement.** If the data provided or created through the execution of the Contract becomes the subject of an audit, compliance review, or complaint investigation by the Office of Civil Rights or any other federal or state oversight agency, the Business Associate shall notify the Covered Entity immediately and provide the Covered Entity with a copy of any protected health information that the Business Associate provides to the Secretary or other federal or state oversight agency concurrently, to the extent that it is permitted to do so by law. The Business Associate and individuals associated with the Business Associate are solely responsible for all civil and criminal penalties assessed as a result of an audit, breach or violation of HIPAA Regulations.
7. **Breach or Other Improper Access, Use or Disclosure Reporting.** The Business Associate must report to the Covered Entity, in writing, any access, use or disclosure of protected health information not permitted by the Contract, Addendum or HIPAA Regulations by Business Associate or its agents or subcontractors. The Covered Entity must be notified immediately upon discovery or the first day such breach or suspected breach is known to the Business Associate or by exercising reasonable diligence would have been known by the Business Associate in accordance with HIPAA Regulations. In the event of a breach or suspected breach of protected health information, the report to the Covered Entity must be in writing and include the following: a brief description of the incident; the date of the incident; the date the incident was discovered by the Business Associate; a thorough description of the unsecured protected health information that was involved in the incident; the number of individuals whose protected health information was involved in the incident; and the steps the Business Associate or its agent or subcontractor is taking to investigate the incident and to protect against further incidents. The Covered Entity will determine if a breach of unsecured protected health information has occurred and will notify the Business Associate of the determination. If a breach of unsecured protected health information is determined, the Business Associate must take prompt corrective action to cure any such deficiencies and mitigate any significant harm that may have occurred to individual(s) whose information was disclosed inappropriately.
8. **Breach Notification Requirements.** If the Covered Entity determines a breach of unsecured protected health information by the Business Associate, or its agents or subcontractors has occurred, the Business Associate will be responsible for notifying the individuals whose unsecured protected health information was breached in accordance with HIPAA Regulations. The Business Associate must provide evidence to the Covered Entity that appropriate notifications to individuals

and/or media, when necessary, as specified in HIPAA Regulations has occurred. The Business Associate is responsible for all costs associated with notification to individuals, the media or others as well as costs associated with mitigating future breaches. The Business Associate must notify the Secretary of all breaches in accordance with HIPAA Regulations and must provide the Covered Entity with a copy of all notifications made to the Secretary.

9. **Data Ownership.** The Business Associate acknowledges that the Business Associate or its agents or subcontractors have no ownership rights with respect to the protected health information it creates, receives or maintains, or otherwise holds, transmits, uses or discloses.
10. **Litigation or Administrative Proceedings.** The Business Associate shall make itself, any subcontractors, employees, or agents assisting the Business Associate in the performance of its obligations under the Contract or Addendum, available to the Covered Entity, at no cost to the Covered Entity, to testify as witnesses, or otherwise, in the event litigation or administrative proceedings are commenced against the Covered Entity, its administrators or workforce members upon a claimed violation by Business Associate of HIPAA Regulations or other laws relating to security and privacy.
11. **Minimum Necessary.** The Business Associate and its agents and subcontractors shall request, use and disclose only the minimum amount of protected health information necessary to accomplish the purpose of the request, use or disclosure in accordance with HIPAA Regulations.
12. **Policies and Procedures.** The Business Associate must adopt written privacy and security policies and procedures and documentation standards to meet the requirements of HIPAA Regulations.
13. **Privacy and Security Officer(s).** The Business Associate must appoint Privacy and Security Officer(s) whose responsibilities shall include: monitoring the Privacy and Security compliance of the Business Associate; development and implementation of the Business Associate's HIPAA Privacy and Security policies and procedures; establishment of Privacy and Security training programs; and development and implementation of an incident risk assessment and response plan in the event the Business Associate sustains a breach or suspected breach of protected health information.
14. **Safeguards.** The Business Associate must implement safeguards as necessary to protect the confidentiality, integrity and availability of the protected health information the Business Associate creates, receives, maintains, or otherwise holds, transmits, uses or discloses on behalf of the Covered Entity. Safeguards must include administrative safeguards (e.g., risk analysis and designation of security official), physical safeguards (e.g., facility access controls and workstation security), and technical safeguards (e.g., access controls and audit controls) to the confidentiality, integrity and availability of the protected health information, in accordance with HIPAA Regulations. Technical safeguards must meet the standards set forth by the guidelines of the National Institute of Standards and Technology (NIST). The Business Associate agrees to only use, or disclose protected health information as provided for by the Contract and Addendum and to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate, of a use or disclosure, in violation of the requirements of this Addendum as outlined in HIPAA Regulations.
15. **Training.** The Business Associate must train all members of its workforce on the policies and procedures associated with safeguarding protected health information. This includes, at a minimum, training that covers the technical, physical and administrative safeguards needed to prevent inappropriate uses or disclosures of protected health information; training to prevent any intentional or unintentional use or disclosure that is a violation of HIPAA Regulations; and training that emphasizes the criminal and civil penalties related to HIPAA breaches or inappropriate uses or disclosures of protected health information. Workforce training of new employees must be completed within 30 days of the date of hire and all employees must be trained at least annually. The Business Associate must maintain written records for a period of six years. These records must document each employee that received training and the date the training was provided or received.
16. **Use and Disclosure of Protected Health Information.** The Business Associate must not use or further disclose protected health information other than as permitted or required by the Contract or as required by law. The Business Associate must not use or further disclose protected health information in a manner that would violate the requirements of HIPAA Regulations.

