

RESOLUTION NO. 2018-0430

Adopted by the Sacramento City Council

November 8, 2018

Approvals for Implementation of the Pathways to Health + Home Program

BACKGROUND

- A. On June 13, 2017, City Council authorized execution of an agreement between the City and the State of California's Department of Health Care Services to design and implement a Whole Person Care program, locally called Pathways to Health + Home.
- B. The Pathways to Health + Home program is a four-year program that provides federal matching dollars for the development of local programs that coordinate health, behavioral health, and social services for vulnerable Medi-Cal populations.
- C. A key component of the Pathways to Health + Home program is the ability to use data, where necessary and in compliance with laws regarding protection of patient health information, from multiple health care systems, housing partners, and other community organizations to assess needs and target interventions. City staff is seeking City Council approval to execute a Data Sharing Agreement with one Pathways partner to further this program element.
- D. Sutter Valley Hospitals committed to supporting the Pathways program with an Intergovernmental Transfer (IGT) contribution of \$7,036,925 over three and a half years. City Council authorized receipt of IGT funds on March 20, 2018 and subsequently approved an alignment contract on April 25, 2018 for the partner's commitment to providing services to program enrollees via existing programs and through Pathways.
- E. Dignity Health committed to supporting the Pathways program with an IGT contribution of \$5.25 million over three and a half years. City Council authorized receipt of IGT funds on March 20, 2018 and subsequently approved an alignment contract on April 25, 2018 for the partner's commitment to providing services to program enrollees via existing programs and through Pathways.
- F. UC Davis committed to supporting the Pathways program with an IGT contribution of \$750,000 over three years. City Council authorized receipt of these funds for the IGT on July 24, 2018 and subsequently approved an alignment contract on October 1, 2018 for the partner's commitment to providing services to program enrollees via existing programs and through Pathways.

- G. City Council approved an \$8 million revenue and expenditure budget in the Operating Grant Fund (Fund 2702) in I02000900 for the IGT participation with DHCS for FY2017/18 on June 13, 2018 (Resolution No. 2017-0254).

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or the City Manager's designee is authorized to execute the Data Sharing Agreement attached hereto as Exhibit A with the Pathways partner identified in the agreement.
- Section 2. The City Manager or the City Manager's designee is authorized to increase revenue and expenditure budgets for Operating Program (Fund 2702) in the Whole Person Care Program (I02000900) in the amount of \$2,206,918 for receipt of the Intergovernmental Transfer match from the Department of Health Care Services for new or extended service contracts for Program Year 4.
- Section 3. Exhibit A is a part of this Resolution.

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Exhibit A – Data Sharing Agreement with County of Sacramento, Department of Health Care Services

Adopted by the City of Sacramento City Council on November 8, 2018, by the following vote:

- Ayes: Members Ashby, Carr, Guerra, Hansen, Harris, Jennings, Schenirer, Warren and Mayor Steinberg
- Noes: None
- Abstain: None
- Absent: None

Attest:

Mindy Cuppy Digitally signed by Mindy Cuppy
Date: 2018.11.14 17:03:30
-08'00'
Mindy Cuppy, City Clerk

The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.

CITY OF SACRAMENTO

**PATHWAYS TO HEALTH + HOME
DATA SHARING AGREEMENT**

This data sharing agreement ("Agreement") is made at Sacramento, California as of November 8, 2018 ("Effective Date"), by and between the City of Sacramento ("City") and the County of Sacramento, Department of Health Services ("Partner"). City and Partner may be collectively referred to herein as "Parties" or in the singular as "Party," as the context requires.

