

**AMENDMENT NO. 3 TO  
340B CONTRACT PHARMACY SERVICES AGREEMENT**

This Amendment No. 3 to the 340B Contract Pharmacy Services Agreement (“**Amendment No. 3**”), made and entered into by and between Santa Barbara County Public Health Department (“**Covered Entity**”) and Walgreen Co. (“**Walgreens**”), is effective October 9, 2018 (“**Amendment No. 3 Effective Date**”).

**1. RECITALS**

- 1.1 The parties have executed a 340B Contract Pharmacy Services Agreement effective January 1, 2014, as amended (“**Agreement**”).
- 1.2 The parties executed a First Amendment to the Agreement on January 13, 2015.
- 1.3 The parties executed a Second Amendment to the Agreement on June 15, 2015.
- 1.3 The parties wish to amend the Agreement effective as of the Amendment No. 3 Effective Date.
- 1.4 Pursuant to Section 8.7 of the Agreement and in consideration of the mutual promises contained herein, the parties hereby agree as follows:

**2. AMENDED TERMS**

- 2.1 Section 3.1 of the Agreement is deleted in its entirety and replaced with the following:

*3.1. Patient Eligibility Verification. Covered Entity prescribers will provide all Eligible Patients with a valid prescription as required by law which will contain, but not necessarily be limited to, the applicable Covered Entity Location name, address and identification number, the eligible prescriber’s name, and the Eligible Patient’s full name. The prescription must be written or sent to Walgreens by an individual on the Prescriber List. Covered Entity may also provide each Eligible Patient whose prescriptions are not reimbursable by a Private Insurer with a voucher or similar document that sets forth the amount that Walgreens shall collect from the Eligible Patient at the time of dispensing. In addition, Covered Entity will provide Walgreens (or an entity designated by Walgreens) with: (i) the Prescriber List on a mutually agreed upon frequency; (ii) either (a) a mutually agreed upon unique identifier affixed to prescriptions, or (b) an electronic file of Covered Entity’s patients that contains the data elements agreed to by the parties, updated a minimum of one time each day via electronic interface and subject to the terms of the Business Associate Addendum, attached hereto as Exhibit C; and (iii) any other patient eligibility information agreed to by the parties. The information described herein, as mutually agreed by the parties, and that Covered Entity provides to Walgreens or its delegate, will establish patient eligibility and serve as evidence of Covered Entity’s authorization for Eligible Patients to receive 340B Drugs (“**Authorization**”). In the event that at any time during the term of this Agreement Walgreens does not receive the information necessary to establish Authorization, Walgreens shall not be obligated to perform under this Agreement, including its obligations to provide 340B Pharmacy Services or Inventory Maintenance Services (except with respect to any 340B Drugs already dispensed by Walgreens), until such time as Walgreens receives the necessary Authorization information.*

- 2.2 Exhibit C, attached hereto, is added to and incorporated in the Agreement immediately following Exhibit B to the Agreement.
- 2.3 The terms and provisions set forth in this Amendment No. 3 shall modify and supersede all inconsistent terms and provisions set forth in the Agreement, the First Amendment or the Second Amendment. The parties restate all other provisions of the Agreement and agree that all such provisions remain in effect.

**IN WITNESS WHEREOF**, Covered Entity and Walgreens have executed and delivered this Amendment No. 3 by their representatives duly authorized.

WALGREEN CO.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approval: _____ Pharmacy Services _____ Legal
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**IN WITNESS WHEREOF**, Covered Entity and Walgreens have executed and delivered this Amendment No. 3 by their representatives duly authorized.

**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

By: \_\_\_\_\_  
Deputy Clerk

**COUNTY OF SANTA BARBARA:**

Das Williams

By: \_\_\_\_\_  
Chair, Board of Supervisors

Date: \_\_\_\_\_

**RECOMMENDED FOR APPROVAL:**

Van Do-Reynoso, MPH, PhD  
Public Health Director

By: \_\_\_\_\_  
Department Head

**APPROVED AS TO ACCOUNTING FORM:**

Theodore A. Fallati, CPA  
Auditor-Controller

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

**APPROVED AS TO FORM:**

Michael C. Ghizzoni  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

**APPROVED AS TO FORM:**

Risk Management

By: \_\_\_\_\_  
Risk Management

**Exhibit C**  
**Business Associate Addendum**

This Business Associate Addendum (“**Addendum**”) is entered into by and between Covered Entity and Walgreen Co. (“**BA**”) and is effective as of the Effective Date of Underlying Agreement (as defined below) (“**Addendum Effective Date**”). This Addendum shall be incorporated into and made a part of the Underlying Agreement.

