



**Contract Number**

19-595

**SAP Number**

N/A - Revenue

## Department of Public Health

<b>Department Contract Representative</b>	<u>Lisa Ordaz, HS Contracts</u>
<b>Telephone Number</b>	<u>(909) 388-0222</u>
<b>Contractor</b>	<u>Molina Healthcare of California</u>
	<u>Partner Plan, Inc.</u>
<b>Contractor Representative</b>	<u>Vivian Urquizu</u>
<b>Telephone Number</b>	<u>(562) 435-3666</u>
<b>Contract Term</b>	<u>Effective September 1, 2019</u>
<b>Original Contract Amount</b>	<u>\$0</u>
<b>Amendment Amount</b>	<u>N/A</u>
<b>Total Contract Amount</b>	<u>\$0</u>
<b>Cost Center</b>	<u></u>

**Briefly describe the general nature of the contract:**

Required Business Associate Agreement (BAA) between the Department of Public Health (DPH), known as the Business Associate, and Molina, known as the Covered Entity. The BAA sets forth the terms and conditions pursuant to which protected health information (in any format) is used.

The term of the BAA is effective September 1, 2019 and shall terminate on date that the last Agreement remaining in force between the parties is terminated or expires.

**FOR COUNTY USE ONLY**

Approved as to Legal Form

Adam Ebright, County Counsel

Date 8/6/19

Reviewed for Contract Compliance

Jennifer Mulhall-Dauder, HS Contracts

Date 8/8/19

Reviewed/Approved by Department

Trudy Raymundo, Director

Date 8/6/19

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “BAA”), effective September 1, 2019 (the “Effective Date”), is entered into by and between San Bernardino County, Department of Public Health (the “Business Associate”) and Molina Healthcare of California, Inc. (“Covered Entity”) (each a “Party” and collectively the “Parties”).

**WHEREAS**, the Parties have engaged or intend to engage in one or more agreements (each, an “Agreement” and collectively, the “Agreements”) which may require the use or disclosure of PHI in performance of services described in such Agreement or Agreements (the “Services”) on behalf of Covered Entity;

**WHEREAS**, the Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and any regulations promulgated thereunder (collectively the “HIPAA Rules”); and

**WHEREAS**, this BAA, in conjunction with the HIPAA Rules, sets forth the terms and conditions pursuant to which protected health information (in any format) that is created, received, maintained, or transmitted by, the Business Associate from or on behalf of Covered Entity, will be handled between the Business Associate and Covered Entity and with third parties during the term of the Agreement(s) and after its termination.

**NOW THEREFORE**, the Parties agree as follows:

### 1. DEFINITIONS

Unless otherwise provided for in this BAA, terms used in this BAA shall have the same meanings as set forth in the HIPAA Rules including, but not limited to the following: “Availability,” “Confidentiality,” “Data Aggregation,” “Designated Record Set,” “Health Care Operations,” “Integrity,” “Minimum Necessary,” “Notice of Privacy Practices,” “Required By Law,” “Secretary,” and “Subcontractor.” Specific definitions are as follows:

“Breach” shall have the same meaning as the term “breach” at 45 CFR 164.402.

“Business Associate” shall have the same meaning as the term “business associate” at 45 CFR 160.103 and in reference to the party to this BAA, shall mean the first party listed in the first paragraph of this BAA.

“Compliance Date” shall mean, in each case, the date by which compliance is required under the referenced provision of the HIPAA, the HITECH Act or the HIPAA Rules, as applicable, provided that, in any case for which that date occurs prior to the effective date of this BAA, the Compliance Date shall mean the effective date of this BAA.

“Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this BAA, shall mean the second party listed in the first paragraph of this BAA.

“Electronic Protected Health Information” or “Electronic PHI” shall have the same meaning as the term “electronic protected health information” at 45 CFR 160.103.

“HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

“Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” at 45 CFR 160.103.

“Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information, set forth at 45 CFR Parts 160 and 164.

“Security Incident” shall have the same meaning as the term “security incident” at 45 CFR 164.304.

“Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information, set forth at 45 CFR Parts 160 and 164.

“Services” shall mean, to the extent and only to the extent they involve the creation, use or disclosure of PHI, the services provided by the Business Associate to Covered Entity under the Agreement(s), including those set forth in this BAA, as amended by written consent of the parties from time to time.

“Unsecured PHI” shall have the same meaning as the term “unsecured Protected Health Information” at 45 CFR 164.402.

