



# MARIPOSA COUNTY

Sheriff's Office • (209) 966-3615



## RESOLUTION - ACTION REQUESTED 2016-292

MEETING: June 14, 2016

TO: The Board of Supervisors

FROM: Doug Binnewies, Sheriff-Coroner-Public Administrator

RE: 2016 CorrectCare Administration Agreement

*Business  
associate agreement  
2 agreements*

### RECOMMENDATION AND JUSTIFICATION:

Approve the Business Associate Agreement and the Third Party Administration Agreement for Review of Medical Services Provided to Adult Detention Facility Inmates; and Authorize the Board of Supervisors Chair to Sign the Agreements (2).

CorrectCare under this Agreement will provide medical billing reviews in an attempt to identify and dispute any expenses deemed unnecessary. Since contracting with this group, CorrectCare has consistently provided a savings to the Mariposa County Adult Detention Facility for submitted medical claims.

The terms of the agreement state that all inmates will be enrolled in the Network Discount Program and all medical treatments will be reviewed by CorrectCare prior to an invoice being paid. After the review by CorrectCare; CorrectCare will advise Mariposa County Adult Detention Facility and the Medical Provider of the amount that is justified to be charged for medical services received. If disputed, CorrectCare will present the facts and justification to support the revised invoice to the medical provider.

The terms of the agreement commence July 1, 2016, to June 30, 2017 and will not exceed the total cost of \$7,200.

The Business Associate Agreement is materially the same as the previous year except the three separate addendums have been condensed into Exhibit A. Pursuant to section F of the Third Party Administrative Agreement, Mariposa as the "Covered Entity" and CorrectCare as the "Business Associate" will have access to medical information pertaining to inmates and the Health Insurance Portability and Accountability Act (HIPAA) and these requirements must be followed.

### BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Mariposa County Adult Detention Facility has entered into contracts in the past for services to support inmate services.

### ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve the agreement and continue to pay medical services with no review for

possible county savings by a qualified medical claims adjuster.

**FINANCIAL IMPACT:**

**Funding amounts for this agreement were included in 2016-2017 proposed budget with no requested increase from the previous fiscal year.**

**ATTACHMENTS:**

**Business Associate Agreement (PDF)**

**Third Party Administration Agreement (DOC)**

**CAO RECOMMENDATION**

Requested Action Recommended

  
Mary Hodson, CAO 6/7/2016

**RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]**

**MOVER:** Kevin Cann, District IV Supervisor

**SECONDER:** Marshall Long, District III Supervisor

**AYES:** Rosemarie Smallcombe, Marshall Long, Kevin Cann, John Carrier

**EXCUSED:** Merlin Jones

## BUSINESS ASSOCIATE AGREEMENT

**THIS BUSINESS ASSOCIATE AGREEMENT** (“Agreement”) is made and entered into as of the 1<sup>st</sup> day of July, 2016 (“Effective Date”), by and between CorrectCare – Integrated Health, Inc., (“CorrectCare”) and Mariposa County (“Business Associate”).

**WHEREAS**, the parties have executed an agreement whereby Business Associate provides certain services to CorrectCare, and Business Associate receives, has access to, or creates Protected Health Information in order to provide those services; and

**WHEREAS**, CorrectCare is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, 45 C.F.R. Parts 160 and 164, (“HIPAA”); and

**WHEREAS**, the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”), adopted as part of the American Recovery and Reinvestment Act of 2009, 42 USC §§ 17921-17954, imposes certain requirements on Business Associates; and

**WHEREAS**, HIPAA requires CorrectCare to enter into a contract with Business Associate in order to require certain protections for the privacy and security of Health Information, and HIPAA prohibits the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place.

**NOW THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** Terms used, but not otherwise defined in this Agreement shall have the meanings given them in the Standards for Privacy and Security. For convenience of reference, the definitions of certain terms as of the Effective Date are as follows:

1.1 “Breach” shall mean the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted by the Standards for Privacy and Security that compromises the security or privacy of the Protected Health Information subject to the exceptions set forth in 45 C.F.R. § 164.402.

1.2 “Disclose” and “Disclosure” mean, with respect to Health Information, the release, transfer, provision of access to, or divulging in any other manner of Health Information outside Business Associate’s internal operations or to other than its employees.

1.3 “Individually Identifiable Health Information” means information that is a subset of health information, including demographic information collected from an individual, and (i) is created or received by a healthcare provider, health plan, employer, or health care clearinghouse; and (ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of health care to an individual; and (a) that identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

1.4 “Protected Health Information” means Individually Identifiable Health Information that Business Associate receives from CorrectCare or from another business

associate of CorrectCare or which Business Associate creates for CorrectCare which is transmitted or maintained in any form or medium.

