

DUI Letter of Certification

**Letter of Certification
For
Driving-Under-The-Influence Program Services**

_____ located at _____ has been certified as a Driving-Under-The-Influence Program Provider (hereinafter referred to as “DUI Program”) by the San Bernardino County Department of Behavioral Health, Substance Use Disorder and Recovery Services Program Administrator (hereinafter referred to as “County”).

Duration and Termination

This Letter of Certification (hereinafter referred to as “Agreement”), between the DUI Program and the County shall commence on **October 1, 2022**, and shall continue without further action until **September 30, 2023**, with the possibility of one additional one-year extension, unless expressly terminated.

Either the DUI Program or the County may terminate this Agreement at any time for any reason or no reason by serving a thirty (30) days’ written notice upon the other party. This Agreement may be terminated at any time by the mutual written concurrence of both the DUI Program and the County.

In the event of termination of this Agreement due to a suspension or revocation of the DUI Program’s license by the California Department of Health Care Services (DHCS) or a voluntary relinquishment of the DUI Program’s license, immediate plans shall be made to transfer or refer all participants served under this Agreement to other County certified/State licensed DUI Program Providers. Participants will not be charged any new assessment fees upon transfer to a new Program. Participants will continue to pay the fees charged when originally enrolled. Such transfer plans shall be coordinated by the County.

Upon termination of this Agreement due to a suspension or revocation of the DUI Program’s license by DHCS or a voluntary relinquishment of the DUI Program’s license, the DUI Program shall deliver or make available to the County all data, reports, records and other such information and materials that may have been accumulated by the DUI Program under this Agreement, whether completed, partially completed, or in progress within fourteen (14) calendar days of said termination date.

1. If the DUI Program shall cease operation of its business, the County shall store the participant records for all DUI Program participants.
2. The DUI Program shall ensure that a list of all currently enrolled participants, including names, birth dates, court case number, and driver license numbers are submitted to the County Alcohol & Drug Program Administrator (CADPA)/designee.
3. The DUI Program is responsible for boxing, indexing, and delivering any and all records that will be stored by the County Medical Records Department.
4. Should the DUI Program fail to relinquish the participant records to the County, the County shall report the DUI Program to DHCS and its qualified professional personnel to the applicable licensing or certifying board(s).

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5. Participants shall receive credit for all services received prior to the Program closing and any money paid for services not rendered shall be refunded immediately by the affected Program through the Performance Bond or Certificate of Deposit.

DUI Program Monitoring

This Agreement is conditioned upon the County possessing the right to review and monitor the DUI Program and facility. DUI Program reviews may include, but are not limited to:

1. Monitoring to ensure compliance with regulations contained in Title 9, California Code of Regulations Chapter 3, Programs for Alcohol and Drug Impaired Drivers, California Health and Safety Code 11836-11838.11 and California Vehicle Code 23500-23702.
2. Monitoring to ensure that DUI Program does not utilize other funds administered by DHCS for program operations.
3. Monitoring to ensure that DUI Program does not utilize participant fees for purposes other than DUI Program activities, with the exception of allowable profit or surplus.
4. Monitoring to ensure that DUI Program maintains complete financial records in accordance with generally acceptable accounting principles.
5. Monitoring to ensure that DUI Program makes provisions for participants who cannot afford to pay program participation fees.
6. Monitoring to ensure that participant fees are refunded timely when the participant pays any program fees in advance for services not rendered.

County monitoring may include requests for financial records to include, but not limited to ledgers, books, vouchers, timesheets, payrolls, and other fiscal data.

County monitoring shall be conducted at any reasonable time, including normal business hours and/or those hours of service provided for DUI participants at the DUI Program location.

County monitoring shall be conducted at least once every six (6) months in compliance with applicable statutes and regulations.

1. DUI Programs will have an implemented process for the review of participant files to verify:
 - a. Completion of Intake, Program Participation Agreement, Release of Information, Court and DMV documents, etc.
 - b. Program participation history
 - c. Fee payment history
 - d. Any additional forms required by Title 9 or the County.
2. Programs will have a process for correcting noted deficiencies in files, and each program will respond to client nonparticipation with procedures that reflect the requirements of Title 9.

