

Agency or Department Name:
Colorado Department of Health Care Policy and Financing

Department or Agency Number:
UHA, FAA

UHA Contract Routing Number: 2105-2007
FAA Contract Routing Number: _____

INTERAGENCY AGREEMENT

THIS Interagency Agreement, made this 1st day of July 2004, by and between the State of Colorado acting by and through the Department of Health Care Policy and Financing, 1570 Grant St., Denver, CO 80203 hereinafter referred to as the Department, and the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, hereinafter referred to as CDPHE.

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this Interagency Agreement under Encumbrance Number PO UHA 2105-2007 in Fund Number 100, Appropriation Accounts 450 and 460 and Organization Number 4111; and,

WHEREAS, the Department is the state agency responsible for the administration of the Colorado Medical Assistance Program (Medicaid) pursuant to Title XIX of the Social Security Act; and

WHEREAS, CDPHE is the single state agency responsible for the administration of the Health Care Program for Children with Special Needs in Colorado pursuant to Title V of the Social Security Act; and

WHEREAS, family planning services are authorized as part of the Medicaid program pursuant to the provisions of Section 26-4-202, C.R.S., as amended; and

WHEREAS, the Family Planning Program is a State of Colorado program administered and monitored by CDPHE, which provides family planning services, through its delegate agencies, to eligible Medicaid clients and to those individuals in their reproductive years who have need of such services;

WHEREAS, CDPHE is the Title XV grantee of the National Breast and Cervical Cancer Early Detection Program as authorized by the Center for Disease Control, pursuant to Section 1902(a)(10)(A)(ii)(XVIII) of Title XIX of the Social Security Act; and

WHEREAS, the Department is authorized to provide enhanced prenatal services through the Medicaid Prenatal Plus Program as specified in the Medicare Catastrophic Coverage Act: OBRA 1987; and

WHEREAS, CDPHE is the state agency responsible for the administration of the federal pediatric vaccine distribution program, also known as the Vaccine for Children Program pursuant to Section 1928 of the Social Security Act Omnibus Budget Reconciliation Act (OBRA) of 1993, Section 13631; and

WHEREAS, CDPHE is the state agency responsible for the administration of the Infant Immunization Program in Colorado pursuant to Section 25-4-1701 *et seq.*, C. R. S.; and

WHEREAS, CDPHE is the state agency responsible for the administration of the Nurse Home Visitor Program in Colorado pursuant to 25-31-101 *et seq.*, C.R.S.; and

WHEREAS, CDPHE is the state agency responsible for the determination of qualified developmental evaluation clinics, family planning clinics, Prenatal Plus sites, sites and early interventionists for Colorado Home Intervention Program, including credentialing and certification of these entities pursuant to Title V of the Social Security Act; and

WHEREAS, all required approvals, clearances and coordination have been accomplished from and with all appropriate agencies.

NOW THEREFORE, it is hereby agreed that:

1. DEFINITIONS

- A. Certified Health Agency means a county/district health department, regional health department or local board of health 10 C.C.R. 2505-10, Section 8.560 – 8.567.
- B. Department's Designated Entity means an agency whose function is to reimburse, coordinate, provide or prior authorize Early and Periodic Screening Diagnosis and Treatment (EPSDT) services for Medicaid- enrolled children.
- C. Developmental Evaluation Clinic Service means an EPSDT related service provided to Medicaid clients, upon referral from the primary care physician or a qualified Medicaid provider. The service involves comprehensive testing and evaluation of children with developmental delays/disabilities that have been identified as an abnormal finding on the EPSDT medical screening service.
- D. Early Childhood Connections for Infants, Toddlers and Families means the statewide, coordinated system of services made available through the Individual Disabilities Education Act, Infant and Toddler Section, as governed by the Colorado Department of Education. Services include an early intervention system of supports and services that are directed at meeting the needs of infants and toddlers with disabilities and their families.
- E. Immunization Program means the program providing state purchased vaccines that are distributed by CDPHE to participating public and private practitioners. Infant

Immunization Program vaccines may be administered to any Medicaid-enrolled child or infant under the age of 19 years, when vaccine is not available through the VFC Program and to any Medicaid-enrolled child age 19 or 20.

- F. Prenatal Plus Program means the health care program option that includes a package of enhanced Medicaid prenatal services addressing non-medical issues including nutritional and psychosocial behaviors that could affect pregnancy outcome.
- G. Prepaid Health Plan (PHP) means a commercial health care plan contracting with the Department to provide comprehensive health care services, coordination, and monitoring of patient utilization of services through the utilization of primary care physicians. The primary care physicians agree to serve as gatekeepers for comprehensive health services, including EPSDT services, as provided to Medicaid clients.
- H. Presumptive Eligibility (PE) means the temporary eligibility for benefits that begin on the date it is determined that a pregnant woman meets eligibility requirements for Medicaid and the client signs the presumptive eligibility form.
- I. Qualified Entities mean Colorado Woman's Cancer Control Initiative (CWCCI) providers contracted with CDPHE under a cooperative agreement with the Center's for Disease Control to support activities related to the National Breast and Cervical Cancer Early Detection Program and to provide breast and cervical cancer assessment services for the Colorado Women's Cancer Control Initiative.
- J. Sponsored Developmental Evaluation Clinic means a local community-based clinic that is a Title V grantee and has been determined by CDPHE as being qualified to provide the developmental evaluation services to Medicaid-enrolled clients.
- K. Vaccine for Children Program (VFC) means the Vaccine for Children Program that provides federally purchased vaccines distributed by CDPHE to participating public and private practitioners. VFC vaccines may be administered to any child under the age of 19 years, who is eligible for vaccination and enrolled under Medicaid.

2. **STATEMENT OF WORK AND RESPONSIBILITIES**

The scope of work for this Interagency Agreement shall include the following:

A. Family Planning

CDPHE shall certify Family Planning delegate agencies and submit a list to the Department by July 1, 2004.

B. Prenatal Plus

- 1) CDPHE shall certify Medicaid Prenatal Plus Program providers.