Covered Entity and BA have entered into an agreement whereby BA provides administrative services related to patient eligibility determinations in addition to dispensing pharmaceutical products pursuant to that certain 340B Contract Pharmacy Services Agreement entered into January 2014 (“**Underlying Agreement**”);

The parties acknowledge that the provision of administrative services related to patient eligibility determinations are services provided by BA outside the scope of BA’s normal covered pharmacy operations function and this Addendum is limited to the provision of such services (“**Services**”);

Pursuant to the terms of the Underlying Agreement, Covered Entity wishes to disclose certain information to BA, some of which may constitute Protected Health Information (as defined below), and the parties wish to establish satisfactory assurances that BA will appropriately safeguard this PHI; and

The purpose of this Addendum is to satisfy certain standards and requirements of the HIPAA Rules (as defined herein), including, but not limited to, those at 45 C.F.R. §§ 164.314(a), 164.502(e), and 164.504(e), as the same may be amended from time to time, to be in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (“**HITECH Act**”), and the regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E (“**Privacy Rule**”), the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C (“**Security Rule**”), and the Notification of Breach of Unsecured Protected Health Information requirements at 45 C.F.R. Part 164, Subpart D (“**Breach Notification Rule**”).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Definitions. For the purposes of this Addendum, terms used, but not otherwise defined, shall have the meaning as those in 45 C.F.R. §§ 160.103, 164.304, 164.402, 164.501, and 164.504, and the following terms have the definitions set forth below:

1.1. “**Breach**” shall have the same meaning as the term “breach” at 45 C.F.R. § 164.402.

1.2. “**HIPAA Rules**” shall mean the Privacy Rule, the Security Rule, and the Breach Notification Rule collectively.

1.3. “**Individual**” shall mean the person who is the subject of the PHI and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.4. **“Protected Health Information”** or **“PHI”** shall have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103, limited to the information created or received by BA from or on behalf of Covered Entity. PHI shall include Electronic Protected Health Information. Notwithstanding anything to the contrary in this Addendum, the term “PHI” as used in this Addendum shall not include any information that BA would otherwise be able to receive as a HIPAA covered entity in the patient’s continuum of care.

1.5. **“Secretary”** shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

1.6. **“Security Incident”** shall have the same meaning as the term “security incident” at 45 C.F.R. § 164.304.

1.7. **“Unsecured PHI”** shall have the same meaning as the term “unsecured protected health information” at 45 C.F.R. § 164.402.

2. **BA Obligations.** The parties agree that BA shall:

2.1. Not use or disclose PHI other than as permitted by this Addendum, the Underlying Agreement, the Privacy Rule, or as Required By Law;

2.2. Use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Addendum. BA shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. BA shall comply with the applicable requirements of Subpart C of Part 164 of the Security Rule;

2.3. Limit any uses, disclosures, and requests for PHI to the minimum amount necessary to perform or fulfill a specific function required or permitted by this Addendum in accordance with the HIPAA Rules;

2.4. Mitigate to the extent practicable, any harmful effect that is known to BA from a use or disclosure of PHI by BA in violation of this Addendum;

2.5. In writing and in a timely manner report to Covered Entity any use or disclosure of PHI of which BA becomes aware that is not provided for or allowed by this Addendum or the HIPAA Rules, including Breaches of Unsecured PHI that BA discovers as required by, and in the manner set forth at, 45 C.F.R. § 164.410, and any Security Incident of which BA becomes aware. The parties acknowledge and agree that this section constitutes notice by BA to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. “Unsuccessful Security Incidents” shall include, but are not limited to, pings and other broadcast attacks on BA’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized acquisition, access, use, or disclosure of PHI;

2.6. In accordance with 45 C.F.R. §§ 164.308(b)(2) and 164.502(e)(1)(ii), require any of its agents or subcontractors that maintain, create, receive, and/or transmit PHI on behalf of BA to agree, in writing, to the same restrictions, conditions and obligations with respect to the use and disclosure of PHI that apply to BA under this Addendum;

2.7. Make available to Covered Entity such information in such form as Covered Entity may require to fulfill Covered Entity's obligations to provide an Individual with access to, amendment of, and an accounting of disclosures of PHI pursuant to 45 C.F.R. §§ 164.524, 164.526, and 164.528, respectively;

2.8. Make available to the Secretary its internal practices, books and records relating to the use and disclosure of PHI received from, or created by, BA on behalf of Covered Entity, for purposes of determining Covered Entity's compliance with the HIPAA Rules; and

2.9. To the extent BA is delegated to carry out any of Covered Entity's obligations under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such delegated obligations.

