

CONTRACT BETWEEN
THE COMMUNITY DEVELOPMENTAL DISABILITY ORGANIZATION
AND
KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
THE DIVISION OF DISABILITY & BEHAVIORAL HEALTH SERVICES
COMMUNITY SUPPORTS AND SERVICES

I. BASIC CONTRACT INFORMATION

Agency Name:

Address:

Contract Number:

Federal Tax ID Number:

Contract Period: July 1, 2008, through June 30, 2009

II. PARTIES TO THE AGREEMENT

This agreement is entered into between the Kansas Department of Social and Rehabilitation Services (SRS), Division of Disability & Behavioral Health Services, Community Supports and Services (DBHS/CSS), and _____, a Community Developmental Disabilities Organization (CDDO).

III. PURPOSE

This agreement establishes the expectations of the CDDO and DBHS/CSS as specified in K.S.A. 39-1801 et seq., K.A.R. 30-64-01 et seq., all applicable federal statutes, regulations and policies, all applicable state statutes, regulations, formally approved SRS policies, and all formally approved DBHS/CDDO policies in existence on or before June 30, 2002. Services provided and use of funds will be in accordance with this agreement, and only for persons who have been determined eligible and shall hereafter be referred to as person or persons. Consistent with K.S.A. 39-1809, however, nothing in this agreement creates any entitlement to waiver or state funded services.

IV. DEFINITIONS AND REFERENCES

For the purpose of this agreement, the definitions in K.S.A. 39-1801 et seq., K.A.R. 30-63-01 et seq., K.A.R. 30-64-01 et seq., and Appendix A apply and by reference are part of this agreement. The provisions included in the affixed Contractual Provisions Attachment (form DA-146a), Appendix A., Appendix B, Appendix C, Appendix D, Appendix E, Appendix F, and Appendix G and signed and executed Addenda are incorporated in this agreement.

V. REIMBURSEMENT

A. Reimbursement of DD Reform Administration Costs

The CDDO is allocated a fixed amount, as set out in Appendix B, to defray the administrative costs of DD Reform.

B. Reimbursement Through the HCBS/MRDD waiver

The CDDO shall utilize available financial data to monitor expenditures for the HCBS/MRDD Waiver. The CDDO must manage expenditures in the current fiscal year as if total cash payments for MR/DD Waiver during FY10 shall not exceed those of FY09 excluding new access due to crises, allowed exceptions, or other access to services approved by the Statewide Funding Committee.

1. DBHS/CSS will review the support plans and funding requests for persons seeking community placement in the CDDO area who are residing in:
 - a. State Mental Retardation Hospitals
 - b. State Mental Health Hospitals
 - c. A private Intermediate Care Facility for Mental Retardation (ICF/MR), which is closing, decertified or reducing bed capacity. The CDDO may exceed the HCBS/ MRDD waiver allocation in this situation as the funds will follow at year end to cover these costs.

For consumers transferring from the SMRH during the fiscal year ending June 30, 2009, DBHS/CSS shall arrange for the transfer of funds from the SMRH account to the HCBS/ MRDD waiver account. The amount to be transferred to the CDDO allocation will equal the aggregate difference of the annualized plan of care for all persons transferring out (based on each person's tier level or negotiated rate for day, residential and wellness monitoring) compared to the annualized HCBS cost for persons transferring into the facility. The director of Management Operations shall certify such transfers on June 1, 2009. The budgetary adjustments are pursuant to K.S.A. 39-1806.

DBHS/CSS will notify the CDDO when the funding plan has been approved (within 10 working days). Once the funding plan has been approved by the CDDO and approved by DBHS/CSS, the CDDO must arrange to serve all persons for whom approval is provided. The CDDO must provide a written explanation to DBHS/CSS for delay of services.

2. As indicated in the Kansas Strategic Plan of 2005-2010, all persons with developmental disabilities should receive the appropriate services and supports for which they are eligible. They should receive services and supports at the time they need them according to their individual needs. To this end, SRS and CDDOs shall work in collaboration with other community partners to create an effective planning process that allows individuals, whose needs can only be met through services available through the HCBS/MRDD waiver, to access the needed new or additional services. The CDDO may exceed the HCBS/MRDD waiver allocation in the following situations:

Unless specifically stated below, eligible individuals in groups a, b, c, and e, who participate in the planning process and are listed on the service access list will be granted funding for services if funding is not available at the time services are required.

- a. Children who are in the custody of SRS may access new or additional HCBS waiver services for the purpose of addressing support needs related specifically to the child's developmental disability. Access to HCBS services and funding shall not be utilized to replace the cost of supporting a typical child in custody. The CDDO will collaboratively work with the responsible child placing agency to assure that the health and welfare needs of the child are met.

Children in SRS custody residing in licensed foster care settings will have their needs for HCBS services reviewed as needed, but at least annually, using the needs assessment tool developed in FY08 by the Statewide Funding Committee. This review will be completed during the child's birth month.

- b. In supporting a child or family when that child has been determined by SRS/CFS to be at imminent risk of coming into the custody of the Secretary of SRS. If a situation arises where an individual is not on the service access list, the CDDO and CSS/CFS will review the

situation and determine the level and intensity of supports needed to assure the child does not come into the custody of SRS.

- c. Children under the age of 18 who are transitioning from SRS custody, as well as adults who are transitioning out of SRS custody at age 18 or thereafter may access HCBS services in an amount sufficient to provide for disability-related support needs of the person provided that the individual has been listed on the service access list. If a situation arises where an individual in SRS custody is transitioning to children or adult services and is not on the service access list, the CDDO and CSS/CFS will review the situation and determine how the health and welfare needs of the individual will be met. SRS understands that the transition to children or adult services may transcend fiscal years.
- d. Children who are transitioning to community services from a Youth Residential Facility 2 or a Psychiatric Residential Treatment Facility, and who previously accessed MR/DD waiver funding are eligible to have waiver funding reinstated in an amount that addresses actual disability-related support needs. If a child is transitioning to community services from a Youth Residential Facility 2 or a Psychiatric Residential Treatment Facility and is not on the service access list, the facility, the CDDO and CSS/MH will review the situation and collaboratively develop a plan that assures the health and safety of the child.
- e. Individuals who because of a reduction in or termination of Technology Assisted, Autism or Traumatic Brain Injury Waiver services will have access to MR/DD waiver funding, not to exceed the actual level of disability-related support need.

All other access to new or additional waiver services shall be limited to individuals who are offered support funding through the funding service access list or crisis criteria contained in Appendix E of this contract.

The annualized costs of serving these persons will be added to the HCBS/MRDD waiver base for FY 09. Funds to continue services to these persons will be allocated to CDDOs per the allocation methodology for FY 09.

DBHS/CSS will continue to meet with the Foster Care for Children with MR/DD Workgroup that will address the coordination of services between systems, including funding for children in SRS custody, or at risk of coming into SRS custody that are eligible for MRDD services. The workgroup will make recommendations for improvement of the system. Members of the workgroup will include individuals from CDDOs, child welfare contractors, SRS Children and Family Services, Mental Health and DBHS/CSS. The workgroup will present a status report to the DD Strategic Plan Oversight Committee in January, 2009.

C. State Aid

State Aid are those funds distributed pursuant to K.S.A. 65-4411 et seq. and K.A.R. 30-22-31 et seq. and the use of these funds is governed only by those citations.

The CDDO shall submit quarterly and annual reports per K.A.R. 30-22-32 (7)(g), using the electronic format developed and agreed upon by the CDDO and SRS with the first such report due October 31, 2009.

D. Payment Schedule

The amounts enumerated in Addendum 1 are for the allocation period July 1, 2008 to June 30, 2009. Upon receipt by SRS of this agreement properly executed, General Funds and State Aid will be paid in four quarterly payments in July 2008, October 2008, January 2009 and April 2009.

A quarterly payment of federal and State General Funds for CDDO administration will be paid in July 2008, October 2008 and January 2009. After receipt of the third quarter's CDDO administrative cost report (per section VII. O) and if the expenditures reported are equal to or greater than the amount of payments, the fourth quarterly payment will be made.

