

**STATE OF NEW MEXICO**



**HUMAN  
SERVICES**  
DEPARTMENT  
MEDICAL ASSISTANCE DIVISION

**Amendment 4 to Medicaid Managed Care Services Agreement**

**among**

**the New Mexico Human Services Department,**

**New Mexico Behavioral Health Purchasing Collaborative,**

**and**

**Molina Healthcare of New Mexico, Inc.**



**PSC: 13-630-8000-0022 A4**

**STATE OF NEW MEXICO  
HUMAN SERVICES DEPARTMENT  
MEDICAID MANAGED CARE SERVICES AGREEMENT  
FOR CENTENNIAL CARE**

**AMENDMENT NO. 4**

This Amendment No. 4 to PSC: 13-630-8000-0022 is made and entered into by and between the New Mexico Human Services Department (“HSD”), the New Mexico Behavioral Health Purchasing Collaborative (the “Collaborative”), and Molina Healthcare of New Mexico, Inc. (“CONTRACTOR”), and is to be effective as of the date of HSD’s authorized signature.

**IT IS MUTUALLY AGREED BY THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE REFERENCED CONTRACT ARE AMENDED AND RESTATED AS FOLLOWS:**

**1) Section 2 of the Contract is amended by adding the following definitions:**

**Ad Hoc Reports or Requests are deliverables.** Deliverables are scheduled and unscheduled reports or requests for information by HSD. The CONTRACTOR will receive, in writing, direction related to the required content and format. HSD will also provide a due date and will indicate if a deliverable is subject to monetary penalties in accordance with 7.3 of this Agreement.

**Failure to Report** means failure to submit a complete, timely and accurate report, in the specified format in accordance with Section 4.21 of this Agreement.

**Medically Fragile 1915(c) Waiver** means the State of New Mexico’s Medicaid home and community-based waiver program for the medically fragile, authorized by CMS pursuant to section 1915(c) of the Social Security Act and/or classified by category of eligibility code “095”.

**Medically Frail** means an Other Adult Group Member who has been determined as meeting HSD’s definitions and criteria for the following conditions: (i) disabling mental disorder, including individuals up to age 21 with serious emotional disturbances and Adults with serious mental illness; (ii) a chronic substance use disorder; (iii) a serious and complex medical condition as defined by HSD; (iv) a physical, intellectual or developmental disability that significantly impairs the Member’s ability to perform one or more activities of daily living; or (v) a disability determination based on Social Security criteria.

**2) Section 4.1.1.2 of the Contract is amended to add the following new sections:**

**4.1.1.2.1** The CONTRACTOR shall use best efforts to contract with the UNM Health Sciences Center – Center for Development & Disability (CDD) to

coordinate care for medically fragile individuals receiving EPSDT and/or Community Benefit services, and shall use all best efforts to have this contract executed prior to the 30th day of September for each year prior to the forthcoming contract period.

4.1.1.2.2 The CONTRACTOR shall submit a copy of the contract with UNM/CDD to HSD for review prior to implementation and annually for the forthcoming contract period by the 1st business day in October following the execution of the contract.

3) **Section 4.5.14 of the Contract is amended to add the following section:**

4.5.14 The CONTRACTOR shall not impose any enrollment fee, premium or similar charge and no deduction, copayment, cost sharing or similar charge to members who are Native American and furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or by a health provider through referral under contract health services for which Medicaid payment may be made. In addition, payment to these providers may not be reduced by any such charges. This requirement is in accordance with Section 5006(a)(1)(A) of the American Recovery and Reinvestment Act of 2009 (ARRA).

4) **Section 4.10.1 of the Contract is amended to add the following new section:**

4.10.1.1 The CONTRACTOR shall ensure its Claims processing system and provider payments dependent on ICD-9 are updated and compliant with the national conversion to ICD-10.

5) **Section 4.10.5 of the Contract is amended and restated to read as follows:**

4.10.5 Enhanced Payments for Primary Care Services

The CONTRACTOR shall have mechanisms in place to reimburse certain evaluation and management services and immunization administration services furnished in calendar year 2014 and 2015 by a physician with a specialty designation of family medicine, general internal medicine, or pediatric medicine at a rate not less than 100 percent (100%) of the payment rate that applies to such services under Medicare. The CONTRACTOR shall establish payment rates for these primary care services for 2014 and 2015 as to be consistent with the equivalent fee-for-service Medicare rate. The CONTRACTOR shall submit to HSD data on enhanced payments for primary care services via Encounter Data. The payments made under this section 4.10.5 of the Contract as prescribed by HSD are separate and apart from the risk-based capitation payments HSD makes to the CONTRACTOR pursuant to section 6 of the Contract.