- 2) As part of the certification process, CDPHE shall ensure that the following Medicaid Prenatal Plus Program requirements are met:
 - a) Supervise contract functions necessary to provide training and technical assistance for the Prenatal Plus Program.
 - b) Review and approve applications from potential Prenatal Plus providers, verify successful completion of training and recommend to the Department eligible providers for the Medicaid Prenatal Plus Program.
 - c) In consultation with the Department, continue to develop service definitions, protocols, guidelines, procedures, and forms for the Medicaid Prenatal Plus Program.
 - d) Provide training and technical assistance to new and ongoing Medicaid Prenatal Plus Program service providers.
 - e) Collect, compile, and analyze birth outcome and evaluation data and provide periodic reports detailing the progress made in reducing the rate of low birth-weight babies as a result of the Medicaid Prenatal Plus Program.
 - f) Manage and monitor administrative expenditures for Medicaid training and technical assistance funds for the Prenatal Plus Program to ensure expenditures do not exceed the appropriation.
- 3) CDPHE shall provide an annual report to the Department on the program by December 31, 2004, reporting the progress made in reducing the rate of low birth-weight babies for the Prenatal Plus Project for calendar year 2003.
- 4) The Department shall ensure that the following Medicaid Prenatal Plus Program requirements are met:
 - a) Continue to inform Medicaid prenatal providers of the availability of Prenatal Plus Program services, client enrollment procedures, provider agency requirements, Medicaid billing requirements and ongoing program changes.
 - b) In cooperation with CDPHE, monitor the Prenatal Plus Program service expenditures and utilization to ensure compliance with applicable federal regulations, rules, and appropriation.

C. Health Care Program for Children with Special Needs (HCP)

- 1) CDPHE shall provide consultation information, technical assistance

through the state and local offices providing HCP and referral services to all families of children with special health care needs.

- 2) CDPHE shall certify Colorado Home Intervention Program early interventionists who shall directly bill the Department through the Department Designated Entity.
- 3) The HCP Medical Home Initiative shall promote use of EPSDT outreach activities to Primary Care Physicians for Medicaid-enrolled families.
- 4) The Department EPSDT Program staff shall participate in the Medical Home projects.
- 5) The Department shall collaborate via mutually agreed upon activities/conferences with CDPHE/HCP to identify data sources (i.e., CAHPS), which can supplement the measurement of outcomes for all children with special needs health care needs (CSHCNs) in Colorado.
- 6) CDPHE/HCP shall provide audiology, nutrition and speech pathology consultation on an annual basis or as needed to all families of children with CSHCNs.
- 7) HCP shall provide access to Specialty Medical Services through HCP clinics in rural and outlying areas for all CSHCNs including children enrolled in Medicaid.
- 8) HCP shall collaborate and plan to increase access to services for high-risk newborns.
- 9) The Department shall provide CDPHE with access to de-identified data as requested by HCP and agreed to by the Department.

D. Developmental Evaluation Clinic Services

- 1) CDPHE shall sponsor Developmental Evaluation (D&E) Clinics throughout the state, in accordance with 42 C.F.R. 431.615. CDPHE shall provide the Department an updated listing of CDPHE certified health agencies that are eligible as providers of clinic services. The listing shall be made available to the Department in April of each fiscal year that this Interagency Agreement is in effect. The Department acknowledges through this Interagency Agreement that any sponsored D&E Clinic and/or CDPHE certified health agency is eligible for enrollment in Medicaid as a clinic provider.
- 2) CDPHE shall accept through the sponsored D&E clinics, Medicaid eligible children for developmental evaluation services in accordance with the program rules, regulation, and guidelines. CDPHE shall determine which

D&E Clinics are Title V grantees, and are qualified to be and sponsored by CDPHE as D&E Clinics. The criteria utilized by CDPHE to

qualify the specific clinics shall be maintained in records as outlined in the Record Keeping Requirements, paragraph 14 below.

- 3) CDPHE shall work with Department EPSDT Program Outreach Coordinators to develop and maintain a mechanism whereby Medicaid-enrolled clients shall be informed of the availability of Title V funded services, and referred for these services as appropriate. CDPHE shall also work with Colorado Department of Education staff to develop and maintain a mechanism whereby Medicaid-enrolled clients shall be informed of the availability of Early Childhood Connection services and referred for the services, as appropriate, by the sponsored D&E Clinics.
- 4) CDPHE shall provide training and technical assistance, as needed, to newly enrolled and continuing sponsored D & E clinics regarding the participation as a vendor in the Colorado Medicaid Program, the potential for participation with the contracted Medicaid Prepaid Health Plan (PHP), the guidelines for the referral process from the physicians enrolled in the Primary Care Provider Program (PCPP) or the PHP, and guidelines for the billing process for the contracted prepaid health plan services or the fee-for-service developmental evaluation clinic services.
- 5) CDPHE shall submit to the Department, in June of each year that this Interagency Agreement is in effect, a current listing of the qualified D&E Clinics that are Title V grantees and sponsored by CDPHE. For additional D&E Clinics that become qualified throughout the fiscal year, CDPHE shall submit a letter of notification of the newly sponsored D&E Clinics to the Department. The Department shall submit to the Medicaid Designated Entity, in July of each year that this Interagency Agreement is in effect, the current listing of the qualified D&E Clinics sponsored by CDPHE. For additional D&E Clinics that become qualified throughout the fiscal year, the Department shall submit a letter of notification of the newly sponsored D&E Clinics to the Medicaid Designated Entity. The Department shall notify CDPHE of any changes to the established fee-for-service billing procedures as it relates to the developmental evaluation clinic services.
- 6) The Department shall inform Medicaid-contracted PHPs that developmental evaluation services are a PHP benefit and that sponsored D&E Clinics within their service area must arrange for the developmental evaluation services. The Department shall provide guidelines for referrals to the D&E Clinics.

E. Immunization Program

- 1) With the exception of immunizations provided through the VFC Program, CDPHE shall negotiate for, purchase, store and maintain adequate inventories of vaccines to distribute to Medicaid providers for administration to Medicaid children.
- 2) CDPHE shall negotiate for and purchase vaccines at the lower of federal contract or other contract source prices. Federal contract prices are available on the VFC homepage. http://www.cdc.gov/nip/vfc/cdc_vac_price_list.htm
- 3) CDPHE shall arrange for the storage and maintenance of adequate inventories of all vaccines necessary, dependent upon national manufacture availability, to meet the preventive medical needs of Medicaid recipients under the age of 21. These vaccines shall include, but are not limited to the following: Diphtheria-Tetanus-Acellular-Pertussis (DTaP); Inactivated Polio Vaccine (IPV); Measles-Mumps-Rubella (MMR); Haemophilus Influenza Type B Conjugate Vaccines (HIB); Hepatitis B (Hep B); Varicella Zoster (VAR); Hepatitis A (Hep A); and, Influenza (FLU).
- 4) CDPHE shall maintain a computerized vaccine order, shipping, and usage record system to monitor distribution of the vaccines to providers, and correlate and maintain information regarding amounts of vaccines distributed to each provider.
- 5) The Department shall provide CDPHE with a listing of Medicaid providers eligible to receive vaccine shipments under this Interagency Agreement and provide periodic written verification of new Medicaid providers who are eligible to order and receive vaccine under this Interagency Agreement. CDPHE shall notify the Department of Medicaid providers who have become ineligible to receive vaccines under this Interagency Agreement.
- 6) The Department and CDPHE shall cooperate in the preparation of informational materials to providers of immunization services and provide technical assistance regarding Medicaid billing procedures to local health departments and other Medicaid providers.
- 7) The Department shall process claims for immunizations through the Medical Management Information System (MMIS).
- 8) The Department shall provide CDPHE with access to de-identified data as requested by Immunization Program and agreed to by HCPF.