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

The Business Associate agrees to these general use and disclosure provisions:

#### 1. Permitted Uses and Disclosures:

- a. Except as otherwise limited in this Addendum, the Business Associate may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Contract, provided that such use or disclosure would not violate HIPAA Regulations, if done by the Covered Entity.
  - b. Except as otherwise limited in this Addendum, the Business Associate may use or disclose protected health information received by the Business Associate in its capacity as a Business Associate of the Covered Entity, as necessary, for the proper management and administration of the Business Associate, to carry out the legal responsibilities of the Business Associate, as required by law or for data aggregation purposes in accordance with HIPAA Regulations.
  - c. Except as otherwise limited by this Addendum, if the Business Associate discloses protected health information to a third party, the Business Associate must obtain, prior to making such disclosure, reasonable written assurances from the third party that such protected health information will be held confidential pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to the third party. The written agreement from the third party must include requirements to immediately notify the Business Associate of any breaches of confidentiality of protected health information to the extent it has obtained knowledge of such breach.
  - d. The Business Associate may use or disclose protected health information to report violations of law to appropriate federal and state authorities, consistent with HIPAA Regulations.
- 2. Prohibited Uses and Disclosures:**
- a. Except as otherwise limited in this Addendum, the Business Associate shall not disclose protected health information to a health plan for payment or health care operations purposes if the patient has required this special restriction, and has paid out of pocket in full for the health care item or service to which the protected health information relates in accordance with HIPAA Regulations.
  - b. The Business Associate shall not directly or indirectly receive remuneration in exchange for any protected health information, unless the Covered Entity obtained a valid authorization, in accordance with HIPAA Regulations that includes a specification that protected health information can be exchanged for remuneration.

#### IV. OBLIGATIONS OF THE COVERED ENTITY

- 1. The Covered Entity will inform the Business Associate of any limitations in the Covered Entity's Notice of Privacy Practices in accordance with HIPAA Regulations, to the extent that such limitation may affect the Business Associate's use or disclosure of protected health information.
- 2. The Covered Entity will inform the Business Associate of any changes in, or revocation of, permission by an individual to use or disclose protected health information, to the extent that such changes may affect the Business Associate's use or disclosure of protected health information.
- 3. The Covered Entity will inform the Business Associate of any restriction to the use or disclosure of protected health information that the Covered Entity has agreed to in accordance with HIPAA Regulations, to the extent that such restriction may affect the Business Associate's use or disclosure of protected health information.
- 4. Except in the event of lawful data aggregation or management and administrative activities, the Covered Entity shall not request the Business Associate to use or disclose protected health information in any manner that would not be permissible under HIPAA Regulations, if done by the Covered Entity.

#### V. TERM AND TERMINATION

- 1. Effect of Termination:**
  - a. Except as provided in paragraph (b) of this section, upon termination of this Addendum, for any reason, the Business Associate will return or destroy all protected health information received from the Covered Entity or created, maintained, or received by the Business Associate on behalf of the Covered Entity that the Business Associate still maintains in any form and the Business Associate will retain no copies of such information.
  - b. If the Business Associate determines that returning or destroying the protected health information is not feasible, the Business Associate will provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon a mutual determination that return or destruction of protected health information is infeasible, the Business Associate shall

extend the protections of this Addendum to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make return or destruction infeasible, for so long as the Business Associate maintains such protected health information.

- c. These termination provisions will apply to protected health information that is in the possession of subcontractors, agents or employees of the Business Associate.
2. **Term.** The Term of this Addendum shall commence as of the effective date of this Addendum herein and shall extend beyond the termination of the contract and shall terminate when all the protected health information provided by the Covered Entity to the Business Associate, or accessed, maintained, created, retained, modified, recorded, stored or otherwise held, transmitted, used or disclosed by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or if it is not feasible to return or destroy the protected health information, protections are extended to such information, in accordance with the termination.
3. **Termination for Breach of Contract.** The Business Associate agrees that the Covered Entity may immediately terminate the Contract if the Covered Entity determines that the Business Associate has violated a material part of this Addendum.

## VI. MISCELLANEOUS

1. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time for the Covered Entity to comply with all the requirements of HIPAA Regulations.
2. **Clarification.** This Addendum references the requirements of HIPAA Regulations, as well as amendments and/or provisions that are currently in place and any that may be forthcoming.
3. **Indemnification.** In accordance with the limitations of NRS 41.0305 to NRS 41.039 each party will indemnify and hold harmless the other party to this Addendum from and against all claims, losses, liabilities, costs and other expenses incurred as a result of, or arising directly or indirectly out of or in conjunction with:
  - a. Any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the party under this Addendum; and
  - b. Any claims, demands, awards, judgments, actions, and proceedings made by any person or organization arising out of or in any way connected with the party's performance under this Addendum.
4. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Contract that any conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA Regulations. The parties agree that any ambiguity in this Addendum shall be resolved to permit the Covered Entity and the Business Associate to comply with HIPAA Regulations.
5. **Regulatory Reference.** A reference in this Addendum to HIPAA Regulations means the sections as in effect or as amended.
6. **Survival.** The respective rights and obligations of Business Associate under Effect of Termination of this Addendum shall survive the termination of this Addendum.



IN WITNESS WHEREOF, the Business Associate and the Covered Entity have agreed to the terms of the above written agreement as of the effective date set forth below.

**COVERED ENTITY**

Department of Health and Human Services  
Aging and Disability Services

3416 Goni Road, Building D-132

Carson City, NV 89706

(775) 687-0532 Phone

(775) 687-0573 Fax

\_\_\_\_\_  
(Authorized Signature)

Edward Ableser, Ph. D.

Administrator, Aging and Disability Services  
Division

\_\_\_\_\_  
(Date)

**BUSINESS ASSOCIATE**

Washoe County

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City, State and Zip Code)

\_\_\_\_\_  
(Business Phone Number)

\_\_\_\_\_  
(Business FAX Number)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)