- 6) **Section 4.19.1.1 of the Contract is amended to add the following new section:**
- 4.19.1.1.1 The CONTRACTOR shall ensure its Claims Processing capabilities are compliant with the national conversion from ICD-9 to ICD-10.
- 7) **Section 4.19.1.7 of the Contract is amended and replaced with:**
- 4.19.1.7 Paying interest as required in Section 8.308.20.9 (E) of NMAC.
- 8) **Section 4.19.1.8 of the Contract is deleted and replaced with:**
- “Intentionally left blank”
- 9) **Section 4.21.1.5.1 of the Contract is amended and restated to read as follows:**
- 4.21.1.5.1 The CONTRACTOR shall comply with all changes specified in writing by HSD, after HSD has discussed such changes with the CONTRACTOR. HSD shall notify the CONTRACTOR, in writing, of changes to existing required report content, at least fourteen (14) Calendar Days prior to implementing the reporting change. The CONTRACTOR shall only be held harmless on the first submission of the revised report, after changes are implemented by HSD, if HSD fails to meet this notification requirement. However, the CONTRACTOR is not otherwise relieved of any penalties for the submission of late, inaccurate or otherwise incomplete reports. The first submission of a report revised by HSD to include a change in data requirements or definitions will not be subject to penalty for accuracy. For minor formatting and schedule changes, the CONTRACTOR will implement as directed by HSD. Minor formatting and schedule changes shall include, but are not be limited to, items such as, addition of rows in a template, unlocking certain template cells, and changes in titles.
- 10) **Section 4.21.1.6 of the Contract is amended and restated to read as follows:**
- 4.21.1.6 The CONTRACTOR shall submit reports that are complete, timely, accurate and in the specified format, as required by HSD. The submission of reports that are incomplete, late, inaccurate, or not in specified format constitutes a “Failure to Report”. “Timely submission” shall mean that a complete and accurate report, in the specified format was submitted on or before the date it was due. HSD, in its sole discretion shall determine if a report is late, inaccurate, incomplete or in an unspecified format. “Failure to Report” may result in monetary penalties in accordance with Section 7.3 of this Agreement.
- The CONTRACTOR shall not be penalized if an error in a previously submitted report is identified by the CONTRACTOR and reported to HSD prior to HSD’s identification of the error. Corrected reports in this

type of situation will be submitted to HSD in a timeframe determined by HSD after consulting with the CONTRACTOR. In such a situation, failure to comply with the agreed upon timeframes for correction and resubmission may result in monetary penalties in accordance with Section 7.3 of this Agreement.

11) **Section 4.21.1.11 of the Contract is amended and restated to read as follows:**

4.21.1.11 The CONTRACTOR shall submit all reports to HSD, unless indicated otherwise in this Agreement, according to the schedule below or as otherwise directed by HSD. "Failure to Report" may result in monetary penalties in accordance with Section 7.3 of this Agreement.

<b>DELIVERABLE</b>	<b>DUE DATE</b>
Weekly Reports	Wednesday of the following week
Monthly Reports	Fifteenth (15th) Calendar Day of the following month
Quarterly Reports	Thirtieth (30 <sup>th</sup> ) Calendar Day of the following month*
Semi-Annual Reports	January 31 and July 31 of the Agreement year
Annual Report	As directed by HSD
Ad Hoc Reports / Requests	Timeframe as determined by HSD at time of the request.

\*Quarterly financial reports are due forty-five (45) calendar days from the end of the quarter.

12) **Section 4.21.1.13 of the Contract is amended and restated to read as follows:**

4.21.1.13 Extensions to report submission dates will be considered by HSD after the CONTRACTOR has contacted the HSD designated point of contact via email at least twenty-four (24) hours in advance of the report due date. Extensions for submission of reports should be under rare and unusual circumstances. If HSD grants an extension, and the report is complete, accurate, in the specified format and submitted on or before the extended deadline, the report will not be subject to penalty. Failure to request an extension at least twenty-four (24) hours prior to the report due date is

considered a "Failure to Report" and may result in monetary penalties in accordance with Section 7.3 of this Agreement.

13) **Section 4.21.1.14 of the Contract is amended and restated to read as follows:**

4.21.1.14 When a report is rejected because it constitutes a "Failure to Report", the CONTRACTOR shall resubmit the report as soon as possible once notification of the rejection is received. The length of time in business days it takes the CONTRACTOR to resubmit rejected reports may result in monetary penalties in accordance with Section 7.3 #7, and #11 of this Agreement. If CONTRACTOR cures the deficiency identified by the HSD and resubmits an accurate report, in the specified format, within five (5) Business Days from receipt of written notification of the basis of such failure, the CONTRACTOR will only be subject to a report rejection penalty of \$5,000 and not the \$1,000 daily monetary penalty. This cure period shall apply only to the initial rejection of any report and not to subsequent rejections of the same report. If the CONTRACTOR does not cure the deficiency within five (5) Business Days of receipt of written notification, HSD may impose monetary penalties for Failure to Report, in addition to the \$5,000 rejection penalty. Any monetary penalties imposed in addition to the \$5,000 report rejection penalty may begin to accrue the day after the report rejection notice is uploaded to the DMZ and ending the day before the report is resubmitted to the DMZ. The one time cure period applies only to the initial rejection of a report and not subsequent rejections of the same report notwithstanding the above, the CONTRACTOR is subject to \$5,000 rejection penalty.

14) **Section 4.21.1.16 of the Contract is amended and restated to read as follows:**

4.21.1.16 HSD shall provide an acknowledgement of receipt of the report to the CONTRACTOR within forty-five (45) Calendar Days from the due date of the report.

15) **Section 6.10.4 of the Contract is amended and restated to read as follows:**

6.10.4 Funds remaining in the Delivery System Improvement Fund account as a result of the CONTRACTOR's inability to meet performance goals may be spent on system improvement activities for provider network development and enhancement activities that will directly benefit members or be recouped by HSD.