F. Lead Poisoning Prevention Program

- 1) The Department shall assist CDPHE Lead Poisoning Prevention Program staff in the development and implementation of training sessions concerning the mandated blood lead screening and treatment services for

children receiving Medicaid benefits.

- 2) The Department shall assist CDPHE Lead Poisoning Prevention Program staff in the development and implementation of state policy and/or guidelines to promote adherence to the CMS-mandated guidelines for blood lead screening and treatment services for children receiving Medicaid benefits.

G. Breast and Cervical Cancer Program

- 1) CDPHE in consultation with the Department shall provide public education and outreach on the Breast and Cervical Cancer Program (BCCP) to Qualified Entities, Medicaid providers and clients in language appropriate for the audience.
- 2) CDPHE shall contract with Qualified Entities within the State of Colorado to provide breast and cervical cancer assessment services through CWCCI; screening services including breast examinations, mammograms, pelvic examinations and Papanicolaou tests; and diagnostic services, surgical consultations and biopsies to women with abnormal screening results. CDPHE shall not change operations to significantly expand the number of women screened.
- 3) CDPHE shall notify the Department of providers participating in the CWCCI as Qualified Entities in July of each year.
- 4) CDPHE shall not change operations in such a way as to significantly expand the number of women screened. Any such change requires submission through the budget process and approval by the General Assembly.
- 5) CDPHE shall ensure the Department has been provided documented verification that a woman has been screened under the CWCCI program. This verification is to be provided on a regular basis, as needed or requested by the Department, and must be accompanied by a HIPAA-compliant Authorization signed by the presumptively eligible Medicaid client. This information is to be provided to the Department directly from the CWCCI sites.
- 6) CDPHE shall provide reports to the Department, quarterly on the following due dates, August 1, November 1, February 1 and May 1 of each year, sorted by county, the number of woman screened, the category of the treatment disease, identifying provider issues, identified trends and any transfers from out-of-state.
- 7) Upon request, CDPHE shall provide site review information on the CWCCI Qualified Entities.

- 8) In consultation with the Department, CDPHE shall provide CWCCI projections and program monitoring information to the BCCP Coordinator.
- 9) CDPHE shall contract with Qualified Entities to ensure the delivery of the following:
 - a) Provide breast and cervical cancer assessments according to the guidelines established by the CWCCI, as well as providing referrals, case management and developing care plans as stipulated by the entity's agreement with the CDPHE.
 - b) Complete PE determinations for clients who meet program eligibility requirements with a confirmed diagnosis of breast or cervical cancer under the CWCCI program.
 - c) Provide verification that a woman has been screened under the CWCCI program.
 - d) Inform PE clients of the benefits available to them under Medicaid and the requirements for submitting a completed Medicaid application on the same day as the BCCP/PE.
 - e) Instruct providers to provide signed consent for release of medical information in accordance with HIPAA.
 - f) Assist applicants in completing the application form, if necessary.
 - g) Forwarding all information to the Department's Designated Entity for a full eligibility determination within five (5) working days.
 - h) Send by mail or fax a copy of the following forms to the BCCP Coordinator at the Department within 5 days of a diagnosis:
 - i) Personal History Form
 - ii) Consent and Release of Medical Information
 - iii) Pathology Report
 - iv) PE Card
 - v) PE Form
- 10) The Department shall provide Medicaid coverage under its State Plan for eligible women screened and determined to be eligible through the CWCCI. The Department shall be responsible for establishing, operating and monitoring the BCCP, including training designated staff at Qualified Entities participating in the CWCCI to assist women in completing the application forms.
- 11) The Department and CDPHE shall share relevant data to manage the

treatment and follow-up process, which links Medicaid eligibility with screening and treatment results, as provided in the HIPAA Business Associate Addendum, Attachment A, attached hereto.

H. Nurse Home Visitor Program

- 1) CDPHE shall fund Nurse Home Visitor Program (NHVP) sites throughout the state, in accordance with the Colorado Nurse Home Visitor Program Act, section 25-31-101, *et seq.*, C.R.S., as amended, (the "Act"), which is funded through the state's Master Tobacco Settlement Agreement. CDPHE shall provide the Department with a current list of NHVP providers and their respective Medicaid reimbursement rates, as set by CDPHE. The list shall be made available to the Department in July of each fiscal year that this Interagency Agreement is in effect. For additional NHVP providers that become qualified throughout the fiscal year, CDPHE shall submit a letter of notification of the newly sponsored NHVP providers to the Department. The Department shall submit to the Department's Designated Entity, in July of each year that this Interagency Agreement is in effect, the current listing of the qualified NHVP providers funded by CDPHE. For additional NHVP providers that become qualified throughout the fiscal year, the Department shall submit a letter of notification of the newly sponsored NHVP providers to the Department's Designated Entity.
- 2) CDPHE shall transfer Master Tobacco Settlement Agreement funds appropriated for the NHVP to the Department in the amount designated in the Long Bill. The Department shall use these NHVP funds as match to capture federal Medicaid funds on a dollar for dollar basis for Targeted Case Management (TCM) services provided and billed on a per client basis through the MMIS by NHVP Medicaid providers. The Department shall then directly reimburse the NHVP Medicaid providers the total combination of the Master Tobacco Settlement Agreement funds and the federal Medicaid funds based on the provider's Medicaid reimbursement rate.
- 3) CDPHE shall inform NHVP sites of their required enrollment and participation as an active state Medicaid provider and the process for billing the Department for TCM services provided to Medicaid eligible clients.
- 4) The Department and/or the Department's Designated Entity shall provide information, training and assistance to NHVP sites, as necessary, concerning enrollment in the state Medicaid program and utilization of the MMIS for TCM billing purposes.
- 5) The Department shall bill CDPHE only for the claims processing fee they

have agreed to contractually with the MMIS contractor. The Department shall notify CDPHE in writing of any changes in the MMIS contractor's programming or claims processing fees as soon as those changes are known to the Department.

