

# ORIGINAL

## MEMORANDUM OF UNDERSTANDING #3732

Agreement for Reimbursement of Narcotic Treatment Program Service Expenses

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**THIS MEMORANDUM OF UNDERSTANDING (MOU)** is made and entered into by and between the County of El Dorado, a political subdivision of the State of California, (hereinafter referred to as “El Dorado”), and County of Placer, a political subdivision of the State of California, (hereinafter referred to as “Placer”);

### RECITALS

**WHEREAS**, in accordance with County of El Dorado Drug Medi-Cal (DMC) Agreement 220-F1811 with the State of California, administered by the Department of Health Care Services (DHCS), the County is required to provide eligible El Dorado County Medi-Cal beneficiaries (Clients) with a continuum of drug and alcohol prevention and treatment services to include Narcotic Treatment Program (NTP) Services; and

**WHEREAS**, due to current lack of NTP Service providers in the County, El Dorado contracts with NTP Service providers in counties outside of El Dorado; and

**WHEREAS**, in accordance with DHCS Mental Health and Substance Use Disorder Services (MHSUDS) Information Notice No. 17-036, dated July 28, 2017, the county of Client’s residence is the county of responsibility (COR), and must, therefore, pay the unmatched federal portion of costs of NTP Services Clients receive out of county; and

**WHEREAS**, El Dorado and Placer wish to establish a memorandum of understanding to ensure El Dorado will reimburse Placer the unmatched federal portion of costs it incurred for Clients of El Dorado; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, State (all references to “State” in this Agreement shall mean the State of California unless otherwise specified) and local laws; and

**NOW, THEREFORE**, El Dorado and Placer mutually agree as follows:

## **ARTICLE I**

### **Scope of Responsibilities:**

- A. El Dorado Responsibilities: In accordance with MHSUDS Information Notice 17-036, attached hereto as Exhibit A, incorporated herein and by reference a part hereof, El Dorado agrees to reimburse Placer for the non-federal financial participation (non-FFP) costs Placer has incurred for Clients of El Dorado, who received NTP Services in Placer County in fiscal year 2017-2018 and July 2018.
- B. Placer Responsibilities: Placer agrees to submit the requested documentation in accordance with Article III, "Reimbursement," to El Dorado for the non-FFP costs it has incurred for Clients of El Dorado who received NTP Services in Placer County in fiscal year 2017-2018 and July 2018.

## **ARTICLE II**

**Term:** This MOU shall become effective upon final execution and cover the period of July 1, 2017 through July 31, 2018 unless terminated earlier pursuant to the provisions contained herein this Agreement under Article IX, "Default, Termination, and Cancellation" and Article VII, "Fiscal Considerations."

## **ARTICLE III**

### **Reimbursement:**

- A. For reimbursement to be issued, Placer shall submit a statement of non-FFP costs incurred for Clients of El Dorado, who have received NTP Services in Placer County. Copies of paid NTP vendor invoices for each itemized reimbursement, and source documentation substantiating the provision of NTP Services must be included for reimbursement.

If applicable, such documentation may include, but is not limited to: client charts, laboratory results, medication administration records, ledgers, books, vouchers, time sheets, payrolls, signed attendance rosters, cost allocation schedules, or other documentation substantiating the provision of NTP services. El Dorado may require Placer to submit backup documentation that supports statements along with any or all invoices. Failure of Placer to supply requested documentation in support of any statement may result in denial of reimbursement by El Dorado. El Dorado shall determine the format and content of statements and backup documentation, and may modify the format and/or content at any time by giving thirty (30) days advance notice to Placer.

For all satisfactory statements provided by Placer, El Dorado agrees to reimburse Placer within forty-five (45) days following El Dorado's receipt and approval of itemized statement detailing costs incurred and the date(s) costs were incurred. El Dorado may withhold or delay any reimbursement if Placer fails to comply with any provision of this Agreement.