## **2. GENERAL PROVISIONS**

2.1 Effect. This BAA supersedes any prior business associate agreement between the Parties and those portions of any Agreement between the Parties that involve the disclosure of PHI by Covered Entity to Business Associate. To the extent any conflict or inconsistency between this BAA and the terms and conditions of any Agreement exists, the terms of this BAA shall prevail.

2.2 Amendment. Covered Entity may, without Business Associate’s consent, amend this BAA to maintain consistency and/or compliance with any state or federal law, policy, directive, regulation, or government sponsored program requirement, upon forty-five (45) business days’ notice to the Business Associate unless a shorter timeframe is necessary for compliance. Covered Entity may otherwise materially amend this BAA only after forty-five (45) business days prior written notice to the Business Associate and only if mutually agreed to by the parties as evidenced by the amendment being executed by each party hereto. If the Parties fail to execute a mutually agreeable amendment within forty-five (45) days of the Business Associate’s receipt of Covered Entity’s written notice to amend this BAA, Covered Entity shall have the right to immediately terminate this BAA and any Agreement(s) between the Parties which may

require the Business Associate's use or disclosure of PHI in performance of services described in such Agreement(s) on behalf of Covered Entity.

### **3. SCOPE OF USE AND DISCLOSURE**

3.1 The Business Associate may use or disclose PHI as required to provide Services and satisfy its obligations under the Agreement(s), if such use or disclosure of PHI would not violate the Privacy Rule.

3.2 The Business Associate may not use or further disclose PHI in a manner that would violate the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI as necessary:

- a. for the proper management and administration of the Business Associate as provided in Section 3.3; and
- b. to provide Data Aggregation services relating to the Health Care Operations of Covered Entity if required under the Agreement.

3.3 The Business Associate may use or disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Any disclosures of PHI under this section may be made only if:

- a. the disclosures are required by law, or
- b. the Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

3.4 The Business Associate shall not request, use or release more than the Minimum Necessary amount of PHI required to accomplish the purpose of the use or disclosure and shall comply with 42 U.S.C. § 17935(b) as of its Compliance Date. The Business Associate hereby acknowledges that all PHI created or received from, or on behalf of, Covered Entity, is as between the parties, the sole property of Covered Entity.

3.5 The Business Associate or its agents or Subcontractors shall not perform any work outside the United States of America that involves access to, use of, or disclosure of, PHI without the prior written consent of Covered Entity in each instance.

### **4. OBLIGATIONS OF THE BUSINESS ASSOCIATE**

The Business Associate shall:

4.1 Not use or disclose PHI other than permitted or required by this BAA or as Required by Law.

4.2 Establish and use appropriate safeguards to prevent the unauthorized use or disclosure of PHI.

4.3 Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. The Business Associate shall, as of the Compliance Date, comply with the applicable standards at Subpart C of 45 CFR Part 164.

4.4 Promptly report to Covered Entity any unauthorized use or disclosure of PHI, Breach of Unsecured PHI, or Security Incident, within no more than five (5) days, after Business Associate becomes aware of the unauthorized use or disclosure of PHI, Breach of Unsecured PHI or Security Incident. The Business Associate shall take all reasonable steps to mitigate any harmful effects of such unauthorized use or disclosure, Breach of Unsecured PHI, or Security Incident. The Business Associate shall indemnify Covered Entity against any losses, damages, expenses or other liabilities including reasonable attorney's fees incurred as a result of the Business Associate's or its agent's or Subcontractor's unauthorized use or disclosure of PHI, Breach of Unsecured PHI, or Security Incident, including, but not limited to, the costs of notifying individuals affected by a Breach of Unsecured PHI. Indemnification is subject to an ability to demonstrate that no agency relationship exists between the parties.

4.5 The Business Associate shall, following discovery of a Breach of Unsecured PHI, notify Covered Entity of such Breach as required at 45 CFR 164.410, without unreasonable delay, and in no event more than thirty (30) days after the discovery of the Breach. The notification by the Business Associate to Covered Entity shall include: (1) the identification of each individual whose Unsecured PHI was accessed, acquired, used or disclosed during the Breach; and (2) any other available information that Covered Entity is required to include in its notification to individuals affected by the Breach including, but not limited to, the following:

- a. a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach;
- b. a description of the types of Unsecured PHI that were involved in the Breach; and
- c. a brief description of what the Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches.

