



May 5, 2020

Board of Supervisors  
County of Kern Administrative Center  
1115 Truxtun Avenue

**PROPOSED APPROVAL OF STANDARD FORM AGREEMENT FOR  
THE BEHAVIORAL HEALTH AND RECOVERY SERVICES DIRECTOR TO APPROVE  
MEMORANDA OF UNDERSTANDING WITH KERN COUNTY  
HOMELESS COLLABORATIVE PARTNER AGENCIES  
(Fiscal Impact: None)**

Behavioral Health and Recovery Services (BHRS) requests authorization for the Behavioral Health and Recovery Services Director to approve standard form Memoranda of Understanding (MOUs) with Kern County Homeless Collaborative partner agencies on behalf of the County. There is no monetary compensation involved with these agreements.

The Kern County Homeless Collaborative must develop and sustain a countywide Homeless Management Information System ("HMIS") that will track homelessness in Kern County, as mandated by the United States Department of Housing and Urban Development (HUD) for local jurisdictions wishing to continue receiving certain HUD funding.

The HMIS system will provide the basis for a more timely, better informed, coordinated and accountable response to homelessness, and enable the community to identify service trends, needs, and gaps, and evaluate progress in helping homeless people transition to permanent, stable housing.

The purpose of the standard form MOU is to articulate the roles, responsibilities, terms, and conditions of participation, and working relations of the parties involved directly in the Homeless Management Information System.

The standard form agreement has been approved by the Office of County Counsel. Counsel concurs with the request for individual MOUs to be signed and approved by the BHRS Director.

Therefore, IT IS RECOMMENDED your Board approve the standard form agreement, adopt resolution, and authorize the Behavioral Health and Recovery Services Director to approve MOUs with Kern County Homeless Collaborative partner agencies on behalf of the County.

Respectfully submitted,

Bill Walker, LMFT, Director

Cc: County Administrative Office  
Auditor-Controller



**KERN COUNTY HOMELESS COLLABORATIVE  
HOMELESS MANAGEMENT INFORMATION SYSTEM**

**MEMORANDUM OF UNDERSTANDING**

**(County of Kern - (Partner Agency))**

**THIS MEMORANDUM OF UNDERSTANDING** ("MOU") is made and entered into on \_\_\_\_\_ by and between the County of Kern, a political subdivision of the State of California, as represented by its Behavioral Health and Recovery Services Department ("KernBHRS" or "Department"), and Contractor Name, ("Partner Agency"), a (legal status), with its principal place of business located at Address, City, State, Zip , and doing business within the County of Kern. KernBHRS and Partner Agency may be referred to individually as a "Party" and collectively as the "Parties."

**WITNESS ETH:**

**WHEREAS:**

- A. The Kern County Homeless Collaborative must develop and sustain a countywide Homeless Management Information System ("HMIS") that will track homelessness in Kern County, California, as mandated by the United States Department of Housing and Urban Development (HUD) for local jurisdictions wishing to continue receiving certain HUD funding; and
- B. The HMIS system will provide the basis for a more timely, better informed, coordinated and accountable response to homelessness, and enable the community to identify service trends , needs, and gaps, and evaluate progress in helping homeless people transition to permanent, stable housing; and
- C. The purpose of the MOU is to articulate the roles, responsibilities, terms, and conditions of participation, and working relations of the parties involved directly in the Homeless Management Information System.

**NOW, THEREFORE,** the parties mutually agree as follows:

I. **TERM**

This MOU shall be deemed effective as of the date first entered above and shall remain in effect during the term of the HUD Supportive Housing Program ("SHP") grant that funds the HMIS, or unless sooner terminated as hereinafter provided.

The term of the MOU may be extended or modified only by written consent of the parties hereto.