16) **Section 6.14 of the Contract is amended to add the following new sections:**

6.14 Hepatitis C Drug Reconciliation.

- 6.14.1 The CONTRACTOR receives payment in the capitated rate for assumed utilization and cost associated with specialty drug treatment for Hepatitis C. The utilization, cost and the number of Members by cohort assumed to seek treatment is communicated to the CONTRACTOR annually.
- 6.14.2 HSD and the CONTRACTOR shall reconcile the difference between the pharmacy expenses for FDA-approved specialty drugs utilized for the treatment of Hepatitis C incurred by the CONTRACTOR and the value included in the capitation rates.
- 6.14.3 The reconciliation process for the Hepatitis C reconciliation is outlined in Attachment 11 and the specialty drug list as part of the reconciliation will be provided to each CONTRACTOR by HSD.
- 6.14.4 The CONTRACTOR is requested to provide HSD with the effective date and value of any supplemental rebates or discounts received from the manufacturers or through the CONTRACTORS pharmacy benefit manager for Hepatitis C specialty medications.
  - 6.14.4.1 In the event that the CONTRACTOR produces information the CONTRACTOR wants HSD to treat as confidential, in response to 6.14.4, the CONTRACTOR shall clearly mark such information as confidential. HSD shall, to the extent consistent with the State and Federal laws and regulations, including, but not limited to NMSA 14-2-1, hold such information in a confidential manner.
- 6.14.5 If the CONTRACTOR cannot provide or refuses to provide the information outlined in 6.14.4 then HSD shall utilize an assumed supplemental rebate or discount amount to reduce the reported payment in the encounter data for purposes of the reconciliation.

**17) Section 7.3.1 of the Contract is amended to add the following new section:**

**7.3.1.8** HSD at its discretion may direct the CONTRACTOR to expend any portion of monetary penalties for provider network development and enhancement activities that will directly benefit Medicaid beneficiaries.

18) **Section 7.3.4 of the Contract is amended and restated to read as follows:**

	<b>PROGRAM ISSUES</b>	<b>PENALTY</b>
1.	Failure to comply with Claims processing as described in Section 4.19 of this Agreement	2% of the monthly capitation payment per month, for each month that the HSD determines that the CONTRACTOR is not in compliance with the requirements of Section 4.19 of this Agreement
2.	Failure to comply with Encounter submission as described in Section 4.19 of this Agreement	2% of the monthly capitation payment per month, for each month that the HSD determines that the CONTRACTOR is not in compliance with the requirements of Section 4.19 of this Agreement.
3.	Failure to comply with the timeframes for a comprehensive care assessment and developing and approving a CCP for care coordination level 2 and level 3	<p>\$10,000 per Member where the CONTRACTOR fails to comply with the timeframes for that Member but is in compliance with the timeframes for 75-94% of members for the reporting period.</p> <p>\$25,000 per Member where the CONTRACTOR fails to comply with the timeframes for that Member but is in compliance with the timeframes for 74% of less of Members for the reporting period.</p>
4.	Failure to complete or comply with CAPs/DCAPs	.12% of the monthly capitation payment per Calendar Day for each day the CAP/DCAP is not completed or complied with as required.
5.	Failure to obtain approval of Member Materials as required by Section 4.14.1 of this Agreement	\$5,000 per day for each Calendar Day that HSD determines the CONTRACTOR has provided Member Material that has not been approved by HSD. The \$5,000 per day damage amounts will double every ten (10) days.



	<b>PROGRAM ISSUES</b>	<b>PENALTY</b>
6.	Failure to comply with the timeframe for responding to Grievances and Appeals required in Section 4.16 of this Agreement	<p>\$10,000 per occurrence where the CONTRACTOR fails to comply with the timeframes but is in compliance with the timeframes for 75-94% of Grievances and Appeals for the reporting period.</p> <p>\$25,000 per occurrence where the CONTRACTOR fails to comply with the timeframes for that Member but is in compliance with the timeframes for 74% or less of Grievances and Appeals for the reporting period.</p>
7.	For every report that meets the definition for "Failure to Report" in accordance with Section 4.21 of this Agreement.	<p>\$5,000 per report, per occurrence</p> <p>With the exception of the cure period:</p> <p>\$1,000 per report, per Calendar Day. The \$1,000 per day damage amounts will double every ten (10) Calendar days.</p>
8.	Failure to submit timely Summary of Evidence in accordance with Section 4.16 of this Agreement	\$1,000 per occurrence.
9.	Failure to have legal counsel appear in accordance with Section 4.16 of this Agreement	\$10,000 per occurrence.
10.	Failure to meet HEDIS targets for the performance measures described in Section 4.12.8 of this Agreement	A monetary penalty based on 2% of the total capitation paid to the CONTRACTOR for the Agreement year, divided by the number of performance measures specified in the Agreement year.

	<b>PROGRAM ISSUES</b>	<b>PENALTY</b>
11.	<p>HSD can modify and assess any monetary penalty if the CONTRACTOR engages in a pattern of behavior that constitutes a violation of this Agreement or, involves a significant risk of harm to Members or to the integrity of Centennial Care. This may include, but is not limited to the following:                      Reporting metrics not met;                      failure to complete care coordination activities by the timeframes specified within this Agreement; failure to report on required data elements in report submissions; for a report that has been rejected by and resubmitted by the CONTRACTOR up to three times and the report still meets the definition of for "Failure to Report" in accordance with Section 4.21 of this Agreement; etc.</p>	<p>Monetary penalties up to five percent (5.0%) of the CONTRACTOR's Medicaid capitation payment for each month in which the penalty is assessed. HSD will determine the specific percentage of the capitation penalty based on the severity of the infraction, taking into consideration factors reasonably related to the nature and severity of the infraction.</p>

NOTE: HSD can modify any monetary penalty if the CONTRACTOR engages in a pattern of behavior which constitutes a violation of this Agreement and involves a significant risk of harm to Members or to the integrity of Centennial Care.