3. PAYMENT AMOUNT AND BILLING PROCEDURE

- A. The Department shall intervene with the Department's Designated Entity to ensure payment of the correct rate for Medicaid covered services, as applicable.
- B. The Department shall bill the state match for Medicaid expenditures to CMS for program costs, which are related to the Medicaid program.
- C. CDPHE shall bill the Department no less than quarterly for the Prenatal Plus administration. Itemized expenditure reports shall be provided by CDPHE upon request from the Department, but no more often than annually, for all programs listed in this Interagency Agreement.
- D. In no case shall CDPHE submit a request for reimbursement for services provided during the term of this Interagency Agreement any later than 45 working days after the final state fiscal year information provided to CDPHE by the Department.
- E. Family Planning: Family planning client claims are paid directly out of MMIS
- F. Prenatal Plus: Payment pursuant to this Interagency Agreement shall be made as earned, in whole or in part, from available state funds encumbered in an amount not to exceed \$102,346, for the administrative costs of the Medicaid Prenatal Plus Program. Prenatal Plus client services are paid out of the MMIS and billed on a regular basis by participating Prenatal Plus providers. The amount needed for prenatal plus services from the medical services premium is projected as a part of premium by the Department Budget Division Office. CDPHE's spending authority for Prenatal Plus administrative expenditures is limited to the amount in the Long Bill. This amount can only be revised through the budget process. Rate increases must be approved through the budget process. Strategies for rate setting for Prenatal Plus client services shall be discussed between CDPHE and the Department at least annually.
- G. HCP specialty clinic providers are paid out of MMIS and billed on a regular basis.
- H. Developmental and Evaluation Clinic Services: HCP Developmental and Evaluation Clinic services are billed directly by Medicaid providers and paid as appropriate through the Department Designated Entity.
- I. Immunization Program: Immunizations and vaccines are paid out of the MMIS and billed on a regular basis.

- J. Lead Poisoning Prevention Program: Medicaid covered Lead Poisoning Prevention Program benefits are paid out of MMIS and billed on a regular basis.
- K. BCCP: Benefits to BCCP clients are paid directly out of the MMIS and billed on a regular basis.
- L. NHVP: In consideration of the obligation of CDPHE to perform in accordance with paragraph one, the Department shall transfer \$3,019,388 total funds according to the schedule and purpose listed below. The liability of the Department, at any time for such payments shall be limited to the unspent amount remaining of such encumbered funds, which includes the matching federal Medicaid funds.

Payment pursuant to this Interagency Agreement shall be made to the NHVP providers as earned, in whole or in part, from available funds encumbered in an amount not to exceed \$3,010,000. CDPHE's spending authority for these services is limited to the amount in the Long Bill. This amount can only be revised through the budget process. NHVP Medicaid providers shall directly bill for TCM services provided to Medicaid eligible participants based on NHVP provider site-specific reimbursement rates set by CDPHE. TCM services shall be billed according to timely filing requirements and paid directly to the NHVP providers out of the MMIS on a per client basis.

The Department shall bill CDPHE claims processing fees for the NHVP no less than quarterly up to \$9,388. The Department shall provide CDPHE with monthly summary reports of claim payment activity by site and by program in a format and containing information agreed to by both parties. The Department shall notify CDPHE in writing of any changes in the MMIS contractor's programming or claims processing fees as soon as those changes are known to the Department.

4. TERM

The term of this Interagency Agreement is from July 1, 2004 through June 30, 2005.

5. AVAILABILITY OF FUNDS

Payment pursuant to this Interagency Agreement, if in any part federally funded, is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. If any of said federal funds become unavailable, as determined by the Department, either party may immediately terminate or seek to amend this Interagency Agreement. Payment pursuant to this Interagency Agreement, if in any part funded by Tobacco Settlement funds, is subject to and contingent upon, the continuing availability of tobacco settlement funds for the purposes hereof. If any of said tobacco settlement

funds become unavailable, as determined by CDPHE, either party may immediately terminate or seek to amend this Interagency Agreement.

6. PERFORMANCE MONITORING

CDPHE shall permit the Department to monitor and audit records and activities that are or have been undertaken pursuant to this Interagency Agreement.

7. ASSIGNMENT

Except as otherwise provided, the duties and obligations of CDPHE shall not be assigned, delegated or otherwise transferred except with the express prior written consent of the Department. CDPHE is authorized by the Department to enter into contracts for the delivery of those services funded by this Interagency Agreement. All subcontractors shall be subject to the requirements of this Interagency Agreement.

8. BENEFIT

This Interagency Agreement shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns. No third party beneficiary rights or benefits of any kind are expressly or implicitly provided to the parties hereto and their respective successors and assigns. No third party beneficiary rights or benefits of any kind are expressly or implicitly provided for herein.

9. NOTICE

For the purpose of this Interagency Agreement, the persons named below are designated as the representatives of the parties. All notices which are required or permitted to be given under this Interagency Agreement shall be given by hand delivery, or by certified mail, return receipt requested, to the representatives named below. The parties may designate in writing a new or substitute representative:

Health Care Policy and Financing:

Phyllis Gervais-Voss
Manager, Acute Care Benefits

1570 Grant Street
Denver, CO 80203

Public Health and Environment:

Joan Eden
Deputy Director, Prevention Services
Division
4300 Cherry Creek Drive South
Denver, CO 80246

10. PROBLEM RESOLUTION

Any failure of either party to perform in accordance with the terms of this Interagency Agreement shall constitute a breach of this Interagency Agreement. Any dispute concerning the performance of a party to this Interagency Agreement, that cannot be resolved at the divisional level, shall be referred to superior departmental management staff designated by each department. Failing resolution at that level, disputes shall be presented to the executive directors of each department for resolution. Failing resolution by the executive directors, the dispute shall be submitted in writing by both parties to the State Controller, whose decision on the dispute shall be final.

11. CONTROLLER'S APPROVAL

This Interagency Agreement shall not be deemed valid until it shall has been approved by the State Controller or such assistant as s/he may designate.

12. HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT OF 1996 ("HIPAA")

Federal law governing the privacy of certain health information requires a "Business Associate Contract" between the Department and CDPHE. 45 C.F.R. Section 164.504(e). Attached as Exhibit C and incorporated herein by reference and agreed to by the Department and CDPHE is a HIPAA Business Associate Addendum. Terms of the Addendum shall be considered binding upon execution of this agreement and shall remain in effect during the term of the agreement including any extensions, unless/until the Department alters the Business Associate Addendum in a substantive way.

