RESOLUTION - ACTION REQUESTED 2017-824

MEETING: December 12, 2017

TO: The Board of Supervisors

FROM: Chevon Kothari, Human Services Director

RE: MOU Between California Health and Wellness and Mariposa County - Whole Person Care

RECOMMENDATION AND JUSTIFICATION:
Approve Data Sharing Agreement with California Health and Wellness and Other Partners as Necessary for Implementation of the Whole Person Care (WPC) Pilot Program; and Authorize the Human Services Director to Sign the Agreement.

The WPC pilot program is ramping up for full implementation and in doing so will be required by the State to have multiple data sharing and other such community partner memorandums of agreement (MOA) as are necessary to achieve the collaborative goals of the WPC program. The attached Data Sharing Agreement with California Health and Wellness is the first of several agreements and MOA's that the Human Services Director will be required to sign.

This data will be aggregated into the WPC e-BHS software system that is cloud based and thus will not have any effect on the county data systems.

Other MOA's will address our Community Partners' willingness to participate in WPC and allow for activities, reporting, and monetary incentives for partner participation as approved by the State for our WPC program. Due to the time sensitive nature of these documents, Human Services is requesting approval for the Director's signature on these MOA's and other such documents as necessary for the implementation of WPC.

Approve and authorize the Human Services Director to sign the Data Sharing Agreement with California Health and Wellness and other community partners' MOA's and data sharing agreements as necessary for the implementation of WPC pilot program.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On February 28, 2017, the Mariposa County Board of Supervisors received a report from the Human Services Department for discussion and direction regarding submission of the Whole Person Care Pilot application.

The Mariposa County Board of Supervisors approved the original Whole Person Care Small County MOU by Resolution No. 2017-464 on July 11, 2017.
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The Mariposa County Board of Supervisors approved acceptance of the WPC grant by Resolution No. 2017-464 on July 11, 2017

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If the County chooses not to approve the agreement, the Department will not be able to effectively collaborate and participate in the WPC Pilot Program. The Department will continue the current level of services to this population and forego any benefits to clients and savings that may have been realized by the grant activities.

FINANCIAL IMPACT:
There is no exchange of funds associated with this data sharing agreement. The budget for the new WPC fund 449 is included in the FY17-18 County Budget. There is no impact to the County General Fund.

ATTACHMENTS:
CA HW MOU - WPC Wcsignature (PDF)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
MEMORANDUM OF AGREEMENT
For Participation in the Whole Person Care Pilot Program

BETWEEN

MARIPOSA COUNTY HUMAN SERVICES DEPARTMENT
AND
CALIFORNIA HEALTH AND WELLNESS

Parties

This Memorandum of Agreement (MOA) is made as of this 13th day of November, 2017, by and between the County of Mariposa ("County") by and through its Human Services Department and California Health and Wellness ("Health Plan"), to be effective as provided in Section 2 below ("Effective Date"). The parties to this MOA may be referred to herein collectively as the "parties" or individually as a "party."

Recitals

WHEREAS, the County provides service integration and whole person wellness related services to its clients, as a business associate to the California Department of Health Care Services ("DHCS").

WHEREAS, Health Plan is a managed care organization providing payment for and management of covered Medi-Cal services for its enrolled members ("Members").

WHEREAS, the parties receive funds from the State of California for the provision of certain health-related and care coordination services to their respective clients and Members, and both parties benefit from the coordination of care between the parties, to improve health and/or reduce health care costs, as part of their respective health care operations, and/or those of DHCS.

WHEREAS, the Whole Person Care pilot has been approved by the Centers for Medicare & Medicaid Services ("CMS") as an amendment to California's Section 1115(a) demonstration ("Medi-Cal 2020" or "WPC") and this MOA is being entered into to facilitate the transfer of certain Member data to the County in support of its public health intervention efforts under the WPC.

WHEREAS, the parties desire to collaborate, to the extent permitted by federal and state laws in the identification of potential Medi-Cal participants for the WPC pilot project and coordinate access and delivery of services to the identified population.

THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises set forth below, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Administration of MOA: Each party identifies the following individual to serve as the authorized administrative representative for that party. Any party may change its administrative representative by notifying the other party in writing of such change. Any such change will become effective upon the receipt of such notice by the other party to this MOA. Notice of the authorized representative shall be sent to each party as follows:
2. **Term:** This MOA shall become effective on the date all of the parties have signed this MOA and, unless terminated earlier as provided in this MOA, shall remain in force through June 30, 2021. The term may be extended by mutual written agreement of the parties.

3. **Parties' Responsibilities**

3.1. **Health Plan shall provide the following:**

3.1.1 Identify a liaison to represent the Health Plan in WPC planning and coordination meetings, including the Management Committee, Data Work Group, and the Clinical Review Team.