If CDDO administration expenditures are less than the amount of the payments for the first three quarters, SRS/DBHS/CSS will contact the CDDO and may reduce the fourth quarterly payment.

Any payments of CDDO administration due to the CDDO as a result of a prior period adjustment will be due within 45 calendar days of the end of the fiscal year.

VI. Refinancing State General Funds

Refinancing a person's funding source is a local option available for people who become eligible for the HCBS/MRDD waiver, but are funded by General Fund dollars. Discretion to exercise this local option is delegated to the CDDO to utilize within available unmatched General Fund resources.

Within fifteen (15) days of exercising this option, the CDDO will notify DBHS/CSS staff that a person's funding source has been refinanced from General Funds to HCBS/MRDD waiver funds. The CDDO will also tell DBHS/CSS staff the tier level of the person who has been refinanced. At the end of the quarter during which the refinancing occurs, the CDDO's allocation of General Funds and HCBS/MRDD waiver funds will be adjusted by the amount of the state portion of the person's waiver tier level.

CDDOs have the discretion to exchange funding for individuals between the HCBS/MRDD Waiver and SGF funded services when an individual loses eligibility for Waiver funding and another individual is waiver eligible, as long as the fiscal effect is neutral. The Statewide Funding Committee will track the implementation of the above language.

VII. PERFORMANCE OF WORK

A. SRS and CDDOs agree on the importance of achieving priority outcomes within the DD Strategic Plan, Strategic Area #1

In keeping with this Goal, the intent of the Kansas DD Strategic Plan is to implement the Kansas Community Service Challenging Behavior Initiative. This initiative is to address the issues faced in serving individuals who present challenging behaviors that are difficult to support. Revenue necessary to fund this initiative will be included in CSS's budget development process for FY 2010 and subsequent years.

During FY 09 the following actions will be taken to begin this initiative:

- a. SRS will coordinate training with the mental health system and the DD system; which will include CDDOs, CMHCs, providers and interested stakeholders. This training will provide

information related to both the MH and DD systems to assist in coordination of services for individuals being served.

- b. DBHS/CSS will evaluate the fiscal impact of expanding the coverage of Positive Behavioral Supports to include adults.
- c. CSS and the mental health unit within SRS will work with Kansas Health Solutions (KHS) to provide the CDDOs information related to KHS's role in providing services to individuals with developmental disabilities.
- d. CSS will work with the CDDOs to develop criteria that will be utilized to access additional funding for individuals experiencing challenging behaviors who need an intensive level of support.
- e. DBHS/CSS will support the development of short term out-of-home services which includes crisis intervention and stabilization.
- f. DBHS/CSS will be available to assist individual CDDOs who wish to develop local processes for serving individuals experiencing challenging behaviors. Best Practices information will be shared regularly at SRS/CDDO management meetings.
- g. DBHS/CSS and CDDOs will study the mental health system for managing hospital beds and determine the feasibility of implementing a similar system for people with developmental disabilities.

B. Service Access Management

The CDDO must arrange to serve persons for whom funding is available as identified in Addendum

1. The CDDO must offer services consistent with the following requirements:

1. New persons should be served within an average of sixty (60) days from when funding for needed services is determined available by the CDDO.
2. Service Reduction:
 - a. If the CDDO projects it will be over its allocated funding amounts as identified in Addendum 1, or if funding reductions are executed pursuant to sections XI. B. and XI. C. of this agreement, it can take measures necessary to reduce services, including, but not limited to, across the board cuts so the CDDO's service area remains within 100% of its allocated funds. All changes in funding will be developed by the CDDO, with input from the Council of Community Members and representatives of CSP's. Appeals directly related to across the board cuts implemented pursuant to sections XI. B. and XI. C. will be forwarded to the Office of Administrative Hearings.
 - b. If the CDDO determines a person whose services are funded pursuant to allocations in this agreement exceeded the amount the person needs, the CDDO should reduce the person's services either voluntarily or involuntarily. However, the CDDO cannot reduce services involuntarily until the CDDO follows the steps outlined in the DBHS/CDDO Involuntary Service Reduction Policy.

C. Statewide Funding Committee

The CDDO will appoint a representative of that CDDO to serve on the Statewide Funding Committee (Appendix C). Each CDDO must designate an alternate representative to attend the meetings in absence of the primary representative.

D. Statewide Quality Oversight Committee

The CDDO will appoint a representative to participate in the Statewide Quality Oversight Committee as described in Appendix G. Each CDDO must designate an alternate representative to attend the meetings in absence of the primary representative.

E. Statewide BASIS Assessment Committee

Each CDDO will appoint two representatives to participate in the Statewide BASIS Assessment Committee as referenced in Appendix F.

F. Funding Plan

Everyone who receives direct community services paid for through General Fund dollars will have a funding plan which outlines the funds that are committed by the CDDO to each person. Through the annual review process, each person's funding is subject to reconsideration.

G. Requirements not contained herein.

CDDOs and affiliates shall not be required to perform any new practices, plans or recordkeeping not expressly required of CDDOs and affiliates by state and federal statute, regulation, or the current SRS/CDDO contract.

H. Children in SRS Custody

To ensure that children who are developmentally disabled and in SRS Custody and children who are transitioning into alternative community supports have access to community supports at the time they are released from custody, DBHS/CSS will facilitate a linkage with Integrated Service Delivery and their regions of the State.

1. At a minimum; CDDO representatives, the Child and Family Team, Child Placing Agencies, school districts and other stakeholders should be encouraged to participate.
2. Data from the above representatives regarding children who are DD and in custody will be made available to CDDOs, the SRS Regional Offices and SRS/DBHS.
3. Responsiveness to children in custody will be managed at a regional level reflecting local and regional strengths and uniqueness with on-going feedback to DBHS/CSS.

I. Notice of Policy Change

SRS shall provide the CDDO with timely advance notice of cost containment policies or newly developed prior authorizations.

J. Prior Authorization Determinations

Timely processing of prior authorizations (PAs) for Medicaid services is a priority for CDDOs and DBHS/CSS. To this end, CDDOs will implement quality assurance measures to maximize the number of plans that are submitted in proper form and timely fashion.

DBHS/CSS will process prior authorizations within ten (10) working days of submissions. At the discretion of DBHS/CSS, inaccurately submitted plans with substantive errors will be placed in rejected status.

Additionally, DBHS/CSS will provide specific reports or guidance to CDDOs and the Statewide Funding Committee that will identify barriers to timely processing of PAs. If a CDDO demonstrates a trend of inaccurate PA submissions, the CDDO will pursue measures intended to rectify identified deficiencies.

K. Biennial Rate Study

Pursuant to the provisions of K.S.A. 39-1806, SRS shall consult with CDDOs in planning for the biennial review of all rate structures by independent professionals. SRS will utilize the most current rate study recommendations in the development of its budget request.

In furtherance of requirements set forth in K.S.A. 39-1806 to complete a biennial study of rates paid through this contract, SRS and CDDOs agree to continue to utilize a Joint SRS Provider Advisory Rate Committee with membership and duties as defined in the 2005 RFP, in planning for, and providing oversight for, the next biennial rate study.

CDDOs will include in all affiliate agreements the requirement that developmental disability community service providers are required to provide information in the biennial independent rate study conducted by SRS as required by the Developmental Disabilities Reform Act as a condition of participation in the Medicaid program.

L. Impartial and Efficient Use and/or Distribution of Funds

The CDDO will administer the impartial and efficient use and/or distribution of funds identified in Addendum 1. Subject to the funds identified in Addendum 1, the CDDO directly or by subcontract, shall ensure an array of services that meet the needs of persons who have a developmental disability in accordance with the Developmental Disabilities Reform Act and provide them opportunities of choice to increase their productivity, independence, integration and inclusion in the community and enable them to exercise the right to risk; and reduce reliance on separate, segregated settings in institutions or community.

Payments to the CDDO, and payments from the CDDO to affiliates, indicate that services are required to meet standards of service access and quality established by SRS. Payments are not indicative of the actual cost of each service delivered. The parties agree and acknowledge that the reimbursement rates, as set by SRS based on appropriations from the Kansas Legislature were not subject to negotiation by SRS.