19) **Section 7.3.5.1 of the Contract is amended and restated to read as follows:**

7.3.5.1 HSD shall provide the CONTRACTOR with notice of any monetary penalties assessed at least thirty (30) Calendar Days before deducting such amounts from the monthly capitation payment. The collection of monetary penalties by HSD shall be made without regard to any appeal rights the CONTRACTOR may have pursuant to this Agreement; however, in the event an appeal by the CONTRACTOR results in a decision in favor of the CONTRACTOR, any such funds withheld by HSD will be immediately returned to the CONTRACTOR.

20) **Attachment 2 to the Contract is amended and restated to read as follows:  
Attachment 2: Centennial Care Covered Services**

<b>Non-Community Benefit Services Included Under Centennial Care</b>
Accredited Residential Treatment Center Services
Applied Behavior Analysis (ABA)
Adult Psychological Rehabilitation Services
Ambulatory Surgical Center Services
Anesthesia Services
Assertive Community Treatment Services
Behavior Management Skills Development Services
Behavioral Health Professional Services: outpatient behavioral health and substance abuse services
Case Management
Community Interveners for the Deaf and Blind
Comprehensive Community Support Services
Day Treatment Services
Dental Services
Diagnostic Imaging and Therapeutic Radiology Services
Dialysis Services
Durable Medical Equipment and Supplies
Emergency Services (including emergency room visits and psychiatric ER)
Experimental or Investigational Procedures, Technology or Non-Drug Therapies <sup>1</sup>
Early and Periodic Screening, Diagnosis and Treatment (EPSDT)
EPSDT Personal Care Services
EPSDT Private Duty Nursing
EPSDT Rehabilitation Services
Family Planning
Family Support (Behavioral Health)
Federally Qualified Health Center Services
Hearing Aids and Related Evaluations
Home Health Services
Hospice Services
Hospital Inpatient (including Detoxification services)
Hospital Outpatient
Inpatient Hospitalization in Freestanding Psychiatric Hospitals
Intensive Outpatient Program Services
IV Outpatient Services
Laboratory Services
Medication Assisted Treatment for Opioid Dependence
Midwife Services
Multi-Systemic Therapy Services
Non-Accredited Residential Treatment Centers and Group Homes
Nursing Facility Services
Nutritional Services
Occupational Services
Outpatient Hospital based Psychiatric Services and Partial Hospitalization
Outpatient and Partial Hospitalization in Freestanding Psychiatric Hospital

<sup>1</sup> Experimental and investigational procedures, technologies or therapies are only available to the extent specified in MAD 8.325.6.9 or its successor regulation.

Non-Community Benefit Services Included Under Centennial Care
Outpatient Health Care Professional Services
Pharmacy Services
Physical Health Services
Physical Therapy
Physician Visits
Podiatry Services
Pregnancy Termination Procedures
Preventive Services
Prosthetics and Orthotics
Psychosocial Rehabilitation Services
Radiology Facilities
Recovery Services (Behavioral Health)
Rehabilitation Option Services
Rehabilitation Services Providers
Reproductive Health Services
Respite (Behavioral Health)
Rural Health Clinics Services
School-Based Services
Smoking Cessation Services
Speech and Language Therapy
Swing Bed Hospital Services
Telehealth Services
Tot-to-Teen Health Checks
Transplant Services
Transportation Services (medical)
Treatment Foster Care
Treatment Foster Care II
Vision Care Services

Agency-Based Community Benefit Services Included Under Centennial Care
Adult Day Health
Assisted Living
Behavior Support Consultation
Community Transition Services
Emergency Response
Employment Supports
Environmental Modifications
Home Health Aide
Personal Care Services
Private Duty Nursing for Adults
Respite
Skilled Maintenance Therapy Services

<b>Self-Directed Community Benefit Services Included Under Centennial Care</b>
Behavior Support Consultation
Customized Community Support
Emergency Response
Employment Supports
Environmental Modifications
Home Health Aide
Homemaker/Personal Care
Nutritional Counseling
Private Duty Nursing for Adults
Related Goods
Respite
Skilled Maintenance Therapy Services
Specialized Therapies
Transportation (non-medical)

21) Attachment 3 to the Contract is amended and restated to read as follows:

**Attachment 3: Delivery System Improvement Targets**

Delivery System Improvement Targets for Year Two (2) of Centennial Care

<b>Delivery System Improvement Objective</b>	<b>Delivery System Improvement Target for Release of Withhold</b>	<b>Number of Points out of 100</b>
Community Health Workers	Each CONTRACTOR shall submit for HSD approval a delivery system improvement project that is designed to increase the use of Community Health Workers (CHWs) for care coordination activities, health education, health literacy, translation and community supports linkages in Rural, Frontier, and underserved communities in urban regions of the State. The project shall emphasize creating a sustainable funding stream for CHW work on behalf of Medicaid Members, and reducing barriers and impediments faced by Medicaid Members in achieving good health outcomes. The CONTRACTOR's submission should include: a brief description of the project; a clearly stated goal(s) that can be validated with data; a discussion of the base line from which the plan seeks to make progress and the data used to determine the base line; and a discussion about measuring progress toward the goal and the data used to measure progress. The CONTRACTOR's plan shall be submitted to HSD by February 1, 2015 and HSD will	25