## 2. **DEFINITIONS**

- a. "Collaborative" refers to the Kern County Homeless Collaborative, and unincorporated group of agencies and individuals that have an interest in housing and services for homeless people in the county and who desire to implement the HMIS.
- b. Continuum of Care (CoC) - refers to the Kern County Homeless Collaborative.
- c. "HMIS" refers to the Kern County Homeless Management Information System.
- d. "KernBHRS" refers to Kern Behavioral Health and Recovery Services. KernBHRS is both the System Administrator and an agency participating in the HMIS.
- e. "HMIS Committee" refers to the advisory committee of the Collaborative responsible for overseeing the HMIS.
- f. "HMIS Agencies" refers to all of the agencies, including Partner Agency, each having signified its commitment to participate in the HMIS by executing a Memorandum of Understanding substantially in the form of this MOU.
- g. "System Administrator" refers to the entity responsible for administering, managing, and operating the HMIS, including the system software, server, and other components, in this case the Information Technology Services (ITS) division of KernBHRS.
- h. "Person Served" refers to the homeless individuals and families who declare themselves to be homeless through one or more HMIS Agencies written intake or applications form(s).
- i. "User" refers to an employee or volunteer of Partner Agency who is issued a license to use HMIS by the System Administrator and who is issued, by Partner Agency, a confidential User ID and password that signifies authorization to access and/or update the Partner Agency HMIS data.

## 3. **PROJECT MANAGEMENT AND OVERSIGHT**

- a. Community Sanction. The HMIS is being developed and operated at the request and under the auspices of the Collaborative, including the HMIS Agencies.
- b. Fiscal Agent. The County of Kern is the applicant recipient, and fiscal agent for the HUD SHP grant that funds the HMIS.
- c. System Administration KernBHRS through their ITS, has been chosen by the Collaborative to be the System Administrator with primary responsibility for implementing, operating, and maintaining the HMIS.
- d. HMIS Committee. The HMIS Committee will be responsible for advising the Collaborative and the System Administrator about the implementation and operation of the HMIS. The HMIS Committee will meet at least quarterly to review

the progress of implementation, identify and resolve problems, update policies and procedures, and plan new or expanded operations.

**4. SOFTWARE AND VENDOR SELECTION**

The Collaborative has selected a HMIS to be provided by Clarity Human Services by Bitfocus Inc.

**5. COSTS**

- a. The expenses associated with purchasing, installing, and operating the server, purchasing user licenses, and providing training on entering data and retrieving reports will be provided by the System Administrator by grants in force now or in the future, for as long as such grant funds are available for such purposes.

Expenses incurred by Partner Agency, including but not limited to staff time, training time, in-house hardware, software, and Internet connections shall be borne by Partner Agency.

- b. With the approval of the HMIS Committee and System Administrator, Partner Agency may contract with the HMIS software vendor to modify or upgrade the HMIS software to meet the specific needs of the Partner Agency. All fees or charges for such changes shall be the responsibility of the Partner Agency and not the System Administrator, County, or other HMIS Agencies.

**6. PARTNER AGENCY AND SYSTEM ADMINISTRATOR ROLES AND RESPONSIBILITIES**

- a. Partner Agency shall:

1. Have in place and maintain all necessary compatible computer hardware, software and Internet connections needed to facilitate the input and sharing of Persons Served data in the HMIS.
2. Input and maintain Persons Served files necessary to maintain current and accurate records in the HMIS;
3. Designate a point person(s) within the Partner Agency to contact regarding HMIS management issues and a Partner Agency representative(s) to serve on the HMIS Committee of the Collaborative; and
4. Participate in orientation and training activities necessary to obtain a software user license and implement and use the HMIS.

- b. System Administrator shall;

1. Apply for and administer HUD SHP grant funds to implement and support the HMIS;
2. Purchase, install, host, and maintain all central site HMIS software and equipment;

3. Pay software user license and access fees for HMIS Agencies with funds derived from the SHP grant;
4. Provide staff to administer the HMIS and deliver user training to HMIS Agencies;
5. Provide initial training and periodic updates to that training to HMIS Agencies on the use of the HMIS;
6. Act as the primary contact between the HMIS vendor and all Partner Agencies regarding technical issues involving the HMIS, provide technical assistance, trouble shooting, and special aggregate reports to HMIS Agencies solely with regard to the operation of the HMIS for the Partner Agency and solely at the discretion of KernBHRS; and
7. Compile Annual Performance Reports (APRs) for the Continuum of Care (CoC) and other aggregate reports for the HMIS as a whole, and compile or provide technical assistance on other special aggregate reports at the sole discretion of KernBHRS and to a level considered reasonable by KernBHRS

7. **REPORTS**

- a. Partner Agency shall retain access to identifying and statistical data in the HMIS on the Persons Served by Partner Agency.
- b. Access by Partner Agency to data on Persons Served by other Collaborative members shall be limited to non-identifying and statistical data, except that Partner Agency may make Partner Agency data available to other entities by other agreements.
- c. Partner Agency, or the Collaborative, may make aggregate data available to other entities for funding or planning purposes.