M. DBHS/CSS will timely notify the CDDO within 30 days of receipt of application for any licensure or re-licensure of any service provider in the CDDO area.

N. SRS and stakeholders shall meet via Webinar three times annually beginning August of the Contract year to discuss a variety of issues related to the capacity of community services and the supports needed for citizens with developmental disabilities. Meeting handouts will be available electronically using the Webinar format. Agendas will be developed jointly by representatives of CDDOs, SRS, CSPs and other stakeholders and will be distributed at least 5 business days prior to the meeting. Responsibility for taking minutes of the meetings will be rotated between SRS and CDDOs. The minutes will be posted on the SRS/DBHS/CSS website within 10 working days after receiving reviewed and approved minutes.

CDDOs and SRS will meet face to face, with Webinar capability made available, three times per year. The first meeting will be held in August of the Contract year. The CDDO / SRS management meetings will precede the SRS & stakeholders meetings. Agendas will be developed jointly by representatives of CDDOs and DBHS/CSS with input from other stakeholders and CSPs and will be distributed at least 5 business days prior to the meeting. Stakeholders are welcome to attend the meetings. Responsibility for taking minutes of the meetings will be rotated between SRS and

CDDOs. The minutes will be posted on the SRS/DBHS/CSS website within 10 working days after receiving reviewed and approved minutes.

O. Reporting

The CDDO will track and report CDDO administrative costs referred to in this document and referenced in Addendum 1 using a format agreed upon by the CDDO and SRS. The report is due to SRS within twenty (20) days of the end of each fiscal quarter, beginning July 1, 2008.

P. MRDD Community Services Strategic Planning Outcomes

1. CDDOs will encourage employment for individuals who are MR/DD that may result in the discontinuance of services funded through this contract. In such instances, SRS/DBHS/CSS will ensure the return to previous funding should persons disengage from identified employment or supported employment activities, if eligible.
2. Participant Direction - Each CDDO will implement a process to inform persons seeking or receiving services in the CDDO area of the benefits and responsibilities of all service options.
3. SRS and CDDOs agree on the importance of achieving priority outcomes within the DD Strategic Plan, Strategic Area #1. Goal #4. To improve the outcome of community based competitive employment for persons seeking or receiving services, Kansas will move towards an “employment first” type of initiative in lieu of traditional rehabilitative day services as a presumed default option. To that end a task force will be convened. The task force will:
 - a. Consist of at a minimum representatives from CSS, CDDO’s, CSP’s, persons served, KHPA, parents, guardians and advocacy organizations.
 - b. Identify barriers and disincentives to increased independence in such areas as competitive employment: the need for a safety net for persons who lose a job; embracing SRS’s mission to promote adult self-sufficiency; reviewing VR’s role in assisting with supported employment; recommending methods of improving outcomes which could include financial incentives; studying current Employment First models in other states, specifically models that treat employment as the “default” model for adults waiting for day services and also other methods of Medicaid funding such as support waivers for supported employment. The task force should also review utilization of the new supported employment service in the DD waiver and opportunities for self employment.
 - c. The workgroup will be charged with the development of a comprehensive community employment service delivery evaluation with recommendations. The workgroup shall be established no later than August 1, 2008 and will provide updates at CSS/CDDO Management Meetings. Meeting reports will be posted on appropriate websites to provide opportunities for input from other CDDO’s and CSP’s. The workgroup will present recommendations to CSS and CDDOs at the spring CDDO Management meeting scheduled in 2009.

Q. CDDO Reviews

The CDDO will participate in and assist in providing resources for the CDDO review process/es developed by the DD Strategic Plan Committee. CDDOs will provide the following:

- a. Information requested prior to the review by the deadline identified;
- b. Assistance/support to SRS in the development of an adequate statewide pool of trained reviewers by promoting and/or soliciting participation of CSP staff, CDDO staff, community

members and advocate volunteers for completion of the review process in other CDDO areas;

- c. A CDDO staff to act as single point of contact for coordination and planning of its CDDO review; and
 - d. SRS shall post CDDO Final Review reports along with CDDO responses on its website.
- R. The CDDO must supply accurate special reports or information to DBHS-CSS or its designees within reasonable requested time frames. Requests for information (such as the biennial independent rate study) are regularly made as a result of regulatory or legislative demands placed on DBHS-CSS, as such; all requests will be identified as to the source of the request and/or informational need. SRS will honor information requests from CDDOs if the information or data is available through current SRS resources. If the information or data being requested is not available, SRS will notify the CDDO and discuss possible options for obtaining requested information. Responses from SRS will be given within a reasonable timeframe.
- S. CDDOs are encouraged to do the following:
1. Self Advocacy Communications: Each CDDO may maintain a list of affiliated providers, including the CDDO, who are willing to provide computer access to consumers to access the Internet to participate in on-line training, 1:1 training on demand (downloads), Webinars and other applications in order to enhance self-advocacy partnerships with SACK. Ideally, the computer will have web cam capability for video access and person-to-person communication. Computer access would be by pre-arrangement by the consumer with the provider or the CDDO. (In addition, providers and CDDOs who update their computers are encouraged to offer older computers to consumers.)
 2. Self-advocacy enhancement: CDDOs are encouraged to support self-advocacy efforts in their service areas. Examples might be through such activities as providing scholarships to the SACK Conference as well as other self-advocacy efforts and initiatives.
- T. Contract Accountability
- SRS and CDDOs agree that ongoing monitoring of the obligations made to each other in this contract promotes the integrity of the contract and of the contracting process. To that end SRS and CDDOs agree that at each SRS/CDDO meeting held during the course of the contract year the agenda shall include status reports from SRS and the CDDOs as to their fulfillment of each of their respective contractual obligations. In all instances where an obligation has not been fulfilled, including where a deadline for action set out in this contract is not met, an explanation for such shall be stated in the report and an estimated date of compliance shall be provided to the other party. The contract spokespersons for the CDDOs shall be responsible for preparation of the CDDO reports. Status reports shall be distributed by CDDOs to SRS, and by SRS to CDDOs, no later than five (5) business days prior to SRS/CDDO meetings.

VIII. UTILIZATION OF FUNDS RECEIVED

Funds paid directly as a result of this Agreement have been allocated pursuant to the methodology described in Appendix B of this agreement.

A. General Funds

General Funds are those funds allocated to the CDDO pursuant to section I. D. of Appendix B of this agreement. These funds may be used, at the CDDO's discretion, for services to persons who are not

HCBS/MRDD eligible, as well as those who are HCBS/MRDD waiver eligible. These funds are allocated for, but not limited to:

1. Adult Day and Residential Services
2. Family Support/Subsidy

B. Transfer of Funds

Notwithstanding the requirements related to portability of funds found in K.A.R. 30-64-28, funds received through this agreement may be transferred to another unaffiliated entity, sponsoring organization, or endowment only if the CDDO does not have a funding service access list for services.

C. Nothing in this provision requires the CDDO to pay the operating deficit of an affiliate. Nothing in this agreement requires a CDDO to pay local tax support revenue to an affiliate.

IX. HCBS/MRDD FUNDING UNITS

A. HCBS/MRDD waiver service funding units are those that are approved through the Prior Authorization process pursuant to the Plan of Care and are subject to the conditions and limitations of this agreement. Through the annual review process, each person's plan of care is subject to reconsideration.

B. All services provided by licensed agencies that are consistent with the definition of Residential and Adult Day Services in the HCBS Waiver, either adults or children, must be reimbursed at the established tiered rate for services except for those persons who receive rates established through the Extraordinary Funding Policy Protocol.

C. State Mental Retardation Hospital or Intermediate Care Facility

For persons being placed into community-based services from an SMRH or from an ICF/MR that is closing or reducing its bed capacity, the CDDO will be provided the option, by DBHS/CSS, to negotiate rate(s) to cover the cost of services for the person as set forth in such person's plan for transfer from the institution to community services, as dictated in 39-1806 (a)(1).