El Dorado shall not reimburse any costs that have not been approved in writing by the Contract Administrator, or designee. Placer shall ensure that only reimbursement information is included on the statement. Information related to EDC beneficiary(ies)

diagnosis or prognosis is not permitted on the statement. Statements shall include the following information:

1. Placer's name, address, and telephone number.
2. Date(s) costs were incurred.
3. EDC beneficiary name(s).
4. Type of service(s) provided.
5. Total costs incurred for each beneficiary.
6. Total amount of reimbursement requested statement.

#### **ARTICLE IV**

**Maximum Obligation:** The maximum obligation of El Dorado under this MOU shall not exceed \$80,000 for the term of this Agreement.

#### **ARTICLE V**

**Taxes:** Placer certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Placer to El Dorado. Placer agrees that it shall not default on any obligations to El Dorado during the term of this Agreement.

#### **ARTICLE VI**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

#### **ARTICLE VII**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that El Dorado is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of El Dorado business, El Dorado will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, El Dorado shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and El Dorado released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any El Dorado department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of El Dorado, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE VIII**

**Audit by California State Auditor:** Placer acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Placer shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

## **ARTICLE IX**

### **Default, Termination, and Cancellation:**

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, El Dorado reserves the right to take over and complete the work by contract or by any other means.

- B. **Bankruptcy:** This Agreement, at the option of El Dorado, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Placer.
- C. **Ceasing Performance:** Either party may terminate this Agreement in the event either party ceases to operate, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** Either party may terminate this Agreement in whole or in part upon seven (7) calendar days written notice to the other party without cause. If such prior termination is effected, El Dorado will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination, and for such other services, which El Dorado may agree to in writing as necessary for contract resolution. In no event, however, shall El Dorado be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, the receiving party shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

**ARTICLE X**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF EL DORADO  
Health and Human Services Agency  
3057 Briw Road, Suite B  
Placerville, CA 95667  
ATTN: Contracts Unit

or to such other location as the County directs.

with a copy to

COUNTY OF EI DORADO  
Chief Administrative Office  
Procurement and Contracts Division  
2850 Fairlane Court, Bldg. C, 2<sup>nd</sup> Floor  
Placerville, CA 95667  
Attn: Purchasing Agent

Notices to Placer shall be addressed as follows:

Placer County  
Department of Health and Human Services  
3091 County Center Drive, Suite 290  
Auburn CA 95603  
Attn: Director

or to such other location as the Placer directs.

**ARTICLE XI**

**Change of Address:** In the event of a change in address for either party's principal place of business, or Notices to Parties, one party shall notify the other party in writing pursuant to the provisions contained in this MOU under Article X, "Notice to Parties." Said notice shall become part of this MOU upon acknowledgment in writing by the County's Contract Administrator, and no further amendment of the MOU shall be necessary provided that such change of address does not conflict with any other provisions of this MOU.

**ARTICLE XII**

**Indemnity:** Placer shall defend, indemnify, and hold El Dorado harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, El Dorado County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way

arise out of or are connected with the Placer's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of El Dorado, Placer, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of El Dorado, its officers and employees, or as expressly prescribed by statute. This duty of Placer to indemnify and save El Dorado harmless includes the duties to defend set forth in California Civil Code Section 2778.

El Dorado shall defend, indemnify, and hold Placer harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, Placer County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the El Dorado's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of Placer, El Dorado, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of Placer, its officers and employees, or as expressly prescribed by statute. This duty of El Dorado to indemnify and save Placer harmless includes the duties to defend set forth in California Civil Code Section 2778.

#### **ARTICLE XIII**

**Insurance:** Each party, at its sole cost and expense, shall carry insurance or self-insure its activities in connection with this MOU, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, professional liability, workers' compensation, and business automobile liability adequate to cover its potential liabilities hereunder. Each party agrees to provide the other thirty (30) days advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverage.

#### **ARTICLE XIV**

**Interest of Public Official:** No official or employee of El Dorado/Placer who exercises any functions or responsibilities in review or approval of services to be provided by El Dorado/Placer under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of El Dorado/Placer have any interest, direct or indirect, in this Agreement or the proceeds thereof.