1.5 “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.501, and any amendments thereto.

1.6 “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

1.7 “Standards for Privacy and Security” shall mean the provisions of the Standards for Privacy and Security of Individually Identifiable Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

1.8 “Use” or “Uses” mean, with respect to Health Information, the sharing, employment, application, utilization, examination or analysis of such Health Information within Business Associate’s internal operations.

2. Applicability of Terms; Conflicts. This Agreement applies to all past, present, and future contracts and relationships between Business Associate and CorrectCare, written or unwritten, formal or informal, in which CorrectCare provides any Protected Health Information to Business Associate in any form whatsoever. As of the Effective Date, this Agreement automatically amends all existing agreements between Business Associate and CorrectCare involving the use or disclosure of Protected Health Information. This Agreement shall automatically be incorporated in all subsequent agreements between Business Associate and CorrectCare involving the use or disclosure of Protected Health Information whether or not specifically referenced therein. In the event of any conflict or inconsistency between a provision of this Agreement and a provision of any other agreement between Business Associate and CorrectCare, the provision of this Agreement shall control unless: (i) CorrectCare specifically agrees to the contrary in writing, or (ii) the provision in such other agreement establishes additional rights for CorrectCare or additional duties for or restrictions on Business Associate with respect to Protected Health Information, in which case the provision of such other agreement will control.

3. Obligations and Activities of Business Associate.

3.1 Disclosure. Business Associate may only Use or Disclose Protected Health Information consistent with the Business Associate Provisions of 45 C.F.R. § 164.504(e). Business Associate will not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law or as otherwise authorized by CorrectCare. In disclosing Protected Health Information, Business Associate may only release the minimum necessary to accomplish the intended purpose of the disclosure in accordance with 42 USC § 17935(b) and 45 C.F.R. § 164.520.

3.2 Safeguards. In accordance with 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316, Business Associate will use appropriate safeguards to prevent the Use or Disclosure of the Protected Health Information other than as provided for by this Agreement. Business Associate will develop, implement, maintain, and use appropriate administrative, technical and physical safeguards to preserve the confidentiality, integrity, and availability of Protected Health Information, whether electronic or otherwise, that is created, received, maintained, or transmitted on behalf of CorrectCare, and to prevent non-permitted use or

disclosure of Protected Health Information. These safeguards are required regardless of the mechanism used to transmit the information. Business Associate will document and keep these safeguards current. Business Associate shall also comply with any and all additional security requirements contained in the HITECH Act that are applicable to Business Associates.

3.3 Mitigation. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

3.4 Breach.

3.4.1 Obligation to Report Breach to CorrectCare. Business Associate will report to General Counsel of CorrectCare, in writing, any Security Incident and/or any use and/or disclosure of Protected Health Information that is not permitted or required by this Agreement of which Business Associate becomes aware. Business Associate shall be deemed to have become aware of a Security Incident upon discovery of a potential Security Incident, even if such Security Incident has not been fully investigated, even if it has not yet been determined whether such Security Incident resulted in a Breach. An employee's, officer's or agent's knowledge of a Security Incident shall be imputed to the Business Associate.

3.4.2 Reporting of Breach to CorrectCare. Such report shall be made as soon as reasonably possible but in no event more than two (2) business days after discovery by Business Associate of such unauthorized use or disclosure. This reporting obligation shall include Breaches by Business Associate, its employees, subcontractors, and/or agents. Each such report of a Breach will: (i) identify the nature of the non-permitted use or disclosure; (ii) identify the Protected Health Information used or disclosed; (iii) identify who made the non-permitted use or disclosure; (iv) identify who received the non-permitted use or disclosure; (v) identify what corrective action Business Associate took or will take to prevent further non-permitted uses or disclosures; (vi) identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted use or disclosure; and (vii) provide such other information as CorrectCare may reasonably request.

3.4.3 Notification of Breach. At CorrectCare's request, Business Associate shall notify individuals whose Protected Health Information has been Breached in accordance with the requirements of 45 C.F.R. § 164.404. Such notification shall be approved by CorrectCare prior to distribution or notification. In the event Business Associate shall fail to make that notification, Business Associate will indemnify CorrectCare for any reasonable expenses it incurs in doing so.