X. INDEMNIFICATION

The CDDO agrees to assume responsibility for and to indemnify, protect, and hold harmless the Department of Social and Rehabilitation Services from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, costs, and expenses (including reasonable attorney's fees) imposed on, incurred by, or asserted against the Department of Social and Rehabilitation Services which in any way relates to or arises out of the CDDO's performance of the terms of this contract, unless caused solely by the Department of Social and Rehabilitation Services, and its agents.

The Department of Social and Rehabilitation Services agrees to assume responsibility for and to indemnify, protect and hold harmless the CDDO from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, costs, and expenses (including reasonable attorney's fees) imposed on, incurred by, or asserted against the CDDO which is in any way relates to or arises out of the Department of Social and Rehabilitation Services performance of the terms and conditions contained in this agreement, unless caused solely by the CDDO and its agents. Any disallowance of federal funds by the federal government related to the structure of reimbursement will not be deemed to have been caused solely by the CDDO and its agents, unless specifically attributable to conduct of the CDDO or its agents.

Any party seeking indemnification (the “Indemnitee”) must promptly give the party from whom indemnification is sought (the “Indemnitor”) notice of any such claim. The Indemnitor may resolve the claim or retain counsel to represent the Indemnitee in defense of the claim. If, however, the Indemnitor does not assume the defense or otherwise resolve the claim, the Indemnitee may protect its interests as it reasonably deems appropriate. The Indemnitor may not consent to entry of judgment or enter into any settlement without the written consent of Indemnitee. The provisions of this agreement section will survive the term of this Agreement.

XI. ALTERATIONS TO THIS AGREEMENT

A. Alterations

Any alterations to this agreement will only be valid when they have been reduced to writing, duly signed and attached to the original of this agreement. This agreement must be subject to renegotiation upon changes in federal or state laws or regulations or formally approved SRS policies to conform to any changes caused by amendments or revisions to those laws or regulations. All other proposed alterations to this agreement, except as outlined in sections XI. B. and XI. C. below, must be introduced at an DBHS/ CDDO meeting and, have a mutually agreed upon effective date.

B. Reduction in Funding

The State of Kansas’ current financial situation does not make it possible for SRS to make firm, unalterable financial commitments. In the event SRS determines lack of funding requires a modification of this agreement, SRS reserves the right to renegotiate terms and conditions of the agreement with the CDDO. The CDDO agrees to cooperate with SRS in negotiating and mediating this agreement should SRS determine that such modification is necessary to manage the resources available to SRS.

In the event SRS is subject to a formal funding reduction or allotment, SRS reserves the right to alter or adjust the payment amounts or terms of this agreement to meet funding reductions or allotments by sending a written notice of such alterations or adjustments to the CDDO 30 days before such alterations or adjustments become effective. Should the CDDO believe there is a need to modify other terms or conditions of the agreement, SRS will, in good faith, negotiate regarding the terms of the agreement.

C. In the event SRS determines that expenditures in the community developmental disabilities service system will exceed funds appropriated to the system, then SRS may take actions, in consultation with CDDO Leadership and through strategies developed by the Statewide Funding Committee, to remedy the funding shortages. Notice of any adjustments as described above will be given to the CDDO thirty (30) days in advance of the effective date of the adjustment(s). Should either party to the agreement believe there is a need to modify other terms or conditions of the agreement, both parties to this agreement will, in good faith, negotiate and mediate regarding the terms of the agreement.

XII. OVERSIGHT AND AUDIT

A. All services provided in this agreement in consideration for funds received may at any time be monitored or evaluated by DBHS/CSS or its designee.

B. Access by Legislative Post Audit

Pursuant to K.S.A. 46-1101 et seq., neither party to this agreement may prohibit or prevent the Legislative Division of Post Audit from accessing any records, documents or other information—

confidential or otherwise—regarding or relating to the execution and/or performance of this agreement.

C. Independent Audits shall be carried out in accordance with DBHS/ CDDO Independent Audit Policy.

XIII. SEVERABILITY

If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the balance of all independent terms of this contract shall not be affected, and each provision of this contract shall be enforced to the fullest extent permitted by law.

XIV. FORCE MAJEURE

The CDDO shall not be liable if the failure to perform this CDDO Administration contract arises out of causes beyond the control of the CDDO. Causes may include, but are not limited to, acts of nature, fires, quarantine, strikes other than by the CDDO's employees, and freight embargoes.

XV. The waiver of any party of a breach of any of the portions of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

XVI. UNEXPENDED FUNDS

This section applies to non-HCBS Waiver funds paid through this agreement: General Funds (See definition in Appendix A), State Aid and CDDO Administration funding.

The above mentioned funding will be spent only to further the purposes of this agreement and are subject to the SRS DBHS/CDDO Independent Audit Policy. The CDDO has ninety (90) days to obligate such expenditures, excluding CDDO Administration, after the term of the agreement. All funds not obligated ninety (90) days after grant expiration will be subject to recoupments. In the case of recoupments, CDDO will either remit the amount due by check or money order payable to the Department of Social and Rehabilitation Services/DBHS Management Operations. Or, by mutual agreement of the parties, SRS will reduce FY2009 grant payments equal to the amount of recoupments.

XVII. TERMINATION FOR CAUSE

This Contract may be terminated by SRS for cause. Cause for termination is limited to the following: CDDO's material breach of the terms and conditions of the Contract or the willful breach, habitual neglect or other continued failure of the CDDO to abide by a law, rule, policy or procedure for which the CDDO has received notice from either SRS or the State of Kansas. In the event SRS attempts to terminate the Contract for cause, CDDO will be provided written notice of the reasons for such termination. CDDO shall have 30 days following receipt of such notice in which to cure the alleged cause for termination or to bring an appeal under the Kansas Administrative Procedures Act.

XVIII. HIPAA

Confidentiality under the Health Insurance Portability and Accountability Act, 1996 (HIPAA):

SRS is a covered entity under HIPAA and therefore SRS is obligated to obtain reasonable assurances from CDDO that CDDO will not use or disclose SRS PHI in ways that SRS could not. These confidentiality protections must continue for as long as the SRS PHI is in the possession of CDDO.

Definition:

For purposes of this section, the terms “Protected Health Information” and “PHI” mean individually identifiable information in any medium pertaining to the past, present or future physical or mental health or 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, that CDDO receives from SRS or that CDDO creates or receives on behalf of SRS. The terms “Protected Health Information” and “PHI” apply to the original data and to any data derived or extracted from the original data that has not been de-identified.

- A. General Provision for Use and Disclosure. Except as otherwise provided in this section, CDDO may use or disclose PHI to perform functions, activities or services for, or on behalf of, SRS as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if performed by SRS.
- B. Specific Uses and Disclosures Section 164.504(e)(2). Except as otherwise provided in this section, CDDO may use PHI for the proper management and administration of CDDO, or to carry out CDDO’s legal responsibilities. Except as otherwise limited in this Agreement, CDDO may disclose PHI for the proper management and administration of CDDO, provided that disclosure is required by law, or, when required by HIPAA, CDDO obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies CDDO of any instances of which it is aware in which the confidentiality of the information has been breached. Except as otherwise limited in this section, CDDO may use PHI to provide Data Aggregation services to SRS as permitted by 42 C.F.R. section 164.504(e)(2)(i)(B).
- C. Minimum Necessary: CDDO agrees to limit the amount of PHI used and/or disclosed pursuant to this section to the minimum necessary to achieve the purpose of the use and disclosure.
- D. Safeguarding and Securing PHI Section 164.504(e)(2)(ii)(B): CDDO agrees to establish appropriate safeguards to protect the physical security of and prevent unauthorized access to the PHI and upon request will furnish SRS with a written description of such safeguards. CDDO agrees to allow authorized representatives of SRS access to premises where the PHI is kept for the purpose of inspecting physical security arrangements.

Appropriate administrative, technical, procedural and physical safeguards shall be established by the CDDO to protect the confidentiality of SRS PHI and to prevent unauthorized access to it. The safeguards shall provide a level of security that is required by the HIPAA regulations.

Security of facilities: CDDO shall provide all reasonable security procedures at any place where services are performed by the CDDO under this Agreement.