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Personnel

DUI Program shall furnish such qualified professional personnel as required in Title 9, California Code of Regulations Chapter 3, Programs for Alcohol and Drug Impaired Drivers.

DUI Program agrees to provide or has already provided information on former San Bernardino County Administrative Officials (as defined below) who are employed by or represent DUI Program. The information provided includes a list of former County Administrative Officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of DUI Program. For purposes of this provision, "County Administrative Official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. If during the course of the administration of this Agreement, the County determines that the DUI Program has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

Participant Fees

DUI Program shall charge only those participant fees and additional fees in the amounts set forth in the County approved DUI Program Contracts and Fee Payment Agreement Documents. These charges have been reviewed and approved by DHCS in accordance with Section 11837.4(b)(2) of the Health and Safety Code.

The DUI Program shall refund to the participant any program fee paid in advance for services the participant did not receive.

County Monitoring Fees

The County shall be compensated for administration and monitoring of DUI Program at the rate of:

1. \$43.00 or as established by the Board of Supervisors, for each "Wet and Reckless" participant enrolled in the DUI Program.
2. \$43.00 or as established by the Board of Supervisors, for each "First Offender" participant enrolled in the DUI Program.
3. \$43.00 or as established by the Board of Supervisors, for each "Extended First Offender" participant enrolled in the DUI Program.
4. \$43.00 or as established by the Board of Supervisors, for each "Multiple Offender" participant enrolled in the DUI Program.

The administrative and monitoring fees will remain in effect for the duration of this Agreement unless modified upon a thirty (30) day written notification from the County to reflect applicable changes in law and/or regulations.

The administration and monitoring fee shall be remitted to the County no later than fifteenth (15th) calendar day of each month following the enrollment/report month.

Required Reports/Special Reports

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“Required reports” are due from the DUI Program by the fifteenth (15th) calendar day of each month following the reporting month to Department of Behavioral Health Fiscal Services. Required reports presently include, but are not limited to, Monthly Data Reports (MDRs). Other required reports may include reports deemed necessary by the County to meet requirements of California Code of Regulations Title 9, Chapter 3, Programs for Alcohol and Drug Impaired Drivers , and are incorporated by reference herein.

“Special reports” shall be due from the DUI Program to the County no later than thirty (30) days from the issuance of any written memoranda by the County and/or DHCS to the DUI Program. Special reports include, but are not limited to, Corrective Action Plans (CAPs), annual cost reports, and other information deemed necessary by the County, and are incorporated by reference herein.

The County and DUI Program agree that the receipt date shall be conclusively established by the “date stamp” affixed by the designated employee(s) of the County.

Indemnification and Insurance

Indemnification – The parties to this Agreement acknowledge that the DUI Program is an independent contractor, and this Agreement shall not be construed in any manner as to change the DUI Program’s status as an independent contractor. The DUI Program agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The DUI Program’s indemnification obligation applies to the County’s “active” as well as “passive” negligence but does not apply to the County’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.

Additional Insured - All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insured’s with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

Waiver of Subrogation Rights – The DUI Program shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the DUI Program and DUI Program’s employees or agents from waiving the right of subrogation prior to a loss or claim. The DUI Program hereby waives all rights to subrogation against the County.

Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

Severability of Interests – The DUI Program agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the DUI Program and the County or between the County and any other insured or additional insured under the policy.

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Proof of Coverage – The DUI Program shall furnish Certificates of Insurance to the County Department administering the Agreement evidencing the insurance coverage, at the time the agreement is executed. Additional endorsements, as required, shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and DUI Program shall maintain such insurance from the time DUI Program commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of Agreement, the DUI Program shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of policies and endorsements immediately upon request.

Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A-VII”.

Deductibles and Self-Insured Retention – Any and all deductibles or self-insured retentions in excess of ten thousand dollars (\$10,000) shall be declared to and approved by Risk Management.

Failure to Procure Coverage – In the event that any policy of insurance required under this agreement does not comply with the requirements, is not procured, or is cancelled and not replaced, the County has the right but not the obligation or duty to cancel the agreement or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the DUI Program.

Insurance Review – Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interest of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. DUI Program agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

Insurance Specifications – The DUI Program agrees to provide insurance set forth in accordance with the requirements herein. If the DUI Program uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the DUI Program agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the DUI Program shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

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1. Worker's Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with two hundred fifty thousand dollars (\$250,000) limits covering all persons including volunteers providing services on behalf of the DUI Program and all risks to such persons under this Agreement.