3.5 Agents and Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of CorrectCare, executes a written agreement obligating the agent or subcontractor to comply with all terms of this Agreement, including but not limited to, implementation of reasonable and appropriate safeguards to protect Protected Health Information.

3.6 Access. Within five (5) business days of receiving a written request from CorrectCare, Business Associate will provide CorrectCare, or to an Individual as directed by CorrectCare, with access to Protected Health Information from a Designated Record Set of CorrectCare, in order to meet the requirements set forth in 45 C.F.R. §164.524. This provision

does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information from a Designated Record Set of CorrectCare.

3.7 Amendments. Business Associate will make any amendment(s) to Protected Health Information in a Designated Record Set of CorrectCare that CorrectCare directs or agrees to pursuant to 45 C.F.R. §164.526. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information from a Designated Record Set of CorrectCare.

3.8 Records. Business Associate will make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, CorrectCare available to the Secretary of Health and Human Services (the "Secretary") during regular business hours within five (5) business days of receiving a written request from CorrectCare, or sooner if requested by the Secretary, for purposes of the Secretary determining CorrectCare's compliance with HIPAA. Notwithstanding the above, no legal privilege, including the attorney/client privilege, shall be deemed waived by virtue of this provision. To the extent permitted by law, Business Associate will promptly notify CorrectCare of all requests served upon Business Associate by or on behalf of the Secretary for information which may be related to this Agreement. Business Associate shall provide CorrectCare with copies of all Protected Health Information, policies, procedures, or other records or documents provided to the Secretary pursuant to such request.

3.9 Accounting of Disclosures. Business Associate will document such disclosures by Business Associate and its employees, subcontractors and agents of Protected Health Information and information related to such disclosures as would be required for CorrectCare to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528. Within five (5) days of receiving a written request from CorrectCare, Business Associate will provide to CorrectCare or an Individual, at CorrectCare's request, information collected in accordance with the preceding sentence, to permit CorrectCare to respond to a request by an Individual for such an accounting of disclosures.

3.10 Alternative Communications. At CorrectCare's request, Business Associate will implement reasonable alternative means or locations of communication with an Individual as necessary to honor a request granted by CorrectCare pursuant to 45 C.F.R. §§164.522 or 164.526, respectively. Except as the Agreement or any other agreement between CorrectCare and Business Associate may provide otherwise, in the event Business Associate receives an access, amendment, disclosure accounting or confidential communications or other similar request directly from an Individual, Business Associate will redirect the Individual to appropriate CorrectCare personnel. Business Associate will maintain records related to disclosures of Protected Health Information for at least six (6) years after the date of the disclosure.

3.11 Prohibition on the Sale of Electronic Health Records and Protected Health Information. Business Associate shall comply with the prohibition on the sale of Electronic Health Records and Protected Health Information as set forth in 42 USC § 17935(d).

4, Permitted Uses and Disclosures by Business Associate.

4.1 Functions and Activities on CorrectCare's Behalf. Except as otherwise limited in this Business Associate and any other agreement between Business Associate and CorrectCare, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, CorrectCare only for purposes authorized by CorrectCare in a separate written agreement or through specific oral instruction, if such use or disclosure of Protected Health Information would not violate HIPAA if done by CorrectCare itself.

4.2 Business Associate's Operations. Except as otherwise limited in this Agreement or any other agreement between Business Associate and CorrectCare: (a) Business Associate may use Protected Health Information for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities; (b) Business Associate may disclose Protected Health Information for Business Associate's proper management and administration, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that (i) it will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (ii) the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.

5. "Trading Partner" Provisions; Use and Disclosure in Connection with Standard Transactions. If Business Associate conducts Standard Transactions (as defined in 45 C.F.R. Part 162) for or on behalf of CorrectCare, Business Associate will comply, and will require each subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Part 162. Business Associate will not enter into, or permit its subcontractors to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for on behalf of CorrectCare that: (i) changes the definition, data condition, or use of a data element or segment in a Standard Transaction; (ii) adds any data elements or segments to the maximum defined data set; (iii) uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification; or (iv) changes the meaning or intent of the Standard Transaction's implementation specification.

6. Term and Termination.

6.1 Term. This Agreement shall commence as of the Effective Date and shall be coterminous with the agreement referenced herein or attached hereto. All Protected Health Information provided by CorrectCare to Business Associate, or created or received by Business Associate on behalf of CorrectCare, must be destroyed or returned to CorrectCare, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such Protected Health Information in accordance with the provisions of this Section 6.