8. **SECURITY**

- a. Data will be shared electronically via a secure, encrypted, web-based system to HMIS Agencies only.
- b. Software provider will secure the location of, physical access to, and maintenance and operation of, the central server and database.
- c. Software provider will limit access to the database to HMIS Agencies and protect HMIS data to the extent provided for in the HMIS security from accidental or intentional unauthorized modification, disclosure or destruction.
- d. Partner Agency shall maintain the security and confidentiality of HMIS data within Partner Agency and shall be responsible for the actions of its Users and their supervision. This shall include the following;

1. Partner Agency shall permit access to HMIS or information obtained from HMIS by Partner Agency employees and staff for business purposes only;
2. Partner Agency shall permit access to HMIS by use of the confidential User I.D. and password that the User may not share with others;
3. Each User must have completed HMIS software use and software related confidentiality training, and have signed a User Agreement that specifies the responsibilities of each user of the HMIS.
4. Partner Agency shall allow access to HMIS only from secured computers that are physically present on Partner Agency premises, owned by the Partner Agency, or approved by the Partner Agency for the purpose of accessing and working with the HMIS;
5. Partner Agency shall ensure the HMIS workstations are protected from viruses by commercially available and effective virus protection; and
6. Partner Agency shall at all times comply with security requirements set forth by HUD, the software vendor or the Collaborative.

**9. DATA ENTRY STANDARDS**

- a. Information entered into the HMIS by Partner Agency shall be truthful, accurate, and complete to the best of its knowledge.
- b. Partner Agency shall not solicit information from Persons Served or enter information about Persons Served into the HMIS database unless the information is required for a legitimate business purpose such as to provide services to the Person Served, to conduct evaluation or research, to administer the program, or to comply with regulatory requirements.
- c. Partner Agency will provide Persons Served with a verbal explanation of the HMIS and arrange for a qualified interpreter or translator in the event that the Person Served requires such translation.
- d. Partner Agency will not enter any confidential Person Served information into the HMIS or divulge any confidential information received from the HMIS to any organization or individual without proper written consent by the Person Served unless otherwise permitted by relevant regulations or laws.
- e. Partner Agency shall enter information into the HMIS database promptly upon receipt, but in all cases no more than ten (10) business days from the date of the receipt of such.
- f. Partner Agency will not alter or override information entered by other HMIS Agencies.

**10. CONFIDENTIALITY**

- a. Partner Agency and KernBHRS will uphold relevant federal and state confidentiality regulations and laws that protect Persons Served records, and will only release confidential Persons Served records with written consent from the

Person Served, or the Person's Served legal guardian, unless otherwise provided for or required by regulations or law.

- b. Partner Agency and KernBHRS will abide specifically by the federal confidentiality regulations as contained in the Code of Federal Regulations, 42 CFR, Part 2, regarding disclosure of alcohol and/or drug abuse records. In general terms, the Federal regulations prohibit the disclosure of alcohol and/or drug abuse records unless disclosure is expressly permitted by written consent of the person to whom it pertains or as otherwise permitted by 42 CFR, Part 2. A general authorization for the release of medical or other information is not sufficient for this purpose. The partner Agency understands that federal rules prohibit sharing any information about persons served for any alcohol or drug abuse, in the furtherance of a criminal investigation or prosecution.
- c. Partner Agency and KernBHRS will abide by the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and corresponding regulations passed by the United States Department of Health and Human Services. In general, the regulations provide people with rights to control the release of medical information, including advance consent for most disclosures of health information, the right to see a copy of health records, the right to request a correction to health records, the right to obtain documentation of disclosures of their health information, and the right to an explanation of their privacy rights and how information may be used or disclosed. The current regulation provides protection for paper, oral, and electronic information.
- d. Partner Agency and KernBHRS will abide by California law(s), which in general terms requires safeguarding of an individual's personal health information.
- e. KernBHRS expects that the Partner Agency will institute a business associate agreement or similar document with other HMIS partner agencies, as required to safeguard personal health information.
- f. KernBHRS agrees to abide by the Business Associate Provisions set forth in Exhibit A, which is attached hereto and made a part hereof.