Background

- A. The City is the Lead Entity for the Pathways to Health + Home ("Pathways") Whole Person Care ("WPC") program in Sacramento County as a business associate of the State of California's Department of Health Care Services ("DHCS"). Pathways is a multi-year, statewide Medi-Cal waiver program that allows local communities to coordinate physical health, behavioral health, and social services for vulnerable individuals who are high users of multiple health care systems and continue to have poor outcomes.
- B. Partner is a provider of supportive services to individuals enrolled in Pathways ("Clients").
- C. The WPC pilot was approved by the Centers for Medicare and Medicaid Services ("CMS") as an amendment to California's Section 1115(a) demonstration ("Medi-Cal 2020"). This Agreement is being executed to facilitate the transfer of certain Client data from Partner to DHCS via the City in support of the public health intervention efforts under WPC.
- D. Data exchange is necessary, to the extent permitted by federal and state laws, to identify potential enrollees for the WPC pilot project and coordinate access and delivery of services to the identified population. In the exchange of data, the Parties desire to maintain the privacy and security of Protected Information (as defined below) in accordance with applicable laws.
- E. The City has contracted with a third party ("Data Management Entity"), which is identified in Exhibit 1 of this Agreement, to perform certain data management and reporting obligations on behalf of the City as part of the WPC pilot, including without limitation the following: (1) obtain relevant information from participating Partners as needed to track services provided and outcomes for Pathways Clients; (2) share relevant Client information with other participating Partners providing services to the Client as needed for effective care coordination and reporting, in compliance with HIPAA and all other applicable laws; and (3) compile, aggregate, and use data in the reporting and

analytics system as deemed necessary by the City to deliver appropriate reports for Pathways program management to DHCS.

- F. The City is signing separate Data Sharing Agreements (“DSAs”) with all Partners who will share Protected Information for the Pathways program with each other and/or with the City. All Partners are bound by the terms of the DSA for such sharing of Protected Information related to the Pathways program.

Based on the foregoing background, City and Partner agree as follows:

1. **Purpose and Scope.** In providing services for the Pathways program, Partner will share Protected Information (as defined below) with the City and/or other Partners in accordance with applicable state and federal laws and regulations for the following purposes:
 - A. Identification of individuals potentially eligible for Pathways enrollment (data may include, but is not limited to, demographics, referring entity detail, insurance coverage detail, housing status if known, medical history relevant to enrollment criteria such as hospital emergency department and inpatient utilization, and known assessments/screenings).
 - B. Monitoring of outcome measures and reporting. Data will be reported to the City or its designee for submission to DHCS for relevant services and outcomes, as per DHCS reporting requirements. The Pathways team will work with Partner to determine which specific data each Partner will be responsible for reporting to City, depending on services provided and access to data sources.
 - C. The coordination of health and human services, such as sharing of information for collaborative care planning (data may include, but is not limited to, event notifications including hospital emergency department and inpatient admit/discharge information, clinical care summaries, and care plan elements).

The Parties will collaborate to define specific mutually agreeable data transmission methods through the Pathways IT and Steering Committees.

2. **Definitions.** When presented as capitalized terms in this Agreement, the following terms have the meanings indicated below:
 - A. “*Authorized User*” shall mean a Party’s employees, agents, assigns, representatives, or independent contractors authorized to access, use or disclose information from another Party’s System.
 - B. “*Breach*” shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the Final Omnibus Rule.

- C. *"Business Associate Agreement"* shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and Final Omnibus Rule.
- D. *"Client"* shall mean a person who is eligible for, and enrolled in, Pathways.
- E. *"Confidentiality Agreement"* shall mean an agreement between a Party and one or more Authorized Users that establishes and defines restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information.
- F. *"Confidential Information"* means any data, business, financial, operational, customer, member, user, vendor, provider, proprietary, personally identifiable, or other information disclosed by one Party to the other and not generally known by or disclosed to the public.
- G. *"Covered Entity"* shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and Final Omnibus Rule.
- H. *"HIPAA Rules"* means the Health Insurance Portability and Accountability Act of 1996 (*"HIPAA"*), the Health Information Technology for Economic and Clinical Health Act (*"HITECH"*), and any requirements and regulations promulgated thereunder.
- I. *"Lead Entity"* means the organization responsible for coordinating and monitoring the WPC pilot and serves as the single point of contact for the Department of Health Care Services. For the Sacramento WPC program (*"Pathways"*), the City is the Lead Entity.
- J. *"Partner(s)"* means a Partner to the City in implementing the Pathways program who has signed a Data Sharing Agreement with the City, including without limitation hospitals, managed health care plans, health services, specialty mental health agencies or departments, public agencies or departments, substance use disorder programs, human services agencies, housing authorities, public health departments, and community-based organizations.
- K. *"Personally Identifiable Information"* means information which can be used to distinguish or trace an individual's identity, including without limitation the individual's name, social security number, or biometric records.
- L. *"PHI"* shall mean *"protected health information"* as defined in 45 C.F.R. § 160.103.
- M. *"Proprietary Information"* shall mean all materials, information and ideas of a Party including, without limitation: patient names, patient lists, patient records,