- E. Agents and Affiliates Section 164.504(e)(2)(ii)(D): CDDO agrees to require all entities, including agents and affiliates which perform Covered Entity Functions on behalf of CDDO, and to whom CDDO discloses PHI received from SRS or created or received by CDDO on behalf of SRS, to agree to the same restrictions and conditions that apply to CDDO with respect to use and disclosure of such information.
- F. Right to Review. SRS reserves the right to review terms of agreements and contracts between the CDDO and affiliates as they relate to the use and disclosure of PHI subject to this Agreement.

- G. Notification Section 164.504(e)(2)(ii)(C): CDDO shall notify SRS in writing of any use or disclosure of PHI not allowed by the provisions of this Agreement of which it becomes aware, and in the event PHI, subject to this Agreement, is subpoenaed, copied or removed by anyone except an authorized representative of SRS or the CDDO.
- H. Transmission of PHI: CDDO agrees to follow the HIPAA standards with regard to the transmission of PHI.
- I. Custodial Responsibility: CDDO shall notify SRS of the individual CDDO has designated as the custodian of PHI who is responsible for observance of all conditions of use. If custodianship is transferred within the organization, CDDO shall notify SRS promptly.
- J. Access, Amendment, and Accounting of Disclosures Section 164.504(e)(2)(ii)(E-G): CDDO will provide access to the PHI in accordance with 45 C.F.R. Section 164.524. CDDO will make the PHI available for amendment and incorporate any amendments to the PHI in accordance with 45 C.F.R. Section 164.526. CDDO will make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. Section 164.528.
- K. Documentation Verifying HIPAA Compliance Section 164.504(e)(2)(ii)(H): CDDO will make its internal practices, books, and records relating to the use and disclosure of the PHI received from SRS, or created or received by CDDO on behalf of SRS, available to the Secretary of the United States Department Health and Human Services for purposes of determining SRS' compliance with 45 C.F.R. Parts 160 and 164. CDDO will make these same practices, books and records available to SRS or its designee upon written request.
- L. Agreement Termination Section 164.504(e)(2)(ii)(I): CDDO agrees that if this Agreement is terminated by SRS at any time within the Allocation Period set out in Addendum 1 CDDO will, within 90 days of such termination, return or destroy, at SRS' direction, any and all SRS PHI that it maintains in any form and will retain no copies of the PHI, to the extent such regulations do not conflict with K.S.A. 45-401 et seq. or other applicable record retention obligations under federal or state law. If the return or destruction of the PHI is not feasible, the protections of this section of the Agreement shall be extended to the information, and further use and disclosure of PHI is limited to those purposes that make the return or destruction of PHI infeasible.
- M. Termination for Compliance Violation Section 164.504(e)(2)(iii) and Section 164.504(e)(1)(ii): CDDO acknowledges that SRS is authorized to terminate this Agreement if SRS determines that CDDO has violated a material term of this section of the Agreement. If termination of the Agreement is not feasible due to an unreasonable burden on SRS, CDDO's violation will be reported to the Secretary of the United States Department of Health and Human Services, along with steps SRS took to cure or end the violation or breach and the basis for not terminating the agreement.

XIX. AGREED BY AND BETWEEN

Secretary of SRS

Date

Deputy Secretary of DBHS

Date

CDDO Authorized Signature

Date

CDDO Authorized Signature

Date

Addendum 1
 FY 2009 Annual Allocation Renewal

1. CONTRACT INFORMATION

This document, along with the Contract between the Community Developmental Disability Organization and Kansas Department of Social and Rehabilitation Services, Division of Disability & Behavioral Health Services, Community Supports and Services, Appendixes A through G, and the Contractual Provisions Attachment shall constitute the FY 2009 CDDO/SRS Contract.

Agency Name:

Address:

Contract Number:

Federal Tax ID Number:

Allocation Period: July 1, 2008, through June 30, 2009.

Total Allocation Award:

2. REIMBURSEMENT SOURCES

DBHS/CSS will provide payment directly to the CDDO of federal and state funds for General Funds, State Aid, and CDDO Administration and will provide Home and Community Based Services/Mental Retardation and Developmental Disabilities (HCBS/MRDD) Waiver and Targeted Case Management payments directly to qualified, enrolled Medicaid providers through the Medicaid Fiscal Intermediary, currently Electronic Data Systems, consistent with the terms and conditions of this contract/grant:

CONTRACT FUNDING			
	State General Funds	Federal Financial Participation	All Funds
State Aid Grant			
General Funds			
CDDO Administration			
HCBS MRDD Waiver Allocation			
Total Award			

3. GENERAL FUNDS PAYMENT

General Fund payments to CDDOs are allocated according to the terms of Appendix B.

4. HCBS/MRDD WAIVER RATES

Tier	Residential	Day	<u>Special Tier</u>		Child In-Home Supports	Adult In-Home Supports
			Residential	Day		
1	\$157.07	\$97.58	\$188.28	\$118.50	\$61.32	\$83.39
2	\$128.65	\$72.16	\$168.00	\$108.94	\$54.89	\$77.03
3	\$93.00	\$58.03	\$149.57	\$100.35	\$49.37	\$68.40
4	\$60.06	\$42.70	\$131.12	\$91.48	\$44.04	\$63.02
5	\$43.40	\$36.64	\$112.30	\$83.64	\$38.96	\$56.76

The parties acknowledge that the execution of this agreement by the CDDO does not constitute acceptance of the rates and allocation in Addendum 1 as being adequate and reasonable funding for the delivery of community services, as required by K.S.A. 39-1806.

5. AGREED BY AND BETWEEN

_____	_____
Secretary of SRS	Date
_____	_____
Deputy Secretary of DBHS	Date
_____	_____
CDDO Authorized Signature	Date
_____	_____
CDDO Authorized Signature	Date

APPENDIX A DEFINITIONS

Affiliate is as defined in K.S.A. 39-1803 (b) an entity or person that meets standards set out in rules and regulations adopted by the secretary relating to the provision of services and that contracts with a Community Developmental Disabilities Organization.

Allocation Period Allocation Period shall mean the period set out in Addendum 1 to this agreement.

BASIS Basic Assessment and Services Information System; DBHS/CSS database of service to persons with DD in Kansas.

Community Developmental Disability Organization (CDDO) Any community mental retardation facility organized pursuant to K.S.A. 19-4001 through 19-4015, established and operating as of the effective date of K.A.R. 30-64-01 et seq.

CDDO Administration/CDDO Administrative Responsibilities Those tasks and functions spelled out in DD Reform legislation which are specific to the 27 Kansas CDDOs; functions which do not qualify as Community Service Provider activities.

CDDO Service Area The counties from which a CDDO receives funding pursuant to K.S.A. 19-4001 et seq.

Community Service Provider (CSP) is as defined in K.S.A. 39-1803 (e) a community developmental disability organization or affiliate thereof.

Competitive employment means work (i) in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and (ii) for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled. Kansas Rehab Services Manual *Reference: Sec. §361.5 (b) (11)*

Crisis is defined in Appendix E.

DD Reform Developmental Disabilities Reform; refers to Kansas statutes (K.S.A. 39-1801 et seq.) and regulations (K.A.R. 30-63-01 et seq.; K.A.R. 30-64-01 et seq.) effective 1996.

Developmental Disability is defined in K.S.A. 39-1803 (f).

Eligibility In order to receive ICF/MR or HCBS/MRDD services, persons must have a converted BASIS score of 35 or more as determined by DBHS/CSS using BASIS assessment information submitted by the CDDO. (See DBHS/CDDO Eligibility Determination for MR/DD Services for Kansas Residents Policy for additional criteria.)

Employment outcome means, with respect to an individual, entering or retaining full-time or, if

appropriate, part-time competitive employment, as defined in the Kansas Rehab Services Manual §361.5(b) (11), in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Family is defined as any person immediately related to the beneficiary of services. Immediate related family members are: parents (including adoptive parents), grandparents, spouses, aunts, uncles, sisters, brothers, first cousins and any step-family relationships.