If the DUI Program has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Worker's Compensation coverage will be suspended by the County's Director of Risk Management.

With respect to DUI Programs that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Worker's Compensation insurance.

2. Commercial/General Liability Insurance – The DUI Program shall carry General Liability Insurance covering all operations performed by or on behalf of the DUI Program providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Personal Injury
- b. Contractual liability
- c. Two million dollars (\$2,000,000) general aggregate limit

3. Automobile Liability Insurance – Primary insurance coverage shall be written on Insurance Services Office (ISO) Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (broadest category for any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the DUI Program is transporting one or more non-employee passengers in performance of the Agreement services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the DUI Program owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

4. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

5. Cyber Liability Insurance

Cyber Liability Insurance with limits of not less than one million dollars (\$1,000,000) for each occurrence or event with an annual aggregate of two million dollars (\$2,000,000) covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network

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security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

6. Professional Services Requirements

a. Professional Liability – Professional Liability Insurance with limits of not less than one million dollars (\$1,000,000) per claim or occurrence and two million dollars (\$2,000,000) aggregate limits.

or

b. Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate limits.

7. Abuse/Molestation Insurance – The Contractor shall have abuse or molestation insurance providing coverage for all employees for the actual or threatened abuse or molestation by anyone of any person in the care, custody, or control of any insured, including negligent employment, investigation, and supervision. The policy shall provide coverage for both defense and indemnity with liability limits of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

8. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of Agreement work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after Agreement completion.

The coverage described above is not required for contractors or consultants providing services which are not relied upon by County departments for decision making. These would include trainers or instructors, expert witnesses, statisticians, etc.

Bonding

The DUI Program shall obtain and maintain at all times during the term of this contract a blanket fidelity bond in an amount not less than five thousand dollars (\$5,000) per claim or occurrence with an admitted carrier in the State of California to cover potential losses due to employee dishonesty. The DUI Program shall furnish the County with a copy of the bond certificate within thirty (30) days of the effective date of this contract. The DUI Program shall notify the County in writing of any change in the vendor’s bond coverage within twenty-four (24) hours of such change.

A copy of the bond certificate shall be sent to:

San Bernardino County Department of Behavioral Health
Substance Use Disorder and Recovery Services Administration
658 E. Brier Dr., Suite 250
San Bernardino, CA 92408
Attn: Substance Use Disorder and Recovery Services
DUI/DEJ Program Coordinator

Licensing and Certification

DUI Program shall obtain and maintain during the term of this Agreement all appropriate licenses, permits, and certificates required by all applicable Local, State and/or Federal laws, regulations and guidelines for the

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operation of its facility and for the provision of services. The licenses and certifications include, but are not limited to:

- Fire Clearance
- Conditional Use Permit, if applicable
- Business License

DUI Program shall submit to the County a new application for licensure pursuant to California Code of Regulations Title 9, Chapter 3, Programs for Alcohol and Drug Impaired Drivers in the event of the death of the DUI Program's owner and license holder, or any change in the ownership of the DUI Program, including sales or transfers of ownership of the Program Provider, unless the transfer of ownership applies to the transfer of stock when the DUI Program is owned by and certified as a corporation and when the transfer of stock does not constitute a majority and/or change in ownership

Any DUI Program found to be in violation of the DUI Letter of Certification or Title 9 shall be considered in non-compliance.

1. The Program will be notified in writing of the violations that exist and will be given at least thirty (30) days to submit a corrective action plan to the CADPA designee.
2. If the Program requires additional time beyond thirty (30) days for submission of a corrective action plan, a written request shall be made to the CADPA designee.
3. During the corrective action period, the CADPA/designee shall provide technical assistance if requested and shall conduct a follow-up interview, if necessary, within that last ten (10) days of the compliance period.
4. Should the Program continue to be in violation following the compliance period, the CADPA designee may inform the Board of Supervisors and notify DHCS of the continuing violation(s).
5. Any recommendation made that would result in adverse results to the Program shall be in accordance with Title 9 and/or any other governing statutory regulations of the DUI Programs.