#### **ARTICLE XV**

**Interest of Parties:** El Dorado/Placer covenants that El Dorado/Placer presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. El Dorado/Placer further covenants that in the performance of this Agreement no person having any such interest shall be employed by El Dorado/Placer.

## **ARTICLE XVI**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. El Dorado/Placer attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of El Dorado/Placer relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article XI, "Default, Termination and Cancellation."

## **ARTICLE XVII**

### **Nondiscrimination:**

- A. County may require El Dorado/Placer's services on projects involving funding from various state and/or federal agencies, and as a consequence, El Dorado/Placer shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: El Dorado/Placer and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex; El Dorado/Placer shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. El Dorado/Placer and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, El Dorado/Placer shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. El Dorado/Placer's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

## **ARTICLE XVIII**

**Licenses:** El Dorado/Placer hereby represents and warrants that El Dorado/Placer and any of its subcontractors employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for El Dorado/Placer and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. El Dorado/Placer and its subcontractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

**ARTICLE XIX**

**Administrator:** The El Dorado County Officer or employee with responsibility for administering this Agreement is Salina Drennan, Program Manager, Substance Use Disorder Services - Behavioral Health Division, or successor.

**ARTICLE XX**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

**ARTICLE XXI**

**Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**ARTICLE XXII**

**Venue:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

**ARTICLE XXIII**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

**ARTICLE XXIV**

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

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**ARTICLE XXIV**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**Requesting Contract Administrator Concurrence:**

By: Salina Drennan  
Salina Drennan, SUD Program Manager  
Behavioral Health Division  
Health and Human Services Agency

Dated: 2/21/2019

**Requesting Department Head Concurrence:**

By: Don Semon  
Don Semon, Director  
Health and Human Services Agency

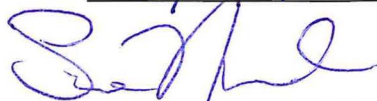
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement #3732 on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: 5/21/19

By:   
Sue Novasel, Chair  
Board of Supervisors  
"County"

ATTEST:  
James S. Mitrison  
Clerk of the Board of Supervisors

By:  Dated: 5/21/19  
Deputy Clerk

-- COUNTY OF PLACER --

By:  Dated: 4-11-2019  
Jeffrey S. Brown, Director  
Department of Health & Human Services  
"Placer"

Approved as to Form  
Office of Placer County Counsel

By:  Dated: 4/10/2019  
lkk

## EXHIBIT A

State of California—Health and Human Services Agency  
Department of Health Care Services



EDMUND G. BROWN JR.  
GOVERNOR

DATE: July 28, 2017

MHSUDS INFORMATION NOTICE NO.: 17-036

TO: COUNTY BEHAVIORAL HEALTH DIRECTORS  
COUNTY DRUG & ALCOHOL ADMINISTRATORS  
COUNTY BEHAVIORAL HEALTH DIRECTORS ASSOCIATION OF CALIFORNIA  
CALIFORNIA COUNCIL OF COMMUNITY BEHAVIORAL HEALTH AGENCIES  
COALITION OF ALCOHOL AND DRUG ASSOCIATIONS  
CALIFORNIA ASSOCIATION OF ALCOHOL & DRUG PROGRAM EXECUTIVES, INC.  
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES  
CALIFORNIA OPIOID MAINTENANCE PROVIDERS

SUBJECT: DRUG MEDI-CAL COUNTY OF RESPONSIBILITY TRANSITION

### **PURPOSE**

The purpose of this information notice is to provide additional guidance to the counties regarding the transition to the county of responsibility (COR) model of service delivery. This guidance applies to both regular Drug Medi-Cal (DMC) State Plan and Drug Medi-Cal Organized Delivery System (DMC-ODS) counties. Prior guidance can be found in both Information Notice 16-023 Drug Medi-Cal Claims Adjudication and Certified Public Expenditure Transition from County of Services to County of Responsibility in the DMC-ODS Pilot Program and Information Notice 16-052 Fiscal Year 2016-17 Behavioral Health Subaccount Allocations.