13. CONFIDENTIALITY

CDPHE shall protect the confidentiality of all applicant/client records and other materials that are owned/disclosed by the Department and in CDPHE's possession in accordance with this Interagency Agreement. Except for purposes directly connected with this Agreement, no information provided by the Department about or obtained from any the Department applicant/client shall be disclosed by CDPHE without the Department's approval. CDPHE shall advise its employees, agents, and subcontractors, if any, that they are subject to these confidentiality requirements before access to confidential data is permitted. Such requirements shall be subject to the Public (Open) Records Act, § 24-72-101, *et seq.*, C.R.S., as amended. CDPHE understands that federal law/regulation prohibits the disclosure of client/applicant data. If CDPHE receives a request made pursuant to the Public (Open) Records Act for the Department applicant/client data, CDPHE shall notify the Department of the request and CDPHE shall deny the request invoking the exception found in § 24-72-204 (1)(b), C.R.S. All protected health information used/disclosed shall meet the requirements of the HIPAA privacy regulations, as interpreted by the Department.

14. RECORD KEEPING REQUIREMENTS

CDPHE shall maintain a complete file of all records, documents, communications, and other materials, which pertain to this Interagency Agreement according to state record keeping guidelines, from the date of final payment under this Interagency Agreement, unless the Department requests that the records be retained for a longer period. Such files shall be sufficient to properly reflect all direct and indirect costs of labor, materials, health-related services, equipment, supplies, and services, and other costs for which a payment was made. These records shall be maintained according to generally accepted accounting principles, community medical record documentation standards, and shall be easily separable from other records of CDPHE. Copies of all such records, documents, communications, and other materials shall be the property of the Department and shall be maintained by CDPHE in a central location except for client/patient records, which shall be maintained by providers or vendors. If an audit by or on behalf of the federal and/or state government has commenced, but is not completed at the end of the period mandated by state record keeping guidelines, then the materials shall be retained until the resolution of the audit findings.

15. REMEDIAL ACTIONS

The Executive Director of the Department, or his/her designee, may exercise the following remedial actions if s/he finds that CDPHE substantially failed to satisfy the scope of work contained in this Interagency Agreement. "Substantially failed to satisfy the scope of work" shall be defined to mean incorrect or improper activities or inaction by CDPHE or the Department. These remedial actions are as follows:

- A. Withhold payment or data to CDPHE until the necessary service or corrections in performance are satisfactorily completed;
- B. Deny payment or recover reimbursement for those services or deliverables which have not been performed and which due to circumstances caused by CDPHE cannot be performed or if performed would be of no value to the Department. Denial of the amount of payment shall be reasonably related to the value of the work or deliverable lost to the Department;
- C. Subject to paragraph 9 above, terminate or amend this Interagency Agreement in whole or in part the Interagency Agreement upon thirty-days prior written notice to CDPHE; and

16. CDPHE REMEDIAL ACTIONS

The Executive Director of CDPHE, or his/her designee, may exercise the following remedial actions if s/he finds that the Department has substantially failed to satisfy the scope of work contained in this Interagency Agreement. "Substantially failed to satisfy the scope of work" shall be defined to mean incorrect or improper activities or inaction by the Department. These remedial actions are as follows:

- A. Stop work under this Interagency Agreement if the Department fails to provide CDPHE with all requested information or data CDPHE is entitled to as per the attached Business Associate Agreement, until such time as the Department provides all such necessary information or data;
- B. Stop work under this Interagency Agreement if the Department fails to pay CDPHE in a timely manner until such time as the Department makes payment to CDPHE;
- C. Subject to paragraph 9 above, terminate or amend this Interagency Agreement in whole or in part, upon thirty days prior written notice to the Department.

17. FEDERAL REQUIREMENTS

During the term of this Interagency Agreement, CDPHE shall follow all federal laws, regulations, and guidelines for the administration of that portion of the Colorado Medicaid Program for which CDPHE is directly responsible. CDPHE shall access through the internet a current copy of the Department regulations, 10 C.C.R. 2505-10, Sections 8.000 *et seq.* and 42 Code of Federal Regulations (C.F.R.) publications. If the federal government finds that the applicable laws, regulations, and guidelines have not been followed, and if CDPHE is determined to be solely responsible, then CDPHE shall seek any and all restoration of funds from the Colorado General Assembly for any loss of federal financial participation. Financial responsibility shall also include payment of any legal expense incurred in the defense of such an audit exception. The Department shall also have the right to implement other available remedial actions. CDPHE shall not be responsible for seeking this supplemental funding if any such violations of federal laws, regulations, and or guidelines are due to the direct mandates promulgated by the Department. CDPHE shall be responsible for requesting budgetary increases, such as Decision Items and Base Reductions, in collaboration with the Department, for the programs contained within this Interagency Agreement. A continuous improvement concept and self-audit process shall be utilized by CDPHE to ensure all Medicaid related programs are performed according to standard.

18. MUTUALITY

CDPHE shall provide full cooperation to the Department and its duly authorized agents in the administration of this Interagency Agreement. The Department shall provide full cooperation to CDPHE and its duly authorized agents in the administration of this Interagency Agreement. The Department shall consult with CDPHE on budget initiatives or in the development of Volume VIII regulations that may affect CDPHE's performance under this Interagency Agreement. CDPHE shall consult with the Department on budget initiatives or in the development of regulations that may affect the Department's performance under this Interagency Agreement. CDPHE and the Department shall designate representatives from each agency, which shall meet as often as necessary to resolve any problems that may arise under this Interagency Agreement. CDPHE and the Department shall each designate a primary contact for each activity under this

Interagency Agreement. CDPHE shall notify and involve the Department in state fiscal audits, draft audit findings, audit conferences, and final audit reports involving programs covered under this Interagency Agreement. CDPHE is responsible for change requests and base requests involving these programs. The Department shall assign a Budget Analyst to work with CDPHE on these matters.

19. WRITTEN MATERIAL

The Department shall provide CDPHE with internet access for materials that are relevant to the programs identified in this Interagency Agreement, including, monthly Medicaid Bulletins, the Department-generated brochures and flyers, relevant agency letters, and 10 C.C.R. 2505-10, Section 8.000 *et seq.* updates.

20. MEDICAID STATE PLAN AMENDMENTS

The Department, in consultation with CDPHE, shall draft proposed Medicaid State Plan amendments as applicable and as required by CMS for those CDPHE Medicaid programs and services that are covered by this Interagency Agreement. CDPHE shall submit a summary specifically identifying the basis for the proposed amendment to the Department for approval and transmission to CMS within federally required timeframes.

21. PROGRAM COORDINATION

The Department and CDPHE shall work together to provide program implementation and administration for all programs listed in this Interagency Agreement. This program coordination includes, but is not limited to: joint meetings when necessary, telephone conference calls, review of printed materials, assistance with billing concerns, assistance with provider questions and joint participation in program trainings.