Family Support Services are those services designed to defray the cost and/or stress of supporting a family member with MR/DD who is living with someone who meets the definition of family or someone who meets the definition of guardian, and provides natural or paid supports to the beneficiary of MR/DD services. These services may include, but are not limited to: direct subsidy, non-HCBS respite and in-home support, and assistance in purchasing durable equipment and supplies.

Formally Approved SRS Policies include all policies contained in the HCBS/MRDD Waiver, and the BASIS Manual, and other policies developed through the SRS Policy Development Process. SRS will provide notice of proposed changes in SRS policies, which affect the DD community service system stakeholders, and will provide timely advance written notice to CDDOs as to changes in these policies.

Funding Service Access List shall mean the list established pursuant to K.A.R. 30-64-30 and described in the May 17, 2001, DBHS/CDDO Funding Service Access List for Developmental Disabilities Policy.

General Funds are state general funds allocated to each CDDO per the methodology described in Appendix B of this agreement. The use of these funds is described in section VIII. A. of this agreement.

Guardian means an individual or corporation certified in accordance with state law, and amendments thereto, who or which is appointed by a court to act on behalf of a ward, and who or which is possessed of some or all of the powers and duties set out in state law, and amendments thereto. "Guardian" does not mean a "natural guardian" unless specified.

HCBS/MRDD Waiver Home and Community Based Services for the Mentally Retarded and Developmentally Disabled Waiver. A category of Medicaid funding which allows community based services that have been established by DBHS/CSS for persons who are otherwise eligible for ICF/MR services.

DBHS/CDDO Policies DBHS/CDDO Policies shall mean those policies adopted prior to June 30, 2002, and incorporated by reference as part of this agreement. Policies adopted after July 1, 2002, meet the definition of Formally Approved SRS Policies.

Home County Pursuant to K.A.R. 30-64-01, the following list shall be utilized to establish a "home county" for persons. The list is in priority order.

- a) the county of residence of a family member of the person with a developmental disability;
- b) then the county of residence of the person's guardian; or,
- c) the county in which the person is living.

The "home county" of children who are in SRS custody is the county in which the child's Medicaid case was opened.

Integrated setting means, with respect to an employment outcome, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons. Kansas Rehab Services Manual *Reference: Sec. §361.5 (b) (33) (ii)*

Mental Retardation (MR) is defined in K.S.A. 39-1803 (h) and cited in the DBHS/CDDO Eligibility Determination for MR/DD Services for Kansas Residents Policy.

Money Follows the Person (MFP) is defined as a project funded through CMS MFP Demonstration Grant dollars. The project is a joint effort between the Kansas Department on Aging and SRS. Qualified individuals living in qualified institutional settings for the qualifying period of time who are Medicaid eligible at least 30 days prior to moving into a qualified HCBS setting are eligible to participate for a designated period of time not to exceed 365 days.

New persons: An individual eligible to receive funded services (HCBS or SGF) that is currently not receiving services requested.

Person An individual eligible to receive services funded through the CDDO/SRS grant. When referring to a person who is making decisions or reporting achievement of outcomes person shall mean the person, and/or the person's support network as defined in K.A.R. 30-63-01.

Portability A requirement that persons currently receiving community service from one CDDO or CSP may move to another CDDO or CSP. With the exception of State Aid and CDDO Administration funding, all funds identified in Addendum 1 of this agreement, must be portable, in accordance with the DBHS/CDDO Portability Policy, and the CDDO must provide continuity of service for persons who choose to continue services and who move from one CDDO to another CDDO or from one CSP to another CSP. Funds must be portable except when a person no longer needs services or voluntarily withdraws from services with no immediate foreseeable need for services.

Rehabilitation Services (RS) A state department that helps people with disabilities achieve employment and self-sufficiency and links employers with qualified and productive individuals to meet their work force needs.

Right to Risk A Principle that REQUIRES Service Systems to deliver services in such a way that the person served is not overprotected and thereby not unnecessarily limited in his or her opportunities for normal life experiences.

Service Reduction Service reductions include voluntary or involuntary reductions in the number of hours of paid support provided to someone receiving family support services, reduction of funds or stipends provided through family subsidy, or reduction in the number of days of day services or residential services.

SMRH State Mental Retardation Hospital; public Intermediate Care Facility for the Mentally Retarded.

Stakeholder Any person with a disability, individual or entity with an interest in the lives of persons with developmental disabilities.

Supported employment is competitive employment with ongoing support services for clients with the most severe disabilities for whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and who, because of the nature and severity of their disabilities, needs intensive time-limited services from Rehabilitation Services (RS) and extended ongoing services after transition in order to be employed. Supported employment includes transitional employment for individuals with the most severe disabilities due to mental illness. Kansas Rehab Services Manual

Support Network One or more individuals selected by a person or by the person and the guardian, if one has been appointed, to provide assistance and guidance to that person in understanding issues, making plans for the future, or making complex decisions. Such individuals share a personal relationship with the person such that they are considered central to or interested parties to the planning of community services and supports for that person.

Targeted Case Management Targeted Case Management services are services which will assist an individual eligible under the State plan in gaining access to needed medical, social, educational, and other services. Targeted Case Management may include: assessment of an eligible individual to determine service needs; development of a specific care plan; referral and related activities; monitoring and follow-up activities. Targeted Case Management does not include the direct delivery of an underlying medical, educational, social, or other service to which an eligible individual has been referred.

APPENDIX B
FY 2009 STATEWIDE FUNDING ALLOCATION METHODOLOGIES

The purpose of the funding allocation methodologies set forth herein is to equitably distribute the funds allocated by the Kansas Legislature for FY2009. SRS has mandated that the application of these methodologies cannot result in allocation of funds in excess of the appropriation.

I. Non-HCBS Waiver Funds

A. State Aid

State Aid Allocations are made consistent with K.S.A. 65-4411 et seq. and K.A.R. 30-22-31 and 32.

1. "Hold Harmless" – The first \$5,216,286 in State Aid is distributed in amounts equal to what each CDDO received in FY 1986.
2. "Excess of Hold Harmless" – State Aid amounts in excess of \$5,216,286 are distributed based on the number of persons served in adult day and residential services as follows:
 - a. The total number of persons served in adult day and residential as of January 1, 2002, for each CDDO service area are listed.
 - b. The number of persons whose adult day and residential services are funded through general funds – Community & Family Services and Supports – as of the last transmission date for April, 2005, are subtracted from the total number of persons listed above.
 - c. The remaining number is converted to program units by adding the number of persons served in adult day to the number served in residential services.
 - d. The amount in excess of \$5,216,286 is divided by the number of program units.
 - e. The amount per program unit is multiplied by the number of program units determined to be provided in each CDDO service area.
3. The "Hold Harmless" is added to the "Excess of Hold Harmless" resulting in the final State Aid allocation.

B. CDDO Administration

To determine a per person amount, the total amount allocated for CDDO Administration is divided the unduplicated number in BASIS statewide less persons residing in the SMRH's. The CDDO Administration for each CDDO area is established by multiplying this per person amount by the number of persons listed in BASIS for that CDDO area. If any new money comes into the MR/DD system for the funding service access list, as defined in the DBHS/CDDO Funding Service Access List for Developmental Disabilities Services Policy, 2.4% of that money will go to CDDO administration and will be allocated pro rata, based on the census data from BASIS taken on the last transmission date April.

C. Special Projects: CDDO Administration

An additional amount, over and above the amount available for CDDO Administration, is added to CDDOs with the added responsibilities they undertake related to State Mental Retardation Hospitals and other special projects. Any special projects will be listed individually, in this appendix.