3.1.2 Provide data to County for the public health intervention purposes of the County to identify Medi-Cal individuals who have incurred high costs to Health Plan for the purposes of:

   a) Matching the data to the Homeless Management Information System and to Behavioral Health Services.

   b) Determining the baseline diagnostic and utilization statistics of this population for reporting to the DHCS, as specified in the Whole Person Care Pilot Participation Agreement.

   c) Ongoing monitoring of utilization statistics and other information required by DHCS that resides in Health Plan databases.

   d) Coordination of care of Medi-Cal individuals that are members of Health Plan and WPC Participants.

3.1.3 Transmit the WPC Member data through a mutually agreeable secure method that is HIPAA compliant.

3.1.4 Coordinate with the Care Coordination Team identified in 3.2.1 below and with the County to ensure access and delivery of services required to be provided by the Health Plan for “WPC Participants” that are identified by the County as part of the County’s WPC services. As used herein “WPC Participants” means persons who are Medi-Cal beneficiaries who are high-cost frequent users of Emergency Departments and/or inpatient services, and are currently experiencing, or at risk of, homelessness and who have any combination of the following conditions: behavior health condition, substance use disorder (SUD), and/or a chronic physical health condition.
3.2 County shall provide the following:

3.2.1 The County through its Care Coordination Team will provide intensive service coordination for Members who are identified by the County for participation in the WPC pilot. The Care Coordination Team will provide, but not be limited to, the following services for each WPC Participant: care management, wellness and education, housing support services, benefits advocacy, mental health services, peer support services, respite services, outreach and engagement services.

3.2.2 Communication to Health Plan shall be delivered by the County, via Care Coordination Team, through electronic reports on a monthly basis, or more frequently as the Parties shall agree, regarding WPC Participants, their participation and progress; provided, however, that the County shall first obtain an authorization from each Health Plan Member to use and disclose their respective Protected Health Information (PHI) (as that term is defined in Section 3.3.1 below).

3.2.3 Coordination and staff support for planning and coordinating meetings, including the establishment of a Management Committee, Data Work Group, and the Clinical Review Team. Other workgroups may be developed based on mutual agreement.

3.2.4 Ensure security of PHI provided by the Health Plan through use of a mutually agreeable secure method for transmitting data, which transmission shall be in accordance with the requirements of applicable state, federal and local laws, including without limitation HIPAA and de-identifying data for review by the Clinical Review Team, and removal of PHI when the list of WPC Participants is provided to the Care Coordination Team.

3.2.5 It is acknowledged and agreed by and between Health Plan and County that the Care Coordination Team will not be performing any services for Members that are deemed part of the benefits provided by Health Plan to Members.

3.3 Compliance With Laws Governing the Disclosure of Member Information

3.3.1 The parties agree that:

3.3.1.1 use or disclosure of Member information qualifying as “protected health information” (“PHI”), as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act (“HITECH”), shall be made in accordance with the requirements and any regulations promulgated thereunder (collectively, the “HIPAA Rules”);

3.3.1.2 PHI shared under this MOA shall be the minimally necessary PHI needed to carry out the purposes of this MOA and is shared for the purpose of treatment, coordination of care and/or other health care operations;

3.3.1.3 where applicable, any Member Information that constitutes “medical information,” as that term is defined under the California Confidential Medical Information Act (“CMIA”), is disclosed in accordance with the requirements of that law; and

3.3.1.4 if the disclosure of Member 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 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 Member prior to making the disclosure.

Each party is responsible for its own compliance obligations under the HIPAA Rules, CMIA, the Lanterman Act, and/or 42 C.F.R. Part 2.

3.3.2 The parties also agree not to use or disclose Member information other than as permitted or required by this MOA.

3.4 Confidential Information

3.4.1 "Confidential Information" means any data, business, financial, operational, customer, member, user, vendor, provider or other information disclosed by one party to the other and not generally known by or disclosed to the public.

3.4.2 Each party shall maintain all of 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 party to whom such Confidential Information was disclosed shall promptly notify and cooperate with the disclosing party and shall take such actions as may be necessary or reasonably requested by the disclosing party to minimize the damage that may result therefrom.

3.4.3 Except as provided in this MOA, 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 counsel as legally required to be disclosed.

The provisions of this Section 3 shall survive termination of this MOA.

4. Mutual Indemnity: Health Plan and the County shall indemnify, defend and hold harmless each other, their respective elected and appointed officers, directors, employees, and agents from and against any demands, claims, damages, liability, loss, actions, fees, costs, and expenses, (including reasonable attorneys' fees and costs), or any damage whatsoever, including but not limited to death or injury to any person and damage to any property, resulting from the misconduct, negligent acts, errors or omissions by the other Party or any of its officers, directors, employees, agents, successors or assigns related to and arising out of this MOA, its terms and conditions, including without limitation a breach or violation of any State or Federal privacy and/or security laws, regulations and guidance relating to the disclosure of PHI, personally identifiable information, including, without limitation, HIPAA or other
Confidential Information of a party hereunder. The terms of this Section 4 shall survive termination of this MOA.