22. AMENDMENTS TO THIS INTERAGENCY AGREEMENT

The Department and CDPHE may propose amendments to the Interagency Agreement or any Exhibits attached hereto during its term that are deemed necessary due to changed circumstances. No amendment shall be considered valid unless in writing and approved by both the Department and CDPHE Executive Directors or his/her designee.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS INTERAGENCY AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

STATE OF COLORADO
Bill Owens, Governor

STATE OF COLORADO
Bill Owens, Governor

COLORADO DEPARTMENT OF HEALTH
PUBLIC
CARE POLICY AND FINANCING

COLORADO DEPARTMENT OF
HEALTH AND ENVIRONMENT

Karen Reinertson
Executive Director

Douglas H. Benevento
Executive Director

APPROVAL

STATE CONTROLLER

Leslie M. Shenefelt

HIPAA BUSINESS ASSOCIATE
Interagency Memorandum of Understanding

The parties to this Business Associate Interagency Memorandum of Understanding (“MOU”) are the Colorado Department of Health Care Policy and Financing (“HCPF,” “Covered Entity” or “CE”) and the Colorado Department of Public Health and Environment (“CDPHE”, “Contractor,” “or “Associate”) as per Interagency Agreement Number 2105-2007. This MOU is effective as of July 1, 2004 (the “MOU Effective Date”).

RECITALS

- A. HCPF wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. HCPF and CDPHE intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d – 3120d-8 (“HIPAA”) and its implementing regulations thereunder by the U.S. Department of Health and Human Services (the “Privacy Rule”) and other applicable laws, as amended.
- C. As part of the HIPAA regulations, the Privacy Rule requires HCPF to enter into a contract containing specific requirements with CDPHE prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this MOU.
- D. This MOU applies to exchanges of information and data relating to the Colorado Women’s Cancer Control Initiative Breast and Cervical Cancer Program, and the Prenatal Plus Program. The data exchanges for these programs/services are considered mutually beneficial for both HCPF and CDPHE. For any program/service in which CDPHE is acting as a public health authority, and information is disclosed for purposes related to CDPHE’s public health authority under 45 C.F.R. § 164.512(b), HCPF may or may not disclose information to CDPHE based on a separate written request from CDPHE.
- E. Required approval, clearance and coordination has been accomplished from and with appropriate agencies.

The parties agree as follows:

1. Definitions.

a. Except as otherwise defined herein, capitalized terms in this MOU shall have the definitions set forth in the HIPAA Privacy Rule at 45 C.F.R. Parts 160 and 164, as amended. In the event of any conflict between the mandatory provisions of the Privacy Rule and the provisions of this MOU, the Privacy Rule shall control. Where the provisions of this MOU

differ from those mandated by the Privacy Rule, but are nonetheless permitted by the Privacy Rule, the provisions of this MOU shall control.

b. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

“Protected Information” shall mean PHI provided by HCPF to CDPHE or created or received by CDPHE on HCPF’s behalf. To the extent, if any, CDPHE is a covered entity under HIPAA and creates or obtains its own PHI for treatment, payment and health care operations, Protected Information under this MOU does not include any PHI created or obtained by CDPHE as a covered entity and CDPHE shall follow its own policies and procedures for accounting, access and amendment of Associate’s PHI.

d. “Designated Record Set” shall mean any client information CDPHE is collecting or has access to on behalf of HCPF, to perform the scope of work,

2. Obligations of CDPHE.

a. Permitted Uses. CDPHE shall not use Protected Information except for the purpose of performing CDPHE’s obligations under and as permitted by the terms of this MOU. Further, CDPHE shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by HCPF, except that CDPHE may use Protected Information: (i) for the proper management and administration of CDPHE; (ii) as required by law; or (iii) for Data Aggregation purposes for the Health Care Operations of HCPF. Additional provisions, if any, governing permitted uses of Protected Information are set forth in Attachment A.

b. Permitted Disclosures. CDPHE shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule if disclosed by HCPF, except that CDPHE may disclose Protected Information: (i) in a manner permitted pursuant to this MOU; (ii) for the proper management and administration of CDPHE; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of HCPF; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 C.F.R. Section 164.502(j)(1). To the extent that CDPHE discloses Protected Information to a third party, CDPHE must obtain, prior to making any such disclosure: (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this MOU and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (ii) an agreement from such third party to notify CDPHE within two (2) business days of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in Attachment A.

c. Appropriate Safeguards. CDPHE shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by this MOU. CDPHE shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the CDPHE's operations and the nature and scope of its activities. CDPHE will not be responsible for provisions of the HIPAA Security Rule prior to April 21, 2005.

d. Reporting of Improper Use or Disclosure. CDPHE shall report to HCPF in writing any use or disclosure of Protected Information other than as provided for by this MOU within five (5) business days of becoming aware of such use or disclosure.

e. CDPHE's Agents. If CDPHE uses one or more subcontractors or agents to provide services under this MOU, and such subcontractors or agents receive or have access to Protected Information, each subcontractor or agent shall sign an agreement with CDPHE containing substantially the same provisions as this MOU and further identifying HCPF as a third party beneficiary with rights of enforcement and indemnification from such subcontractors or agents in the event of any violation of such subcontractor or agent agreement. CDPHE shall implement and maintain appropriate sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

f. Access to Protected Information. CDPHE shall make Protected Information maintained by CDPHE or its agents or subcontractors in Designated Record Sets available to HCPF for inspection and copying within ten (10) business days of a request by HCPF to enable HCPF to fulfill its obligations to permit individual access to PHI under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524.

g. Amendment of PHI. Within twenty (20) business days of receipt of a request from HCPF for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, CDPHE or its agents or subcontractors shall make such Protected Information available to HCPF for amendment and incorporate any such amendment to enable HCPF to fulfill its obligations with respect to requests by individuals to amend their PHI under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from CDPHE or its agents or subcontractors, CDPHE must notify HCPF in writing within ten (10) business days of the receipt of the request. Any denial of amendment of Protected Information maintained by CDPHE or its agents or subcontractors shall be the responsibility of HCPF.

h. Accounting Rights. Within twenty (20) business days of notice by HCPF of a request for an accounting of disclosures of Protected Information, CDPHE and its agents or subcontractors shall make available to HCPF the information required to provide an accounting of disclosures to enable HCPF to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528. As set forth in, and as limited by, 45 C.F.R. Section 164.528, CDPHE shall not provide an accounting to HCPF of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 C.F.R. Section 164.506; (ii) to individuals of Protected Information about them as set forth in 45 C.F.R. Section 164.502; (iii)

pursuant to an authorization as provided in 45 C.F.R. Section 164.508; (iv) to persons involved in the individual's care or other notification purposes as set forth in 45 C.F.R. Section 164.510; (v) for national security or intelligence purposes as set forth in 45 C.F.R. Section 164.512(k)(2); (vi) to correctional institutions or law enforcement officials as set forth in 45 C.F.R. Section 164.512(k)(5); (vii) incident to a use or disclosure otherwise permitted by the Privacy Rule; (viii) as part of a limited data set under 45 C.F.R. Section 164.514(e); or (ix) disclosures prior to April 14, 2003. CDPHE agrees to implement a process that allows for an accounting to be collected and maintained by CDPHE and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to CDPHE or its agents or subcontractors, CDPHE shall within five (5) business days of the receipt of the request forward it to HCPF in writing. It shall be HCPF's responsibility to prepare and deliver any such accounting requested. CDPHE shall not disclose any Protected Information except as set forth in Section 5(b) of this MOU.