Delivery System Improvement Objective	Delivery System Improvement Target for Release of Withhold	Number of Points out of 100
	provide feedback/approval within two (2) weeks of receipt of the CONTRACTOR's plan. The goal agreed to by the CONTRACTOR and HSD will become the target for release of the withhold associated with this objective.	
Telehealth	A minimum of a fifteen percent (15%) increase in telehealth "office" visits with specialists, including Behavioral Health providers, for Members in Rural and Frontier areas. At least five percent (5%) of the increase must be visits with Behavioral Health providers. Telehealth visits conducted at I/T/Us outside of the Albuquerque area are included. Project ECHO is not considered "telehealth" for this delivery system improvement target nor is routine telemedicine such as interpretations of radiologic exams by a radiologist at a remote site. The Member must be present at the originating site to count as a telehealth visit. Each CONTRACTOR must submit its baseline using 2014 experience, and an explanation of the data used to arrive at the baseline, to HSD by February 1, 2015.	25
Patient-Centered Medical Homes Section 4.13.1 of this Agreement	A minimum of a five percent (5%) increase of the CONTRACTOR's Members being served by Patient-Centered Medical Homes (including both PCMHs that have achieved NCQA accreditation and those that have not). The CONTRACTOR shall use 2014 experience as a basis to measure an increase in 2015, and shall submit 2014 experience to HSD by February 1, 2015. If the CONTRACTOR achieves a minimum of 40% of membership being served by PCMHs, verified with data submission on February 1, 2015, then CONTRACTOR must maintain that same minimum percentage at end of calendar year in order to meet this target.	25
Emergency Room Diversion	A minimum of a ten percent (10%) reduction in the per capita use of non-emergent emergency room as compared to utilization in 2014. The baseline to determine the reduction will be provided to the CONTRACTOR by HSD based on historical data.	25

The CONTRACTOR shall submit a report no later than by February 1, 2016, describing the results of the delivery system improvement on (i) Community Health Workers, (ii)

telehealth, (iii) Patient-Centered Medical Homes, and emergency room diversion based on the targets established for 2015 set forth in this Attachment 3

22) **Attachment 11 to the Contract is added:**

**Contract Attachment 11: Hepatitis C Risk Corridor – Physical Health Population**

1. HSD shall implement a risk corridor for Hepatitis C for the physical health population, defined by Cohorts 001 through 012, for the incurred period between January 1, 2015 and December 31, 2015. The CONTRACTOR and HSD shall share in excess gains or losses generated under this Agreement as outlined in the capitation rate sheet. This risk corridor applies to non-Other Adult Group only. Section 7.2 and Attachment 7 outlines the risk corridor parameters for the Other Adult Group.
2. The risk corridor is limited to the pharmacy cost, less applicable rebates (including financial incentives, rebates or discounts negotiated with manufacturers), associated with Hepatitis C treatment. HSD shall communicate the pharmacy cost component of the capitated payment rate to the CONTRACTOR subject to the risk corridor. The CONTRACTOR is requested to provide all supplemental rebate, discount or incentive information to HSD. As outlined in 6.14.4. If the CONTRACTOR cannot or refuses to provide this information to HSD an assumed supplemental rebate or discount will be utilized to reduce the cost reported in the encounter data.
3. For purposes of this Attachment, “covered pharmacy cost associated with Hepatitis C treatment” is limited to the FDA-approved drug list maintained and communicated to the CONTRACTOR by HSD between January 1, 2015 and December 31, 2015. Expenditures not identified and included in the drug list will not be countable expenses in the calculation of the risk corridor. The premium tax component of the rate will be adjusted depending on the outcome of the risk corridor measurement.
4. HSD will utilize encounter data received and accepted by HSD and specific rebate information provided by the CONTRACTOR or assumed if information is not provided as sources for the measurement of the risk corridor limited to Members who are eligible according to HSD’s eligibility system and classified as being eligible in Cohorts 001 through 012 in the month they incurred countable expenses.
5. HSD shall conduct measurements of the risk corridor for the calendar year 2015 period and will perform measurements on a quarterly basis. The first measurement shall occur thirty (30) calendar days after the end of the quarter being measured. HSD shall recoup from or make payment to the CONTRACTOR on a pro-rated percentage basis for each measurement.
6. HSD has established the risk corridor but makes no guarantee of any level of underwriting gain to the CONTRACTOR under this Agreement.

7. Pharmacy costs will be compared to Hepatitis C component of the capitation payment to determine the recoupment from or payment to the CONTRACTOR. CONTRACTOR encounter data received and accepted by HSD will be used to develop their actual costs for this population. The risk corridor will be applied on an overall statewide basis across all population groups.

**Contract Exhibit A-Contractor's Responsibility For Compliance With Laws and Regulations**

If the Contractor's performance of its obligations under the terms of this agreement qualifies it as a Business Associate of the HSD as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder, the Contractor agrees to execute the HSD Business Associate Agreement (BAA), attached hereto as Exhibit A, and incorporated herein by this reference, and comply with the terms of the BAA and subsequent updates.