patient information, operation methods and information, accounting and financial information, marketing and pricing information and materials, internal publications and memoranda and, if notice thereof is given, other matters considered confidential by a Party. Proprietary Information shall not include information which: (i) is readily available or can be readily ascertained through public sources; (ii) a Party has previously received from another entity unrelated to this Agreement; (iii) would cause a Party to be in violation of the law; (iv) negatively impacts Party's licensure, accreditation or participation in any federally or state funded healthcare program, including without limitation the Medicare and Medicaid programs; or (v) is information received by a Party that is used in compliance with Section 3(A) below and integrated into the records of the receiving Party.

- N. *"Protected Information"* shall mean PHI and Proprietary Information.
- O. *"System"* shall mean software, portal, platform, or other electronic medium controlled or utilized by a Party through which or by which the Party exchanges Protected Information under this Agreement. For purposes of this definition, it shall not matter whether the Party controls or utilizes the software, portal, platform or other medium through ownership, lease, license, or otherwise.

3. **Compliance with Laws Governing the Disclosure of Client Protected Information.**

- A. The use or disclosure of Client information qualifying as PHI shall be made in accordance with the HIPAA Rules.
- B. PHI shared under this Agreement shall be the minimally necessary PHI needed for treatment, coordination of care, and/or other health care operations under the Pathways program.
- C. Any Client Protected Information that constitutes "medical information," as defined under the California Confidentiality of Medical Information Act ("CMIA"), shall be disclosed in accordance with the requirements of CMIA.
- D. If the disclosure of Client Protected Information would include information and records obtained in the course of providing mental health services from a facility subject to the additional privacy protections under the Lanterman-Petris-Short Act ("Lanterman Act") or if it would be information originating from a federally assisted drug abuse program subject to the additional privacy protections provided by 42 C.F.R. Part 2 that identifies a patient as having or having had a substance use disorder ("SUD"), the Party making the disclosure will obtain the appropriate authorization(s) or consent(s) required by the Lanterman Act and/or 42 C.F.R. Part 2 from the Client prior to making the disclosure.

- E. Each Party is responsible for its own compliance obligations under the HIPAA Rules, CMIA, the Lanterman Act, and 42 C.F.R. Part 2.
- F. The Parties shall not use or disclose Client Protected Information other than as permitted or required by this Agreement.
- G. The Parties intend and in good faith believe that this Agreement complies with all federal, state and local laws. If any provision of this Agreement is declared void by a court or binding arbitration, or rendered invalid by any law or regulation (including without limitation any regulation or requirement of accreditation, tax-exemption, federally funded health care program participation or licensure which (i) invalidates the provisions of this Agreement; (ii) would cause a Party to be in violation of the law; or (iii) jeopardizes the Party's licensure, accreditation or participation in any federally or state funded health care program, including without limitation Medicare and Medicaid programs), and if such provision is necessary to effectuate the purposes of this Agreement, the Parties agree to attempt to renegotiate in good faith the Agreement to comply with such law(s) to the satisfaction of all Parties. In the event the Parties are not able to mutually agree to a new agreement within 60 days, then this Agreement shall automatically terminate. If any provision of this Agreement that is not necessary to effectuate the purposes of the Agreement is declared void or rendered invalid as specified above, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- H. Each Party, whether providing, receiving, or using Protected Information shall comply with the following:
 - (1) Establish and implement appropriate policies and procedures to prevent unauthorized access, use, and disclosure of Protected Information and ensure that such policies and procedures do not conflict with and are not less restrictive than this Agreement.
 - (2) Regularly monitor and audit access to Protected Information and take prompt corrective action to remedy any Breach of Protected Information, mitigate to the extent practicable any harmful effect of a use or disclosure of Protected Information, and take any other action required by applicable federal and state laws and regulations pertaining to such Breach.
 - (3) Notify the affected Party within 24 hours of the discovery of unsecured Protected Information in electronic or other media if: (1) the Protected Information was, or is reasonably believed to have been accessed or acquired by an unauthorized person, (2) there is any suspected security incident, intrusion or unauthorized access, (3) there is suspected use or disclosure of Protected Information in violation of this Agreement, or (4)