i. Governmental Access to Records. CDPHE shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining HCPF's compliance with the Privacy Rule. CDPHE shall provide to HCPF a copy of any Protected Information that CDPHE provides to the Secretary concurrently with providing such Protected Information to the Secretary.

j. Minimum Necessary. CDPHE (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure, in accordance with the Minimum Necessary requirements of the Privacy Rule including, but not limited to, 45 C.F.R. Sections 164.502(b) and 164.514(d).

k. Data Ownership. CDPHE acknowledges that CDPHE has no ownership rights with respect to the Protected Information.

l. Retention of Protected Information. Except as provided in Section 4(e) of this MOU or in Attachment A, CDPHE and its subcontractors or agents shall retain all Protected Information throughout the term of this MOU and shall continue to maintain the information required under Section 2(h) of this MOU for a period of six (6) years after termination of the Contract.

m. Notification of Breach. During the term of this MOU, CDPHE shall notify HCPF within two (2) business days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. CDPHE shall take (i) prompt

corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

n. Audits, Inspection and Enforcement. Within ten business (10) days of a written request by HCPF, CDPHE and its agents or subcontractors shall allow HCPF to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this MOU for the purpose of determining whether CDPHE has complied with this MOU; provided, however, that: (i) CDPHE and HCPF shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) HCPF shall protect the confidentiality of all confidential and proprietary information of CDPHE to which HCPF has access during the course of such inspection; and (iii) HCPF shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by CDPHE. The fact that HCPF inspects, or fails to inspect, or has the right to inspect, CDPHE's facilities, systems, books, records, agreements, databases, policies and procedures does not relieve CDPHE of its responsibility to comply with this MOU, nor does HCPF's (i) failure to detect or (ii) detection, but failure to notify CDPHE or require CDPHE's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of HCPF's enforcement rights under this MOU.

o. Safeguards During Transmission. CDPHE shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of Protected Information transmitted to HCPF pursuant to this MOU, in accordance with the standards and requirements of the Privacy Rule, until such Protected Information is received by HCPF, and in accordance with any specifications set forth in Attachment A.

3. Obligations of HCPF.

a. Safeguards During Transmission. HCPF shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to CDPHE pursuant to this MOU, in accordance with the standards and requirements of the Privacy Rule, until such PHI is received by CDPHE, and in accordance with any specifications set forth in Attachment A.

b. Notice of Changes. HCPF shall provide CDPHE with a copy of its notice of privacy practices produced in accordance with 45 C.F.R. Section 164.520, as well as any subsequent changes or limitation(s) to such notice, to the extent such changes or limitations may affect CDPHE's use or disclosure of Protected Information. HCPF shall provide CDPHE with any changes in, or revocation of, permission to use or disclose Protected Information, to the extent it may affect CDPHE's permitted or required uses or disclosures. To the extent that it may affect CDPHE's permitted use or disclosure of PHI, HCPF shall notify CDPHE of any restriction on the use or disclosure of Protected Information that HCPF has agreed to in accordance with 45 C.F.R. Section 164.522.

4. Termination.

a. Without Cause. Either of the parties shall have the right to terminate this MOU by giving the other party 60 days notice. If notice is given, the MOU will terminate at the end of 60 days, and the liabilities of the parties hereunder for further performance of the terms of the MOU shall thereupon cease, but the parties shall not be released from duty to perform up to the date of termination.

b. Reasonable Steps to Cure Breach. If HCPF knows of a pattern of activity or practice of CDPHE that constitutes a material breach or violation of the CDPHE's obligations under the provisions of this MOU or another arrangement, and does not terminate this MOU pursuant to Section 4(c), then HCPF shall take reasonable steps to cure such breach or end such violation, as applicable. Any dispute concerning the performance of this MOU that cannot be resolved at the divisional level shall be referred to superior departmental management staff designated by each department. Failing resolution at that level, disputes shall be presented to the executive directors of each department for resolution. Failing resolution by the executive directors, the dispute shall be submitted in writing by both parties to the State Controller, whose decision on the dispute shall be final. This dispute resolution mechanism is in addition to, and not in lieu of, any other reporting or other requirement of federal or state law concerning alleged privacy violations.

c. Material Breach. Any material breach by CDPHE of any provision of this MOU, as determined by HCPF, shall be grounds for immediate termination of the Contract by HCPF. HCPF shall either (i) terminate this MOU, if feasible or (ii) if termination of this MOU is not feasible, HCPF shall report CDPHE's breach or violation to the Colorado Attorney General's Office and to the Secretary of the U.S. Department of Health and Human Services.

d. Judicial or Administrative Proceedings. Either party may terminate this MOU, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

e. Effect of Termination.

(1) Except as provided in paragraph (2) of this subsection, upon termination of this MOU, for any reason, CDPHE shall return or destroy all Protected Information that CDPHE or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If CDPHE elects to destroy the PHI, CDPHE shall certify in writing to HCPF that such PHI has been destroyed.

(2) If CDPHE believes that returning or destroying the Protected Information is not feasible, CDPHE shall promptly provide HCPF notice of the conditions making return or destruction infeasible. Upon mutual agreement of HCPF and CDPHE that return or destruction of Protected Information is infeasible, CDPHE shall continue to extend the protections of

Sections 5(a), 5(b), 5(c), 5(d) and 5(e) of this MOU to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. No Waiver of Immunity. No term or condition of this MOU shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS 24-10-101 *et seq.* or the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.* as applicable, as now in effect or hereafter amended.

6. Defense. To the extent any legal action against either party is not covered by the Risk Management Fund or other authorized self-insurance fund for tort claims, each party shall defend itself at its own expense in any action by third parties.

7. Disclaimer. HCPF makes no warranty or representation that compliance by CDPHE with this MOU, HIPAA or the HIPAA Regulations will be adequate or satisfactory for CDPHE's own purposes. CDPHE is solely responsible for all decisions made by CDPHE regarding the safeguarding of PHI.