TARC - \$16,000.00
CLASS - \$16,000.00

SMRH Responsibilities
SMRH Responsibilities

D. General Funds

1. In FY 2009 the General Fund dollars will be allocated per the following methodology:
 - a. For allocation purposes, the number of individuals served by each CDDO cannot exceed the total number recorded on the last BASIS transmission date for April 2002 unless approved portability of General Fund dollars took place between this date and the last BASIS transmission date for April 2006. In the event a portability agreement was executed during this period, the receiving CDDO's total number would be increased by one in that service category and the originating CDDO's total number would be decreased by one in that services category.
 - * Those receiving family support/family subsidy.
 - * Those receiving adult day services.
 - * Those receiving adult residential services.
 - b. The number of families receiving family support/family subsidy is multiplied by the capitated amount for Family Support/Family Subsidy determined by DBHS resulting in the total amount allocated to each CDDO for this set of supports and services.
 - c. The number of persons who receive day services is multiplied by the capitated amount for day services determined by DBHS. The number of persons who receive residential services is multiplied by the capitated amount for residential services determined by DBHS. These two amounts added together result in the total amount allocated to each CDDO for adult day and residential services.
2. Any adjustment to the level of funding allocated for General Funds will be allocated to CDDOs on a pro rata basis, based on each CDDO's percentage of the overall General Fund allocation.

II. HCBS/MRDD Waiver

- A. The number of persons reported by each CDDO through BASIS as of the last transmission date for April 2006, who are receiving services funded by the HCBS/MRDD waiver are listed as follows:
 - *Those receiving residential services.
 - *Those receiving day services.
 - *Those receiving in-home family support services.
1. The CDDO Attendance Rates for residential and day services will be determined by conducting a survey of all CDDOs to determine the actual attendance rate for each service type in each CDDO area. If there are insufficient funds in the state HCBS/MRDD waiver allocation after the above has been determined, then a Statewide Appropriation Adjustment (see description of this adjustment below) will be made to each service type in each CDDO area and on the total HCBS MRDD Waiver allocation.
2. The CDDO Attendance Rates for residential and day services will be determined by conducting a survey of all CDDOs to determine the actual attendance rate for each service type in each CDDO area. If there are insufficient funds in the state HCBS/MRDD waiver allocation after the above has been determined, then a Statewide Appropriation Adjustment (see description of this adjustment below) will be made to each service type in each CDDO area and on the total HCBS MRDD Waiver allocation.

3. After the residential and day services Attendance Rates have been determined, the FY 2009 HCBS MR/DD waiver allocation for both service types will be adjusted by each rate for each CDDO. If the total adjusted amounts add up to more than the total HCBS allocation for FY 2009, then a Statewide Appropriation Adjustment will be applied, less the allocation for In-Home supports as defined in section II.D. of this Appendix. This Statewide Appropriation Adjustment will be accomplished by determining the percentage of difference between the total adjusted amounts for both services and the actual allocation and then subtracting that percentage from each service at each CDDO's adjusted amounts. This amount will be deducted from the total of all waiver allocations at the bottom of the spreadsheets.
 4. DBHS/CSS will quantify the total statewide appropriation adjustment in the spreadsheet by noting with percent and dollars.
- B. Residential Services – The amount allocated for residential services is determined as follows:
1. The number of persons at each CDDO who receive residential HCBS-funded services whose services are not funded with individualized rates are listed by tier.
 2. The number of persons in each tier is multiplied by
 - *the tier rate
 - *365 days, and
 - *the local CDDO's Attendance Rate
 3. The amount authorized for individualized rates is multiplied by 365 and the Attendance Rate, and is added to their tier allocation.
- C. Day Services – The amount allocated for day services is determined as follows:
1. The number of persons at each CDDO who receive HCBS-funded day services whose services are not funded with individualized rates are listed by tier.
 2. The number of persons in each tier are multiplied by
 - *the tier rate
 - *260 days, and
 - *the local CDDO's Attendance Rate
 3. The amount authorized for individualized rates is multiplied by 260 and the Attendance Rate, and is added to their tier allocation.
- D. In-Home Support Services
- The numbers of persons statewide who receive in-home family support services funded by the HCBS/MRDD waiver are multiplied by the tier rate amount paid for in-home support services are then multiplied by 365 days and by 87% attendance factor.

APPENDIX C
STATEWIDE FUNDING COMMITTEE

The role of the Statewide Funding Committee will be:

1. To review spending of MRDD funded services and formulate strategies to be presented for review and approval of CDDOs for submission to DBHS/CSS for final action.
2. To annually review and recommend revisions to the allocation methodology and committee-developed management procedures to be presented for review and approval by CDDOs before submission to DBHS/CSS for final action.
3. To review spending related to section V.C. of this agreement and formulate strategies for appropriate resource management to be presented for review and approval by CDDOs before submission to DBHS/CSS for final action.
4. Each agenda will allow time for input from non-CDDO stakeholders concerning any current or previous agenda item.
5. The statewide funding committee will provide feedback to CDDOs, SRS and other stakeholders on at least a quarterly basis.
6. CDDOs will report to DBHS/CSS, the Statewide Funding Committee chairperson and the HCBS Program Manager, information that is necessary for the SFC to perform their assigned tasks.
7. The SWFC, DBHS/CSS and CDDOs will utilize available data to project total system spending for the current fiscal year. In the event it appears the HCBS waiver allocation will not be fully expended, the SWFC will formulate recommendations for consideration by SRS and CDDOs to fully utilize projected unexpended funds. These recommendations shall specifically include an analysis of those leaving HCBS services, the system's ability to allow service access to individuals on the service access list, and/or access to new or increased levels of service for those currently served.
8. A total of one non-voting seat will be made available to allow for direct input from participating consumer advocacy organizations. The D.D. Council, SACK, Families Together, and the DRC will work in partnership to select a representative to serve in this capacity. The above stated consumer advocacy organizations will designate an alternate representative to attend meetings in the absence of the primary representative. Priority should be given to allow for direct representation by individuals who are eligible for MR/DD services in Kansas.

APPENDIX D
GENERAL TERMS AND CONDITIONS

1. Controlling Provisions: It is expressly agreed that the terms of each and every provision in this appendix shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of this agreement to which this attachment is incorporated with the exception of the Contractual Provisions Attachment, Form DA 146a.

2. Criminal Provisions: By entering into this contract, the CDDO declares and assures that it has not been convicted for any criminal offenses that indicate a lack of integrity or honesty. Crimes indicating a lack of integrity or honesty include but are not limited to the following: any conviction of federal state or local laws for embezzlement; theft; forgery; bribery; falsification or destruction of records; receiving stolen property; racketeering; and violation of antitrust laws. Any conviction(s) incident to obtaining or attempting to obtain or performing a public or private contract, subcontract, grant or subgrant; or conviction or any other offense which impacts the performance and/or responsibility of a contractor, subcontractor, grantee or subgrantee are also considered offenses which lack of integrity and honesty. For purposes of this declaration, the CDDO is considered to be any individual or entity which directly, indirectly or acting in concert with one or more individuals or entities, has ownership and/or control of 25% or more of its equity, or otherwise controls its management or policies.

3. Accounting System: The CDDO's Accounting System shall meet generally accepted accounting principles.

4. Maintenance of Cost Records: The CDDO shall maintain books, records, and other documents in such a manner so as to readily identify them directly with the delivery of services outlined in the grant award.

5. Submission of Reports: The CDDO shall submit any required reports in accordance with the contract. Failure to report required data could result in the delay and/or loss of funds.

6. Retention of Records and Reports: Unless otherwise specified in the contract, the CDDO shall preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this contract for a minimum of three (3) state fiscal years from the date of the expiration or termination of this agreement. Matters involving litigation shall be kept for a minimum of three (3) years or for one (1) year following the termination of litigation, including all appeals, whichever is longer. The CDDO shall notify SRS of circumstances which impair the integrity or security of such materials during the retention period.

7. Data: SRS warrants that technical data issued to the CDDO for use in performing professional services under this Contract shall be current, accurate, complete, and adequate for its intended purpose. The CDDO shall notify the SRS Technical Representative as soon as possible upon discovering any data deficiency. The SRS Technical Representative shall take prompt and reasonable action to reconcile or remedy the data deficiency(ies). The CDDO may have access to private or confidential data maintained by SRS to the extent necessary to carry out its responsibilities under this Contract. The CDDO must comply with all the requirements of the Kansas Open Records Act in providing services under this Contract. The CDDO shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Contract shall be disseminated by either party except as authorized by statute, either during the period of the Contract or thereafter. The CDDO must agree to return any or all data furnished by SRS promptly at the request of SRS in whatever form it is maintained by the CDDO. On the termination or expiration of this Contract, the CDDO will not use any of such data or any material derived from the data for any purpose and, where so instructed by SRS, will destroy or render it unreadable.