there is potential loss of confidential data affecting this Agreement. The Parties shall take all reasonable steps to mitigate the Breach. For purposes of this paragraph, "affected Party" shall include any Party regarding which there is a reasonable possibility that the Party's System or data thereon could be negatively impacted by the Breach.

The Parties acknowledge and agree that this Section constitutes notice by Partner to City of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to City shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Partner's firewall, port scans, unsuccessful log-on attempts, denials of service, or any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Protected Information.

- (4) Provide all Authorized Users with appropriate education and training on the requirements of this Agreement.
- (5) Provide upon request copies or detailed summaries of its privacy and security policies and procedures to the other Party and, upon reasonable request by another Party, demonstrate compliance with its policies and procedures.

I. The provisions of Section 3 shall survive termination of this Agreement.

4. **Confidential Information.**

- A. Each party shall maintain the other Party's Confidential Information in confidence and will protect such information with the same degree of care that such Party exercises with its own Confidential Information, but in no event less than a reasonable degree of care. If a Party suffers any unauthorized disclosure, loss of, or inability to account for the Confidential Information of the other Party, then the compromised Party shall immediately notify the other Party and shall take such actions as may be necessary or reasonably requested by the other Party to minimize the damage that may result therefrom.
- B. Except as provided in this Agreement, a Party shall not use or disclose (or allow the use or disclosure of) any Confidential Information of the other Party without the express prior written consent of such Party. If a Party is legally required to disclose the Confidential Information of the other Party, the Party required to disclose will, as soon as reasonably practicable, provide the other Party with written notice of the applicable order or subpoena creating the obligation to disclose so that such other Party may seek a protective order or other appropriate remedy. Regardless, the Party subject to such disclosure obligation

will only disclose that Confidential Information which the Party is advised by legal counsel as legally required to be disclosed.

5. **Term and Termination.**

- A. **Term.** This Agreement shall be effective from the Effective Date until this Agreement is terminated by either Party or December 31, 2021, whichever is earlier. Either Party may only terminate this Agreement if that Party is no longer sharing Protected Information for the City's Pathways program. Termination shall be achieved by providing the other Party with sixty (60) days prior written notice.
- B. **Temporary Termination of Access to Protected Information.** Each Party reserves the right to temporarily and immediately terminate another Party's access to Protected Information at any time if the Party becomes aware that another Party has suffered a Breach of the security of its System or has violated any of the terms of this Agreement, including without limitation accessing any information that a Party would not otherwise be authorized to receive pursuant to this Agreement, improperly disclosing Protected Information, or otherwise failing to abide by the appropriate policies and procedures outlined in this Agreement. Access will be restored once the Breach is cured and/or adequate assurances have been provided that the breaching Party has resumed compliance with the terms of this Agreement.
- C. **Effect of Termination.** Upon termination or expiration of this Agreement, the Parties acknowledge that return or destruction of Protected Information may not be feasible. However, the Parties shall take reasonable measures to maintain the privacy, confidentiality, and security of Protected Information until the Protected Information can be returned or destroyed. The provisions of this section shall survive expiration or termination of this Agreement.

6. **Warranties.**

- A. The Parties hereby disclaim all implied and express warranties regarding their respective Systems, whether arising from course of dealing or otherwise. No Party warrants that (i) the performance of a System or delivery of the Protected Information or (ii) the content of the Protected Information will be uninterrupted or error free.
- B. Without limiting any other provision of this Agreement, each Party and such Party's Authorized Users shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for their respective patients and clients.