8. Certification. To the extent that HCPF determines an examination is necessary in order to comply with HCPF's legal obligations pursuant to HIPAA relating to certification of its security practices, HCPF or its authorized agents or contractors, may, at HCPF's expense, examine CDPHE's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to HCPF the extent to which CDPHE's security safeguards comply with HIPAA, the HIPAA Regulations or this MOU.

9. Amendment.

a. 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 MOU may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule, the Final HIPAA Security regulations at 68 Fed. Reg. 8334 (Feb. 20, 2003), 45 C.F.R. § 164.314 and other applicable laws relating to the security or privacy of PHI. The parties understand and agree that HCPF must receive satisfactory written assurance from CDPHE that CDPHE will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this MOU embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. HCPF may terminate the MOU upon thirty (30) days written notice in the event (i) CDPHE does not promptly enter into negotiations to amend this MOU when requested by HCPF pursuant to this Section or (ii) CDPHE does not enter into an amendment to this MOU providing assurances regarding the safeguarding of PHI that HCPF, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rule.

b. Amendment of Attachment A. Attachment A may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this MOU.

10. Assistance in Litigation or Administrative Proceedings. CDPHE shall make itself, and any subcontractors, employees or agents assisting CDPHE in the performance of its obligations under this MOU, available to HCPF, at no cost to HCPF up to a maximum of 30 hours, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against HCPF, its directors, officers or employees based upon a claimed violation of HIPAA, the Privacy Rule or other laws relating to security and privacy of PHI, except where CDPHE or its subcontractor, employee or agent is a named adverse party.

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

12. Interpretation. This MOU shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this MOU shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.

13. Survival of Certain Terms. Notwithstanding anything herein to the contrary, CDPHE's obligations under Section 7(d) ("Effect of Termination") and Section 14 ("No Third Party Beneficiaries") shall survive termination of this MOU and shall be enforceable by HCPF as provided herein in the event of such failure to perform or comply by the CDPHE.

14. Representatives and Notice.

a. Representatives. For the purpose of this MOU, the individuals listed below are hereby designated as the parties' respective representatives. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. All required notices shall be in writing and shall be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

HCPF/Covered Entity Representative:

Julie Gefke
Privacy and Security Officer
Department of Health Care Policy and Financing
1570 Grant St, Denver, CO 80203-1818

CDPHE/Business Associate Representative:

Ann McNulty
HIPAA Compliance Coordinator
Department of Public Health and Environment
4300 Cherry Creek Drive South, Denver, CO 80246-1530

15. Availability of Funds. Payment pursuant to this MOU, if in any part federally funded, is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. If any of said federal funds become unavailable, as determined by HCPF, either party may immediately terminate or seek to amend this MOU.

16. Audits. In addition to any other audit rights in this MOU, CDPHE shall permit HCPF and any authorized federal agency to monitor and audit records and activities which are or have been undertaken pursuant to this MOU.

17. No Assignment. Except as otherwise provided, the duties and obligations of CDPHE shall not be assigned, delegated or subcontracted except with the express prior written consent of HCPF. Any subcontractors or agents used by BA to perform any services in connection with this MOU shall be subject to the requirements of this MOU.

ATTACHMENT A

This Attachment sets forth additional terms to the HIPAA Business Associate MOU dated July 1, 2004, between the Department of Health Care Policy and Financing and the Department of Public Health and Environment (“MOU”). This Attachment may be amended from time to time as provided in Section 12(b) of the MOU.

1. Additional Permitted Uses. In addition to those purposes set forth in Section 5(a) of the MOU, CDPHE may use Protected Information as follows:

No Additional Permitted Uses

2. Additional Permitted Disclosures. In addition to those purposes set forth in Section 5(b) of the MOU, CDPHE may disclose Protected Information as follows:

No Additional Permitted Disclosures

3. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of CDPHE shall receive Protected Information in the course of assisting CDPHE in the performance of its obligations under the MOU:

Authorized IRIS users: HCPF data will be input into the IRIS system for Prenatal Plus program case management. CDPHE will provide authorized IRIS users with notification of HCPF expectations, based on this MOU, regarding uses and disclosures of Protected Health Information, safeguarding of Protected Health Information, and Colorado Medical Assistance Program client rights under 45 C.F.R. Parts 160 and 164. HCPF will receive a copy of the notification provided to IRIS users.

4. Receipt. CDPHE’s receipt of Protected Information pursuant to the MOU shall be deemed to occur as follows, and CDPHE’s obligations under the MOU shall commence with respect to such PHI upon such receipt:

Upon disclosure of PHI by HCPF to CDPHE

5. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information:

No Additional Restrictions on the Use of Data

6. Additional Terms. *[This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security of privacy specifications, de-identification or re-identification of data and other additional terms.]*
- a. Prenatal Plus information provided monthly to CDPHE: Medicaid Decision Support System data will be provided monthly to CDPHE on all potential Prenatal Plus clients. This information will be uploaded to the IRIS computer system in order to identify current Medicaid clients and to eliminate duplication. Data provided by HCPF on Medicaid clients who are *not* found to be part of the Prenatal Plus Program will be permanently deleted from any/all electronic databases by CDPHE, including the IRIS system, and all other copies are to be destroyed by CDPHE immediately upon such discovery. This action must take place within six months of the baby's due date. HCPF will provide data via FTP to a designated CDPHE employee no later than the 8th of each month.
 - b. Prenatal Plus information provided yearly to CDPHE: Medicaid Decision Support System data will be provided yearly to CDPHE on those Prenatal Plus clients (and their infants) who have paid for Program services in full or in part through Medicaid. This data will be used solely to analyze birth outcome and evaluate progress made in reducing the rate of low birth-weight babies as a result of the Program. This information is not to be distributed to any outside sources for any reason without express approval from HCPF. HCPF will provide data via FTP to a designated CDPHE employee no later than August 31 of each year.
 - c. Breast and Cervical Cancer Program information provided to CDPHE: COIN reports reflecting those enrolled in the Breast and Cervical Cancer Program will be provided to CDPHE on a regular basis, as needed or requested. These reports will include the following information: client name, client ID, CWCCI site number and name, and eligibility begin date. CDPHE will be copied on all disenrollment letters sent to clients by HCPF.
 - d. The Integrated Registration Information System (IRIS) uses the Internet to transmit information about clients on a statewide basis. IRIS restricts access to HCP, Prenatal Plus, and Family Planning data to authorized CDPHE staff members and authorized CDPHE subcontractor staff only. Prior to April 2005, CDPHE shall provide comprehensive security documentation to the HCPF Security Officer demonstrating that IRIS is compliant with the HIPAA security regulations. The provided documentation must address each HIPAA security standard/specification individually and specifically and how the IRIS system meets each requirement.