IN WITNESS WHEREOF, the parties have executed this amended and restated contract as of the date of signature by the Human Services Department.

**CONTRACTOR**

By: Patty Kehoe  
Title: President MANM

Date: 8/20/15

**STATE OF NEW MEXICO**

By: [Signature]  
Cabinet Secretary, Human Services Department

Date: 9/2/15

By: [Signature]  
Chief Financial Officer, Human Services Department

Date: 8/26/15

**Approved as to Form and Legal Sufficiency:**

By: [Signature]  
Office of General Counsel, Human Services Department

Date: 8/26/15

**THE NEW MEXICO BEHAVIORAL HEALTH PURCHASING COLLABORATIVE**

By: [Signature]  
Title: Cabinet Secretary, HSD

Date: 7/2/15

By: [Signature]  
Title: HSD Director, CyFD

Date: 9/10/15

By: Patta Ward  
Title: Secretary, DHH

Date: 9/20/15

[Signature] 09/21/2015

The records of the Taxation and Revenue Department reflect that the CONTRACTOR is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross Receipts and compensating taxes.

**TAXATION AND REVENUE DEPARTMENT**

ID Number: 02-215219-00-9

By: [Signature]

Date: 9/3/15

**Exhibit A****HIPAA Business Associate Agreement**

This Business Associate Agreement (“BAA”) is entered into between the New Mexico Human Services Department (“Department”) and Molina Healthcare of New Mexico, Inc., hereinafter referred to as “Business Associate”, in order to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended by Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), including the Standards of the Privacy of Individually Identifiable Health Information and the Security Standards at 45 CFR Parts 160 and 164.

**BUSINESS ASSOCIATE**, by this PSC 13-630-8000-0022, has agreed to provide services to, or on behalf of the HSD which may involve the disclosure by the Department to the Business Associate (referred to in PSC 13-630-8000-0022 as “Contractor”) of Protected Health Information. This Business Associate Agreement is intended to supplement the obligations of the Department and the Contractor as set forth in PSC 13-630-8000-0022, and is hereby incorporated therein.

**THE PARTIES** acknowledge HIPAA, as amended by the HITECH Act, requires that Department and Business Associate enter into a written agreement that provides for the safeguarding and protection of all Protected Health Information which Department may disclose to the Business Associate, or which may be created or received by the Business Associate on behalf of the Department.

**1. Definition of Terms**

- a. **Breach.** “Breach” has the meaning assigned to the term breach under 42 U.S.C. § 17921(1) [HITECH Act § 13400 (1)] and 45 CFR § 164.402.
- b. **Business Associate.** “Business Associate”, herein being the same entity as the Contractor in PSC 13-630-8000-0022, shall have the same meaning as defined under the HIPAA standards as defined below, including without limitation Contractor acting in the capacity of a Business Associate as defined in 45 CFR § 160.103.
- c. **Department.** “Department” shall mean in this agreement the State of New Mexico Human Services Department.
- d. **Individual.** “Individual” shall have the same meaning as in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502 (g).
- e. **HIPAA Standards.** “HIPAA Standards” shall mean the legal requirements as set forth in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations and policy guidance, as each may be amended over time, including without limitation:
  - i. **Privacy Rule.** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.
  - ii. **Breach Notification Rule.** “Breach Notification” shall mean the Notification in the case of Breach of Unsecured Protected Health Information, 45 CFR Part 164, Subparts A and D

- iii. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C, including the following:
  - f. **Security Standards.** "Security Standards" hereinafter shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.306.
  - g. **Administrative Safeguards.** "Administrative Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.308.
  - h. **Physical Safeguards.** "Physical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.310.
  - i. **Technical Safeguards.** "Technical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.312.
  - j. **Policies and Procedures and Documentation Requirements.** "Policies and Procedures and Documentation Requirements" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.316.
  - k. **Protected Health Information.** "Protected Health Information" or "PHI" shall have the same meaning as in 45 CFR §160.103, limited to the information created, maintained, transmitted or received by Business Associate, its agents or subcontractors from or on behalf of Department.
  - l. **Required By Law.** "Required By Law" shall have the same meaning as in 45 CFR §164.103.
  - m. **Secretary.** "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
  - n. **Covered Entity.** "Covered Entity" shall have the meaning as the term "covered entity" defined at 45 CFR §160.103, and in reference to the party to this BAA, shall mean the State of New Mexico Human Services Department.

Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Standards. All terms used and all statutory and regulatory references shall be as currently in effect or as subsequently amended.

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

- a. **General Rule of PHI Use and Disclosure.** The Business Associate may use or disclose PHI it creates for, receives from or on behalf of, the Department to perform functions, activities or services for, or on behalf of, the Department in accordance with the specifications set forth in this BAA and in this PSC 13-630-8000-0022; provided that such use or disclosure would not violate the HIPAA Standards if done by the Department; or as Required By Law.
  - i. Any disclosures made by the Business Associate of PHI must be made in accordance with HIPAA Standards and other applicable laws.
  - ii. Notwithstanding any other provision herein to the contrary, the Business Associate shall limit uses and disclosures of PHI to the "minimum necessary," as set forth in the HIPAA Standards.
  - iii. The Business Associate agrees to use or disclose only a "limited data set" of PHI as defined in the HIPAA Standards while conducting the authorized activities herein and as delineated in PSC 13-630-8000-0022, except where a "limited data set" is not practicable in order to accomplish those activities.