5. **Insurance:** Each party must obtain at its own cost and expense, and keep in force and effect during the term of the MOA (including any extension), policies of insurance or programs of self-insurance with coverage amounts appropriate for the size and nature of each party’s activities pertaining to this MOA, and in compliance with applicable laws and government program requirements. The applicable minimum limits shall in no way limit any party’s indemnification obligations.

6. **Conformance With Rules And Regulations:** The Parties agree that in the performance of their obligations hereunder that it shall be in conformity with all applicable federal, State, County, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all applicable licenses, permits, notices, and certificates as are required. Each Party hereby agrees that it shall further comply with all applicable laws relating to wages and hours of employment, occupational safety, and to fire safety, health, and sanitation.

7. **Permits and Licenses:** Each Party hereby certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to the other Party, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of its respective obligations hereunder. Each Party may reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.

8. **Governing Law:** This MOA shall be governed, interpreted, construed, and enforced in accordance with the laws of the State of California, except to the extent such laws conflict with or are preempted by any Federal law, in which case the Federal law shall govern.

9. **Compensation:** Each Party shall pay their own costs and expenses in carrying out their obligations and the terms of this Agreement.

10. **Third Party Beneficiaries Excluded:** This MOA is intended solely for the benefit of County and Health Plan. Any benefit to any third party is incidental and does not confer on any third party to this MOA any rights whatsoever regarding the performance of this MOA. Any attempt to enforce provisions of this MOA by third parties is specifically prohibited.

11. **Amendments to MOA:** Any party may propose amendments to this MOA by providing written notice of such amendments to the other party. This MOA may only be amended by a written amendment signed by both parties.

12. **Severability:** If any terms or provisions of this MOA or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this MOA, or the application of such term and provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term and provision of this MOA shall be valid and enforced to the maximum extent permitted by law.

13. **Full Agreement:** This MOA represents the full and entire agreement between the parties and supersedes any prior written or oral agreements that may have existed with respect to the subject matter contained herein.
14. **Scope of MOA:** This MOA only applies to the Whole Person Care program described herein and does not set forth any additional current or future obligations or agreements between the parties, except that the parties may by written amendment amend the scope of this MOA, as provided in Section 11 above.

15. **Termination for Convenience/Cause**

15.1 Termination for Convenience: Either Party may, by written notice stating the extent and effective date, terminate this MOA for convenience in whole or in part, at any time with 30 days written notice. This MOA shall terminate immediately upon: (i) the loss of funding by CMS; (ii) termination of the WPC pilot by CMS and/or DHCS.

15.2 Termination for Cause: Either Party may terminate this MOA upon a material breach if such breach has not been cured within thirty (30) days of receipt of a Party’s written notice of a breach.

16. **Dispute Resolution:** In the event of a dispute, the aggrieved Party shall submit a notice of the nature of the dispute to the other Party (“Dispute Notice”). The Parties agree to meet and confer in good faith to attempt to resolve the dispute within thirty (30) days of the Dispute Notice. If the dispute cannot be resolved within such thirty (30) day period, then either Party may seek their legal and equitable remedies at law.

17. **Counterparts:** This MOA may be executed in any number of separate counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument. The executed counterparts may be transmitted via facsimile or PDF.

18. **Notice:** Any notice or other communication to be given under this MOA will be deemed to have been given by either Party to the other Party upon the date of receipt, if hand delivered, or four (4) business days after deposit in the U.S. mail, if mailed to the other Party by registered or certified mail, properly addressed, postage prepaid, return receipt requested, or one (1) business day after deposit with a national overnight courier for next day delivery, in each case addressed to the Party as indicated in Paragraph 1, or such other address as a Party shall request by written notice to the other Party as provided herein.

19. **Assignment:** Neither this MOA, nor any of a Party’s rights or obligations hereunder, is assignable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

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**MARIPOSA COUNTY HUMAN SERVICES DEPARTMENT**

- **Name:** Chevon Kothari
- **Title:** Director, Mariposa Human Services Department
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  Mariposa, CA 95338

**CALIFORNIA HEALTH AND WELLNESS**

- **Name:** Abbie Totten
- **Title:** VP, Government Programs Policy & Strategic Initiatives
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  Suite 200
  Sacramento, CA 95833

_Signed:_

- **Date:** 11/18/17

**APPROVED AS TO FORM:**

_11/13/17_

STEWEN W. DAHLE
COUNTY COUNSEL