11. **TERMS AND CONDITIONS OF MOU**

- a. No part of this MOU may be transferred or assigned without the written consent of the parties hereto.
- b. This MOU will be governed and construed in accordance with the laws of the State of California.
- b. Either party to this MOU shall have the right to terminate the MOU with thirty (30) days written notice to the other party. In the event that this MOU is terminated, any data previously entered will remain in the HMIS. Access to this information will be restricted to user in aggregate reports.

12. **INDEMNIFICATION**

Both parties to this Agreement agree to indemnify, defend, and hold harmless to the other party and their officers, agents and employees, from any and all claims, demands judgments, damages, costs, liabilities or losses arising from, or in any way relating to, their respective acts or omissions, and the acts or omissions of their officers, agents, and employees, under this MOU.

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**IN WITNESS WHEREOF**, the Parties have executed this MOU on the date and year first hereinabove written.

**Behavioral Health and Recovery Services**

**PARTNER AGENCY**

By: \_\_\_\_\_  
Bill Walker, LMFT, Director

By: \_\_\_\_\_  
Name, Title  
"Contractor"

**APPROVED AS TO FORM**  
Office of the County Counsel

By: \_\_\_\_\_  
Ann E Garza, Deputy

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**EXHIBIT A "BUSINESS ASSOCIATE PROVISIONS"  
HIPAA COMPLIANCE**

- a. KernBHRS shall comply with and assist the Partner Agency in complying with, the privacy requirements of the Health Insurance Portability and Accountability Act (including but not limited to 42 U.S.C. 1320d et seq.; "HIPAA") and its implementing regulations (including but not limited to 45 CFR Parts 142, 160, 162, and 164). Hereinafter collectively referred to as the "PrivacyRule." Terms used but not otherwise defined in this MOU shall have the same meaning as those terms are used in the Privacy Rule.
- b. Except as otherwise limited in this MOU, KernBHRS may use or disclose Protected Health Information to perform functions, activities, or services for or on behalf of the Partner Agency as specified in this MOU, provided that such use or disclosure would not violate the Privacy Rule if done by the Partner Agency.
- c. KernBHRS shall not use or further disclose Protected Health Information other than as permitted or required by this MOU or as required by law.
- d. KernBHRS shall use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this MOU.
- e. KernBHRS shall report to the Partner Agency any use or disclosure of the Protected Health Information not provided for by this MOU.
- f. KernBHRS shall mitigate, to the extent practicable, any harmful effect that is known to KernBHRS of a use or disclosure of Protected HEALTH Information by KernBHRS in violation of the requirements of this MOU.
- g. KernBHRS shall ensure that any agent, including a subcontractor, to whom it provides Protected HEALTH Information received from, or created or received by KernBHRS on behalf of the Partner Agency agrees to the same restrictions and conditions that apply though this MOU to KernBHRS with respect to such information.
- h. KernBHRS shall provide access, at the request of the Partner Agency, and in the time and manner designated by the Partner Agency, to Protected Health Information in a Designated

Record Set, to the Partner Agency or, as directed by the Partner Agency, to an Individual in order to meet the requirements under 45 CFR 164.524.

- i. KernBHRS shall make any amendment(s) to Protect Health Information in a Designated Record Set that the Partner Agency directs or shall pursuant to 45 CFR 164.526 at the request of the Partner Agency or an Individual, and in the time and manner designated by the Partner Agency.
- j. KernBHRS shall document such disclosures of Protected HEALTH Information and information related to such disclosures as would be required for the Partner Agency to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- k. KernBHRS shall provide to the Partner Agency or an Individual, in time and manner designated by the Partner Agency, information collected in accordance with subsection U), to permit the partner Agency to respond to a requested by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- l. KernBHRS shall make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from or created or received by KernBHRS on behalf of the Partner Agency to the Secretary of the United States Department of Health and Human Services ("Secretary"), in a time and manner designated by the Partner Agency or the Secretary, for purposes of the Secretary determining the Partner Agency's compliance with the Privacy Rule.
- m. In the event that KernBHRS determines that returning or destroying the Protected Health Information is infeasible, KernBHRS shall provide to the Partner Agency notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, KernBHRS shall extend the protections of this MOU to such Protected Health Information and limit further uses and disclosures of such Protect Health Information to those purposes that make the return or destruction infeasible, for so long as KernBHRS, or any of its agent or subcontractors, maintains such Protected Health Information.
- n. The Parties agree to take such action as is necessary to amend this MOU from time-to-time as is necessary for the Partner Agency to comply with the requirements of the Privacy Rule.

**[End of MOU]**