- iv. Except as otherwise limited by this BAA or PSC 13-630-8000-0022, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- v. Except as otherwise limited by this BAA or PSC 13-630-8000-0022, Business Associate may disclose PHI for the proper management and administration of the Business Associate provided that the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- vi. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j).
- vii. Business Associate may use PHI to provide Data Aggregation services to the Department as permitted by the HIPAA Standards.
- b. Safeguards. The Business Associate agrees to implement and use appropriate Security, Administrative, Physical and Technical Safeguards, and comply where applicable with subpart C of 45 C.F.R. Part 164, to prevent use or disclosure of PHI other than as required by law or as provided for by this BAA or PSC 13-630-8000-0022. Business Associate shall identify in writing upon request from the Department all of those Safeguards that it uses to prevent impermissible uses or disclosures of PHI.
- c. Restricted Uses and Disclosures. The Business Associate shall not use or further disclose PHI other than as permitted or required by this BAA or PSC 13-630-8000-0022, the HIPAA Standards, or otherwise as permitted or required by law. The Business Associate shall not disclose PHI in a manner that would violate any restriction which has been communicated to the Business Associate.
  - i. The Business Associate shall not directly or indirectly receive remuneration in exchange for any of the PHI unless a valid authorization has been provided to the Business Associate that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual, except as provided for under the exceptions listed in 45 C.F.R. §164.502 (a)(5)(ii)(B)(2).
  - ii. Unless approved by the Department, Business Associate shall not directly or indirectly perform marketing to individuals using PHI.
- d. Agents. The Business Associate shall ensure that any agents that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, in accordance with 45 C.F.R. § 164.502(e)(1)(ii), and shall make that agreement available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.
- e. Availability of Information to Individuals and the Department. Business Associate shall provide, at the Department's request, and in a reasonable time and manner, access to PHI in a Designated Record Set (including an electronic version if required) to the Department or, as directed by the Department, to an Individual in order to meet the requirements under 45 CFR § 164.524. Within three (3) business days, Business Associate shall forward to the Department for handling any request for access to PHI that

Business Associate receives directly from an Individual. If requested by the Department, the Business Associate shall make such information available in electronic format as required by the HIPAA Standards to a requestor of such information and shall confirm to the Department in writing that the request has been fulfilled.

- f. Amendment of PHI. In accordance with 45 CFR § 164.526, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Department directs or agrees to, at the request of the Department or an Individual, to fulfill the Department's obligations to amend PHI pursuant to the HIPAA Standards. Within three (3) business days, Business Associate shall forward to the Department for handling any request for amendment to PHI that Business Associate receives directly from an Individual.
- g. Internal Practices. Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI, available to the Department or to the Secretary within seven (7) days of receiving a request from the Department or receiving notice of a request from the Secretary, for purposes of the Secretary's determining the Department's compliance with the Privacy Rule.
- h. PHI Disclosures Recordkeeping. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Department to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the HIPAA Standards and 45 CFR § 164.528. Business Associate shall provide such information to the Department or as directed by the Department to an Individual, to permit the Department to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by the Department. Within three (3) business days, Business Associate shall forward to the Department for handling any accounting request that Business Associate directly receives from an individual.
- i. PHI Disclosures Accounting. Business Associate agrees to provide to the Department or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 (h) of this Agreement, to permit the Department to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- j. Security Rule Provisions. As required by 42 U.S.C. § 17931 (a) [HITECH Act Section 13401(a)], the following sections as they are made applicable to business associates under the HIPAA Standards, shall also apply to the Business Associate: 1) Administrative Safeguards; 2) Physical Safeguards; 3) Technical Safeguards; 4) Policies and Procedures and Documentation Requirements; and 5) Security Standards. Additionally, the Business Associate shall either implement or properly document the reasons for non-implementation of all safeguards in the above cited sections that are designated as "addressable" as such are made applicable to Business Associates pursuant to the HIPAA Standards.
- k. Civil and Criminal Penalties. Business Associate agrees that it will comply with the HIPAA Standards as applicable to Business Associates, and acknowledges that it may be subject to civil and criminal penalties for its failure to do so.
- l. Performance of Covered Entity's Obligations. To the extent the Business Associate is to carry out the Department's obligations under the HIPAA Standards, Business Associate shall comply with the requirements of the HIPAA Standards that apply to the Department in the performance of such obligations.

- m. **Subcontractors.** The Business Associate shall ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, with 45 C.F.R. § 164.502(e)(1)(ii), and shall make such information available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement. Upon the Business Associate's contracting with a subcontractor for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.

**3. Business Associate Obligations for Notification, Risk Assessment, and Mitigation**  
 During the term of this BAA or PSC 13-630-8000-0022, the Business Associate shall be required to perform the following pursuant to the Breach Notification Rule regarding Breach Notification, Risk Assessment and Mitigation:

Notification

- a. Business Associate agrees to report to the Department Contract Manager or HIPAA Privacy and Security Officer any use or disclosure of PHI not provided for by this BAA or PSC 13-630-8000-0022, and HIPAA Standards, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, as soon as it (or any employee or agent) becomes aware of the Breach, and in no case later than three (3) business days after it (or any employee or agent) becomes aware of the Breach, except when a government official determines that a notification would impede a criminal investigation or cause damage to national security.
- b. Business Associate shall provide the Department with the names of the individuals whose unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by the Department, provide information necessary for the Department to investigate promptly the impermissible use or disclosure. Business Associate shall continue to provide to the Department information concerning the Breach as it becomes available to it, and shall also provide such assistance and further information as is reasonably requested by the Department.