### **BACKGROUND**

Information Notice 16-052 explained that the Department of Finance, in consultation with the appropriate state agencies and the California State Association of Counties, established the ongoing methodology ("base methodology") for allocating 2011 Realignment Behavioral Health Subaccount (BHS) funds. Pursuant to Government Code Section (GC) 30029.6, beginning in FY 2016-17, the State Controller's Office allocated the BHS funds according to the new base methodology, which included a change to the calculation for determining BHS allocations from the county that provides a DMC service to the county in which the beneficiary resides. Information Notice 16-023 provided additional advance notice of this transition.

## **DISCUSSION**

All Counties have an obligation to provide DMC State Plan services to all beneficiaries who reside in that county per Section 2: Covered Services of Exhibit A, Attachment 1 of the "State/County" DMC contract and GC 30026.5 (e)(5). For DMC, the covered services are Outpatient Drug-Free Treatment; Narcotic Replacement Therapy; Oral Naltrexone; Intensive Outpatient Treatment and, Perinatal Residential Substance Abuse Services.

Counties that opt-into the 1115 DMC-ODS waiver have an obligation to provide all state plan services plus all DMC-ODS services to all beneficiaries that reside in that county per paragraph 128(a) and 129 of the DMC-ODS Special Terms and Conditions (STCs) (available at <http://www.dhcs.ca.gov/provgovpart/Pages/medi-cal-2020-waiver.aspx>). Per paragraph 143(c) of the STCs, ODS Counties must ensure that beneficiaries who live in a non-ODS County, but receive Narcotic Treatment Program services in the ODS County do not experience a disruption of services. The details of this coordination with non-ODS Counties must be outlined in the ODS County's Implementation Plan.

This Information Notice clarifies that Counties are expected to establish contractual arrangements, when necessary, to ensure that the county of residence is financially responsible to pay for any DMC entitlement services being provided to its residents by another county given its BHS allocation for this purpose. Pursuant to GC 30025(f)(16)(B)(i) – 30025(16)(B)(v), counties shall use BHS (base and growth) funds exclusively to fund the following: (1) residential perinatal drug services, (2) drug court operations, (3) non-DMC substance abuse treatment programs, (4) the DMC program, and (5) Medi-Cal Specialty Mental Health Services, including Early and Periodic Screening, Diagnostic, and Treatment and mental health managed care.

The following are options that counties of residence may use to ensure their BHS funds are being used to reimburse providers from another county for services provided to their residents:

Option A: The COR may choose to contract directly with providers located outside of its borders to ensure that its beneficiaries receive medically necessary DMC entitlement services.

Option B (this option is only available to counties that are not participating in the DMC ODS waiver): If a county serves, or pays a contracted provider to serve an out of county beneficiary, the county that provided, or arranged for the provision of the service can submit the Certified Public Expenditure for that service and receive the Federal Financial Participation for that claim. In this case, the county where the beneficiary resides is responsible for the non-federal match of the reimbursement

and must make this payment. The two counties would enter into a contractual relationship that would allow the exchange of BHS funds from the COR to the other county that provided the service.

Because an ODS County is operating as a managed care plan, the ODS County is unavailable to provide ODS services to beneficiaries from other non-ODS Counties. As a result, any provider within the ODS County's borders that wants to provide State Plan services to non-ODS beneficiaries will need to contract with the non-ODS County where those beneficiaries reside.

**QUESTIONS**

Please address all questions regarding this Informational Notice to Marco Zolow, Health Program Specialist, Program, Policy, and Fiscal Division at [marco.zolow@dhcs.ca.gov](mailto:marco.zolow@dhcs.ca.gov).

Sincerely,

Original signed by

Karen Baylor, Ph.D., LMFT, Deputy Director  
Mental Health & Substance Use Disorder Services