Laws and Regulations

DUI Program agrees to comply with all relevant Federal and State laws and regulations inclusive of future revisions and comply with all applicable provisions of:

1. California Code of Regulations Title 9, Chapter 3, Programs for Alcohol and Drug Impaired Drivers.
2. Policies as identified in DHCS policy letters that are applicable to DUI Program.
3. California Health and Safety Code 11836-11838.11
4. California Vehicle Code 23500-23702

Privacy and Security

Covered Entity: These include 1) health care providers, 2) health plans, and 3) health care clearing houses that transmit any health information in electronic form in connection with a transaction covered by the Privacy and Security Rules. DBH is the covered entity in this agreement.

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DBH General Responsibilities

Pursuant to HIPAA and 42 C.F.R. Part 2, DBH has implemented administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability PHI transmitted or maintained in any form or medium.

The Drug Medi-Cal Organized Delivery System (DMC-ODS) is a component of the 1115 demonstration project implemented by the California Department of Health Care Services (DHCS). The DMC-ODS provides a continuum of care, enables more local control and accountability, provides greater administrative oversight, and creates utilization controls to improve care and efficient use of resources. It implements evidenced based practices in substance use disorder treatment, coordinates with other systems of care, and provides the patient with access to the care and system interaction needed in order to achieve sustainable recovery. The DMC-ODS demonstrates how organized substance use disorder care increases the success of DMC patients while decreasing other system health care costs.

DUI Program Responsibilities

If the DUI Program happens to obtain PHI and becomes aware of a potential breach of this information, DUI program will report to DBH any unauthorized use, access or disclosure of unsecured PHI or PII no later than one (1) business day upon the discovery of a potential breach.

Upon discovery of the potential breach, DUI program shall complete the following actions:

1. Provide DBH with the following information, including, but not limited to:
 - a. Date the potential breach occurred;
 - b. Date the potential breach was discovered;
 - c. Number of staff, employees, subcontractors, agents, or other third parties, and the titles of each person allegedly involved;
 - d. Number of potentially affected patients/clients; and
 - e. Description of how the potential breach allegedly occurred.

Suspension of Participant Referrals

County may initiate steps in accordance with California Code of Regulations Title 9, Chapter 3, Programs for Alcohol and Drug Impaired Drivers leading to suspension of referrals to DUI Program for failure to comply with the terms and conditions of this Agreement including, but not limited to, the following:

1. Failure to notify the Court of applicable jurisdiction, Probation Department, and/or Department of Motor Vehicles of a participant's enrollment or termination;
2. Failure to permit indigent participants to participate in DUI Program due to indigence;
3. Collecting participant fees that exceeds the State-approved maximum fee;
4. Failure to notify and seek approval from the County of a change in location, substantial change or modifications to the physical facility and/or substantial change in the DUI Program's structure and services;
5. Failure to advise and seek approval from the County or from DHCS for a change in Program Administrator (ref. DHCS 5085A);

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6. Actual and/or constructive abandonment of the DUI Program ("constructive abandonment" shall include insolvency, eviction, or seizure of assets or equipment resulting in the failure to provide alcohol and/or drug services to participants);
7. Failure to correct deficiencies as specified in Title 9 of the California Code of Regulations, Chapter 3, Programs for Alcohol and Drug Impaired Drivers, California Health and Safety Code 11836-11838.11 and California Vehicle Code 23500-23702.
8. Failure to attain prior authorization and approval before changing and utilizing a required County Contract or Form.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

County Certification No. _____

COUNTY OF SAN BERNARDINO
DEPARTMENT OF BEHAVIORAL HEALTH
SUBSTANCE USE DISORDER AND
RECOVERY SERVICES ADMINISTRATION

(Print or type name of Corporation, Company, Contractor, etc.)

By: _____
(Authorized Signature - Sign in Blue Ink)

By: _____
(Authorized Signature - Sign in Blue Ink)

Name: Georgina Yoshioka
(Print or Type Name of Person Signing Contract)

Name: _____
(Print or Type Name of Person Signing Contract)

Title: Interim Director
(Print or Type)

Title: _____
(Print or Type)

Date: _____

Date: _____

Address: 303 East Vanderbilt Way
San Bernardino, CA 92415

Address: _____