Risk Assessment

- c. When Business Associate determines whether an impermissible acquisition, use or disclosure of PHI by an employee or agent poses a low probability of the PHI being compromised, it shall document its assessment of risk in accordance with 45 C.F.R. § 164.402 (in definition of "Breach", ¶ 2) based on at least the following factors: (i) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the protected health information or to whom the disclosure was made; (iii) whether the protected health information was actually acquired or viewed; and (iv) the extent to which the risk to the protected health information has been mitigated. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons documenting the determination of risk of

the PHI being compromised. When requested by the Department, Business Associate shall make its risk assessments available to the Department.

- d. If the Department determines that an impermissible acquisition, access, use or disclosure of PHI, for which one of Business Associate's employees or agents was responsible, constitutes a Breach, and if requested by the Department, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with the Department about the timeliness, content and method of notice, and shall receive the Department's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate. The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to the Department.

#### Mitigation

- e. In addition to the above duties in this section, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI, by Business Associate in violation of the requirements of this Agreement, the Related Agreement or the HIPAA Standards. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by the Department, Business Associate shall make its mitigation and corrective action plans available to the Department.
- f. The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of the Breach, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate and the Department are doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).

#### Notification to Clients

- g. Business Associates shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of a State or jurisdiction, Business Associate shall, if requested by the Department, notify prominent media outlets serving such location(s), following the requirements set forth in 45 CFR §164.406.

#### **4. Obligations of the Department to Inform Business Associate of Privacy Practices and Restrictions**

- a. The Department shall notify Business Associate of any limitation(s) in the Department's Notice of Privacy Practices, implemented in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. The Department shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

- c. The Department shall notify Business Associate of any restriction in the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d. The Department shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Department.

**5. Term and Termination**

- a. Term. This BAA terminates concurrently with PSC 13-630-8000-0022, except that obligations of Business Associate under this BAA related to final disposition of PHI in this Section 5 shall survive until resolved as set forth immediately below.
- b. Disposition of PHI upon Termination. Upon termination of this PSC 13-630-8000-0022 and BAA for any reason, Business Associate shall return or destroy all PHI in its possession, and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Department notification of the conditions that make return or destruction of PHI not feasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate shall agree, and require that its agents, affiliates, subsidiaries and subcontractors agree, to the extension of all protections, limitations and restrictions required of Business Associate hereunder, for so long as the Business Associate maintains the PHI.
- c. If Business Associate breaches any material term of this BAA, the Department may either:
  - i. provide an opportunity for Business Associate to cure the Breach and the Department may terminate this PSC 13-630-8000-0022 and BAA without liability or penalty in accordance with Article 4, Termination, of PSC 13-630-8000-0022, if Business Associate does not cure the breach within the time specified by the Department; or,
  - ii. immediately terminate this PSC 13-630-8000-0022 without liability or penalty if the Department determines that cure is not reasonably possible; or,
  - iii. if neither termination nor cure are feasible, the Department shall report the breach to the Secretary.

The Department has the right to seek to cure any breach by Business Associate and this right, regardless of whether the Department cures such breach, does not lessen any right or remedy available to the Department at law, in equity, or under this BAA or PSC 13-630-8000-0022, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

**6. Penalties and Training**

Business Associate understands and acknowledges that violations of this BAA or PSC 13-630-8000-0022 may result in notification by the Department to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by the Department, Business Associate shall participate in training regarding use, confidentiality, and security of PHI.

**7. Miscellaneous**

- a. Interpretation. Any ambiguity in this BAA, or any inconsistency between the provisions of this BAA or PSC 13-630-8000-0022, shall be resolved to permit the Department to comply with the HIPAA Standards.



- b. Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by Business Associate with this BAA or the HIPAA Standards will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- c. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this BAA or PSC 13-630-8000-0022, the Department shall notify Business Associate of any actions it reasonably deems necessary to comply with such changes, and Business Associate shall promptly take such actions. In the event there is a change in federal or state laws, rules or regulations, or in the interpretation of any such laws, rules, regulations or general instructions, which may render any of the material terms of this BAA unlawful or unenforceable, or which materially affects any financial arrangement contained in this BAA, the parties shall attempt amendment of this BAA to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the BAA and PSC 13-630-8000-0022 pursuant to its termination provisions.
- d. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Department, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- e. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or workforce members assisting Business Associate in the fulfillment of its obligations under this BAA and PSC 13-630-8000-0022 available to the Department, at no cost to the Department, to testify as witnesses or otherwise in the event that litigation or an administrative proceeding is commenced against the Department or its employees based upon claimed violation of the HIPAA standards or other laws relating to security and privacy, where such claimed violation is alleged to arise from Business Associate's performance under this BAA or PSC 13-630-8000-0022, except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.
- f. Additional Obligations. Department and Business Associate agree that to the extent not incorporated or referenced in any Business Associate Agreement between them, other requirements applicable to either or both that are required by the HIPAA Standards, those requirements are incorporated herein by reference.