7. **Indemnity.** Each Party (hereafter the "Indemnifying Party") shall defend, hold harmless and indemnify the other Party and other Partners (hereafter "Indemnified Party"), their officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from data security breaches, personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by the Indemnifying Party, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of the Indemnified Party, its agents, servants, or independent contractors who are directly responsible to Indemnified Party, except when such agents, servants, or independent contractors are under the direct supervision and control of the Indemnifying Party. A Party's maintenance of any insurance policies shall not limit the liability of the Party hereunder. The provisions of this section shall survive any expiration or termination of this Agreement.
8. **Insurance.** Each Party must obtain at its own cost and expense, and keep in force and effect during the term of this Agreement, policies of insurance or programs of self-insurance with coverage amounts appropriate for the size and nature of each Party's activities pertaining to Pathways, and in compliance with applicable laws and government program requirements.
9. **Representatives.** All communications pertaining to this Agreement shall be referred to the following representatives:

Partner:
Stephanie Kelly, LMFT
Health Program Manager
Sacramento County,
Department of Health Service
Division of Behavioral Health
7001 East Parkway
Sacramento, CA 95823
kellyst@saccounty.net

City:
Emily Halcon
Homeless Services Coordinator
Office of the City Manager
City of Sacramento
915 I Street, 5th Floor
Sacramento, CA 95814
ehalcon@cityofsacramento.org

10. **Binding on Successors.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the Parties.
11. **Independent Contractor.** At all times during the term of this Agreement, Partner shall be an independent contractor and no relationship of employer-employee shall exist between the City and Partner for any purpose whatsoever. Partner shall not be entitled to any benefits payable to employees of the City.
12. **Subcontractors.** Partner shall require any of its subcontractors that acquire, access, disclose, or use Protected Information to comply with the terms and conditions of this Agreement and indemnify the City to the same extent required by Section 7 above.
13. **Partner Not Agent.** Except as specified in writing, either Party's personnel shall have no authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent or to bind the other Party to any obligation whatsoever.
14. **Entire Agreement.** This Agreement, which includes all attachments and all documents that are incorporated by reference, contains the entire agreement between the Parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Partner, and by City, in accordance with applicable provisions of the Sacramento City Code.
15. **Attorney Fees.** The Parties shall bear their own costs and attorneys' fees incurred in connection with this Agreement.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Waiver.** No waiver by either party of any specific default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder. No waiver shall be effective unless it is in writing and signed by the waiving Party.

18. **Authority.** The individuals signing this Agreement for the Parties represent and warrant that they are authorized to sign this Agreement on behalf of the Parties and to bind the Parties to the performance of their obligations hereunder.

[Signature Page Follows]

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Christopher Conlin, Assistant City Manager
for
Howard Chan, City Manager

APPROVED AS TO FORM:

Maria Hansen

City Attorney

ATTEST:

City Clerk

Sacramento County, Department of Health Services

Maryann Duke
Peter Beilenson, MD, MPH, Director of Health
Services

TYPE OF BUSINESS ENTITY (*check one*):

- ____ Individual/Sole Proprietor
____ Partnership
____ Corporation (*may require 2 signatures*)
____ Limited Liability Company
____ ☒ Other (*please specify: (Government)*)

Signature

Print Name

Title

Additional Signature (*only if required*)

Print Name

Title

Federal I.D. No.

State I.D. No.

CONTRACT AND CONTRACTOR TAX STATUS
REVIEWED AND APPROVED BY COUNTY COUNSEL

By:  _____ Date: 10-12-18

CITY OF SACRAMENTO

**PATHWAYS TO HEALTH + HOME
DATA SHARING AGREEMENT**

Exhibit 1

1. Healthy Community Forum for the Greater Sacramento Region dba Sacramento Covered currently serves as the Data Management Entity for Pathways. City will notify all Partners of any change in the Data Management Entity.
2. Upon execution, parties will be provided with a link to a webpage on the Pathways website listing the organizations with fully executed DSAs in force.