6.2 Termination for Cause. As provided in HIPAA, including 45 C.F.R. §164.504(e)(2)(iii), upon CorrectCare's reasonable determination that Business Associate has breached a material term of this Agreement, CorrectCare shall be entitled to do any one or more of the following:

(a) Give Business Associate written notice of the existence of such breach and give Business Associate an opportunity to cure upon mutually agreeable terms. If Business Associate does not cure the breach or end the violation according to such terms, or if CorrectCare and Business Associate are unable to agree upon such terms, CorrectCare may

immediately terminate any agreement between CorrectCare and Business Associate which is the subject of such breach.

(b) Immediately terminate any agreement between CorrectCare and Business Associate which is the subject of such breach. If termination of the agreement is not feasible, CorrectCare will report the breach to the Secretary.

(c) Immediately stop all further disclosures of Protected Health Information to Business Associate pursuant to each agreement between CorrectCare and Business Associate which is the subject of such breach.

6.3 Effect of Termination. Except as provided in this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from CorrectCare, or created or received by Business Associate on behalf of CorrectCare. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to CorrectCare notification of the conditions that make return or destruction infeasible. Upon notice that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6.4 Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of Protected Health Information is continuous and survives any termination, cancellation, expiration, or other conclusion of this Agreement or any other agreement between Business Associate and CorrectCare and the completion or earlier termination of the Services in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(I).

7. Notices. All notices pursuant to this Agreement must be given in writing and shall be effective when received if hand-delivered or if delivered by reputable overnight delivery service, facsimile or U.S. Mail to the appropriate address or facsimile number as set forth at the end of this Agreement.

8. Indemnity. Business Associate shall indemnify and hold CorrectCare harmless from all claims, damages, liabilities, judgments, costs, including reasonable attorneys' fees, which CorrectCare may incur in connection with the performance or breach of Business Associate's responsibilities, obligations, warranties, and representations contained in this Agreement. This provision shall survive the termination or expiration of this Agreement.

9. Miscellaneous.

(a) Business Associate and CorrectCare agree that Individuals who are the subject of Protected Health Information are not third-party beneficiaries of this Agreement.

(b) The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties agree that privacy and security requirements applicable to Covered Entities pursuant to the Standards for Privacy and Security are also applicable to Business Associates and are hereby



incorporated by reference. The parties further agree to take such action as may be necessary from time to time to implement the standards and requirements of HIPAA and other applicable laws relating to the security or confidentiality of Health Information. The parties understand and agree that CorrectCare must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Health Information that it receives or creates pursuant to this Agreement. Upon CorrectCare's request, Business Associate agrees to promptly enter into negotiations with CorrectCare concerning the terms of any amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA or other applicable laws. CorrectCare may terminate this Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by CorrectCare pursuant to this Section, or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of Protected Health Information that CorrectCare, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA.

(c) In the event that any provision of this Agreement violates any applicable statute, ordinance or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.

(d) This Agreement may not be amended, altered or modified except by written agreement signed by Business Associate and CorrectCare.

(e) No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision. Nothing in this Agreement shall be deemed a waiver of any legally-recognized claim of privilege available to Business Associate.

(f) The persons signing below have the right and authority to execute this Agreement for their respective entities and no further approvals are necessary to create a binding Agreement.

(g) Neither CorrectCare nor Business Associate shall use the names or trademarks of the other party or of any of the respective party's affiliated entities in any advertising, publicity, endorsement, or promotion unless prior written consent has been obtained for the particular use contemplated.

(h) All references herein to specific statutes, codes or regulations shall be deemed to be references to those statutes, codes or regulations as may be amended from time to time.

(i) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky, and venue for any legal action arising under this Agreement shall be in the courts located in Lexington, Fayette County, Kentucky.

(j) Business Associate understands and acknowledges that any disclosure or misappropriation of any Protected Health Information in violation of this Agreement will cause CorrectCare irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that CorrectCare shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or

breach and for such other relief as may be just and proper. Such right of CorrectCare is to be in addition to the remedies otherwise available to CorrectCare at law or in equity.

(k) Nothing in this Agreement shall be construed to create (1) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (2) a relationship of employer and employee between the parties.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this Agreement, as of the date set forth above.

**BUSINESS ASSOCIATE**

**MARIPOSA COUNTY DETENTION**

**FACILITY**

By: John Carrier  
Its: Chair

**CORRECTCARE – INTEGRATED HEALTH, INC.**

By: Linda Goins  
Its: President

**APPROVED AS TO FORM:**

Steven W. Dahlem  
**STEVEN W. DAHLEM  
COUNTY COUNSEL**