3. Permitted Uses and Disclosures. The parties agree that BA may:

3.1. Use and disclose PHI to perform the Services provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity;

3.2. Use PHI in its possession for its proper management and administration and to fulfill any of its present or future legal responsibilities;

3.3. Use PHI in its possession to provide Data Aggregation services relating to the Health Care Operations of Covered Entity;

3.4. Disclose PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any of its present or future legal responsibilities provided that: (i) the disclosures are Required By Law; or (ii) BA has received from the third party receiving the PHI reasonable assurances that the PHI will be held confidentially, that the PHI will only be used or further disclosed as Required By Law or for the purpose for which it was disclosed to the third party, and that the third party will notify BA of any instances of which it is aware in which the confidentiality of the information has been breached; or

3.5. De-identify PHI and use and disclose the de-identified information, provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b) and use the de-identified information for any purpose.

4. Obligations of Covered Entity. With respect to the use and/or disclosure of PHI by BA, Covered Entity shall:

4.1. Notify BA, in writing and in a timely manner, of any limitations in its notice of privacy practices, to the extent that such limitations may affect BA's use or disclosure of PHI;

4.2. Notify BA, in writing and in a timely manner, of any change in, or revocation of, consent or authorization by an Individual to use or disclose PHI, to the extent that such change may affect BA's permitted or required use or disclosure of the PHI;

4.3. Notify BA, in writing and in a timely manner, of any restriction to the use and/or disclosure of PHI to which Covered Entity is required, or has agreed in accordance with 45 C.F.R. § 164.522 to the extent such restriction may affect BA's use or disclosure of PHI;

4.4. Have entered into a "Business Associate Agreement", as required by 45 C.F.R. § 164.502(e) with any third parties to which Covered Entity directs and authorizes BA to disclose PHI; and

4.5. Only disclose to BA the minimum necessary PHI for BA to provide the Services to Covered Entity.

5. Term. This Addendum shall become effective on the effective date of the Underlying Agreement and shall expire when all of the PHI provided by Covered Entity to BA is destroyed or returned to Covered Entity pursuant to Section 7 in this Exhibit C.

6. Termination. Notwithstanding any other provision under the Underlying Agreement, the parties agree that this Addendum may be terminated without penalty at any time by either Party if the other Party violates a material obligation under this Addendum, provided, however, the other Party is afforded thirty (30) days opportunity to cure the breach and the other Party does not cure the breach or end the violation within said thirty (30) days. If the parties mutually agree that cure is not possible, this Addendum shall terminate immediately.

7. Return or Destruction of PHI. Upon termination or expiration of this Addendum, BA shall return to Covered Entity any and all PHI received from, or created by BA on behalf of, Covered Entity that is maintained by BA in any form whatsoever, including any copies or replicas. If returning the PHI to Covered Entity is not feasible, BA shall destroy any and all PHI maintained by BA in any form whatsoever, including any copies or replicas. Should the return or destruction of the PHI be determined by BA to be not feasible, the parties agree that the terms of this Addendum shall extend to the PHI, and any further use or disclosure of the PHI by BA shall be limited to that purpose which renders the return or destruction of the PHI infeasible.

8. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties agree to take such action as is necessary to comply with the standards and requirements of the HIPAA Rules and other applicable laws relating to the security or confidentiality of PHI. Upon either Party's request due to a change in the law, the other Party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum.

9. Independent Contractors. In the performance of the Services and the obligations under this Addendum, the parties acknowledge and agree that each Party is at all times acting and performing as an independent contractor and at no time shall the relationship between the parties be construed as a partnership, joint venture, employment, principal/agent, or master/servant relationship.

10. Interpretation. Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits Covered Entity and BA to comply with the HIPAA Rules. The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement between the parties that may conflict or appear inconsistent with any provision of this Addendum.

11. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

12. Notice. Any notice required under this Addendum shall be delivered in writing to BA or Covered Entity, as appropriate, and submitted to the address indicated below:

For BA: Walgreens Privacy Office  
200 Wilmot Road, MS 9000  
Deerfield, Illinois 60015  
Phone: (847) 236-6518  
Fax: (847) 236-0862  
Email: [privacy.office@walgreens.com](mailto:privacy.office@walgreens.com)  
Attn: Privacy Officer

For Covered Entity: The address set forth in the Underlying Agreement

13. Regulatory References. A reference in this Addendum to a section in the HIPAA Rules means the section in effect or as amended and for which compliance is required at the time.