4.6 In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors or agents that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

4.7 Within ten (10) days of receiving a request, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524.

4.8 Within fifteen (15) days of receiving a request, make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 CFR 164.526.

4.9 Maintain and make available to Covered Entity, within twenty (20) days of receiving a request, the information required to provide an accounting of disclosures to the individual as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.

4.10 Make its internal practices, books and records relating to the use or disclosure of PHI received from or on behalf of Covered Entity available to Covered Entity or the U. S. Secretary of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

4.11 To the extent the Business Associate conducts Standard Transaction(s) (as defined in the HIPAA Rules) on behalf of Covered Entity, Business Associate shall comply with the HIPAA Rules, "Administrative Requirements," 45 C.F.R. Part 162, by the applicable compliance date(s) and shall not: (a) change the definition, data condition or use of a data element or segment in a standard; (b) add any data elements or segments to the maximum defined data set; (c) use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification(s); or (d) change the meaning or intent of the standard's implementation specifications. The Business Associate shall comply with any applicable certification and compliance requirements (and provide the Secretary with adequate documentation of such compliance) under subsection (h) of Title 42 U.S.C. Section 1320d-2.

4.12 To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

## 5. MISCELLANEOUS

5.1 Indemnification. In addition to any indemnities set forth in the Agreement(s), each party will indemnify and defend the other party from and against any and all claims, losses, damages, expenses or other liabilities, including reasonable attorney's fees, incurred as a result of any breach by such party of any representation, warranty, covenant, agreement or other obligation expressly contained herein by such party, its employees, agents, Subcontractors or other representatives.

5.2 Interpretation. Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules.

5.3 No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the

respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 Governing Law and Venue. This BAA shall be governed by California law notwithstanding any conflicts of law provisions to the contrary. The venue shall be the jurisdiction where the applicable services were received by the Covered Entity.

5.5 Notices. Any notices to be given hereunder to a Party shall be made via certified U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below:

**If to Business Associate, to:**

**If to Covered Entity, to:**

Department of Public Health

Molina Healthcare, Inc.

351 North Mt. View Avenue, #303

200 Oceangate, Suite 100

San Bernardino, CA 92415-0010

Long Beach, CA 90802

Attn: Quality and Compliance Officer

Attn: Privacy Official

Fax: 909-387-6228

Fax: 562-499-0789

**6. TERM AND TERMINATION OF BAA**

6.1 Term. The Term of this BAA shall be effective as of the effective date set forth in the first paragraph of this BAA, and shall terminate on date that the last Agreement remaining in force between the parties is terminated or expires, or on the date Covered Entity terminates for cause as authorized in paragraph 6.2 below, whichever is sooner.

6.2 Termination for Cause. Notwithstanding any other provision of this BAA or the Agreement(s), Covered Entity may terminate this BAA and any or all Agreement(s) upon five (5) days written notice to Business Associate if Covered Entity determines, in its sole discretion, that Business Associate has violated a material term of this BAA .

6.3 Obligations of Business Associate Upon Termination. Upon termination of this BAA for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. If PHI is destroyed, Business Associate agrees to provide Covered Entity with certification of such destruction. Business Associate shall not retain any copies of PHI except as Required By Law. If return or destruction of all PHI, and all copies of PHI, received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, is not feasible, Business Associate shall:

- a. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section 6, for as long as Business Associate retains the PHI; and
- b. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set forth in Section 3 above which applied prior to termination.

6.4 Survival. The obligations of Business Associate under this Section shall survive the termination of this BAA and remain in force as long as Business Associate stores or maintains PHI in any form or format (including archival data). Termination of the BAA shall not affect any of the provisions of this BAA that, by wording or nature, are intended to remain effective and to continue in operation.

**INTENDING TO BE LEGALLY BOUND**, the parties hereto have caused this BAA to be executed by their duly authorized representatives.

**“Business Associate”**

  
 \_\_\_\_\_  
 Signature

**Curt Hagman**  
 \_\_\_\_\_  
 Print Name

**Chairman, Board of Supervisors**  
 \_\_\_\_\_  
 Title Date

**“Covered Entity”**

  
 \_\_\_\_\_  
 Signature

**Timothy C. Zevnik**  
 \_\_\_\_\_  
 Print Name

**Privacy Official** 11/26/2019  
 \_\_\_\_\_  
 Title Date

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD  
 LYNNA MONELL  
 Clerk of the Board of Supervisors of the County of San Bernardino

By   
 \_\_\_\_\_  
 Deputy