8. Rights and Remedies: If this contract is terminated pursuant to K.A.R. 30-64-20, SRS, in addition to any other

rights provided for in this contract, may require the CDDO to transfer title and deliver to SRS in the manner and extent directed, any completed materials. SRS shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the CDDO shall receive payment pro-rated for that portion of the contract period services were provided to SRS subject to any offset by SRS for actual damages including loss of federal matching funds.

The rights and remedies of the parties provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

9. Federal, State and Local Taxes Contractor: SRS makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

10. Governing Law; Consent to Jurisdiction This contract, and any act, agreement, contract or transactions to which they shall apply, or which are contemplated hereby or hereunder, shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the State of Kansas and, to the extent applicable, the United States of America.

Any dispute arising out of, or any suit or other proceedings pursuant to or arising out of these terms and conditions, or any act, agreement, contract or transactions to which they shall apply or which are contemplated hereby or hereunder, shall be subject to the jurisdiction of a court of competent jurisdiction located in the county of Shawnee, State of Kansas, and the CDDO shall take any and all necessary or appropriate action to submit to the jurisdiction of such court.

11. Debarment: As part of the Code of Federal Regulations (45 C.F.R. Part 76), all governmental entities receiving funding from the Federal Government must participate in a government-wide system for nonprocurement debarment and suspension. A person or entity who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have government-wide effect. The Secretary of SRS is authorized to impose debarment. Before any person or entity enters into an agreement, grant or contract with SRS, the "Excluded Parties Lists" (located at the web sites http://epls.arnet.gov/epl/owa/epl_search.name_srch and <http://exclusions.oig.hhs.gov>) shall be researched for potential debarred persons or entities.

12. Lobbying No appropriated funds may be expended by the recipient of a grant which includes federal funding to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of the Legislature or an employee of a member of the Legislature in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

Appendix E.

Access to HCBS-MR/DD Funded Services:

1. Individuals may request increased In-home Support services from the local CDDO Funding Committee if the individual has been included in a BASIS snapshot with funds allocated in the current contract. These requests may only be approved if a need for increased paid supports is documented on a needs assessment tool used by all CDDOs. The aggregate increase in funding must be recommended to SRS and CDDOs by the SWFC and approved by SRS prior to any individual request being approved.
2. Access to new services will be limited to crisis/imminent risk of crisis, reallocation of funding or with waiting list funding.

Persons who are in crisis or imminent risk of crisis and whose needs can only be met through services available through the HCBS/MRDD waiver are those persons who:

- a. Require protection from confirmed abuse, neglect, or exploitation or written documentation of pending action for same; or
- b. Are at significant, imminent risk of serious harm to self or others in their current situation.

Procedures for Crisis:

- i. When persons present themselves to the CDDO as being in crisis, the CDDO shall make appropriate referrals to other available community services and if, after all natural and community supports have been explored and exhausted the person is still determined to be in crisis consistent with the definition above, the CDDO will allow the person to access MR/DD services. Documentation of all attempts to find other resources will be maintained and provided to the CDDO prior to the person being approved to crisis funding.
- ii. After a person enters services, the CDDO will review the person's continued need for services after no longer than 90 days. If the person needs fewer paid supports after this review, the CDDO shall reduce services. If the person no longer needs MRDD funded services, he/she will be removed from services. The CDDO shall make appropriate referrals to other available community services. If the person is determined to need services after the initial 90 days, the CDDO will continue to monitor the need for MR/DD funded services as appropriate. Documentation of this monitoring will be maintained by the CDDO.

- iii. The Secretary shall report monthly; crisis-related caseload and caseload growth; caseload and caseload growth related to children in custody; and children transitioning from custody; and persons exiting a SMRH and/or ICF/MR that are decertified or that are reducing bed capacity; and the costs related to the preceding, to the State Budget Director, the budget committees of the 2005 Legislature and Statewide Funding Committee.
- iv. DBHS/CSS will perform a post review of persons determined to be in crisis.

Or;

- 2. The Statewide Funding Committee shall review the financial impact of people exiting HCBS MR/DD Waiver services and make recommendations to DBHS/CSS regarding the possible reallocation of these funds. The funds allocated for individuals entering services shall not exceed the funds allocated for those leaving services.

Or;

- 3. Funds allocated in the FY2009 Kansas State Budget to serve a portion of those persons who are waiting for initial access to HCBS MR/DD waiver services or access to additional MR/DD waiver services will be allocated using the following procedure:
 - a. Any waiting list funding allocated by the legislature will be allocated no later than July 1, 2009 as directed by the Statewide Funding Committee using a distribution process that includes the following minimum criteria:
 - i. Each individual must have an identified need for services or waiver funding for those services.
 - ii. Individuals to be funded must be eligible for HCBS waiver services.
 - iii. The requested date for at least one requested service must have passed.
 - iv. Allocations will be made based on the length of time individuals have been waiting for the offer of services, or funding as defined by both the “date requested” and “date applied” in the BASIS Services section. Priority will be given to those who have been waiting the longest by date requested. In the event that waiting list dollars will not cover all individuals on specific “date requested”, priority will be given to those with the oldest “date applied” so all waiting list dollars are allocated for expenditure.

- v. If the individual is offered funding for services and they decline, the requested date will be required to be changed to an agreed upon date, but must be AT LEAST 90 days from the date of decline. If the individual is offered funding a second time and declines funding, they may choose to be removed from the waiting list or their requested date will be required to be changed to three years from the date of decline. Nothing shall prohibit a person from changing their requested service date to a future date in order to avoid being offered services before they need them which could result in the person declining the services. If the service request is removed and the individual reapplies for the service at a later date, the earliest the service can be requested is three years from the date of the second decline.
 - b. Once all waiting list funding has been allocated for those individuals identified, and if those individuals decline services, each individual CDDO may utilize the funding to serve individuals who are waiting to access services per local policy.
 - c. For persons moving from one CDDO area to another, the person's "date applied" and "date requested" for services from the previous CDDO area will be honored.
5. Within the technological capabilities of SRS's information management system, and based on the recommendations of the BASIS workgroup, changes to the BASIS system will be developed collaboratively and will be implemented on a mutually agreeable timeframe. Maintaining current data accessibility capabilities will be a priority in this process.

APPENDIX F
STATEWIDE BASIS ASSESSMENT COMMITTEE

The role of the FY09 Statewide BASIS Assessment Committee will be:

1. To provide a more uniform statewide annual BASIS assessment of all individuals across the state of Kansas. This will include, but will not be limited to:
 - a. BASIS training occurring as determined by the committee for the purpose of providing guidance to the assessors regarding the Interpretive Guidelines and any subsequent changes or amendments to those guidelines.
 - b. The posting of interpretive guidelines on the DBHS/CSS website. The development of a process for ensuring that any statewide change or amendment to the Interpretive Guidelines will be accessible to all CDDOs, CSPs, and stakeholders for review, and implementation no earlier than 30 days upon posting. This process will be posted on the DBHS/CSS website. Exploring and examining other evidence-based assessment/level of care determination practices, including tools during FY09. The committee recommendations regarding this will be made to CDDOs and DBHS/CSS for preparation of the FY10 DBHS/CDDO contract. This initiative may be accomplished directly through the work of this committee or through the work accomplished through the Systems Transformation Grant.
2. Each CDDO will appoint two representatives to participate in the Statewide BASIS Assessment Committee. At least one of these representatives shall be a BASIS assessor. These meetings will be held at least quarterly and may be held in different regions of the state. Alternative communication methods will be provided when possible.
3. CDDO members will select a chairperson to work in collaboration with DBHS/CSS to organize an agenda, designate a keeper of minutes, and direct each meeting.
4. Each agenda will allow time for input from CDDOs, CSPs, and stakeholders concerning any current or previous agenda item. CDDO representatives shall be responsible for collection and submission of agenda items from their service area. This will include agendas being made available at least 5 days prior to the meeting.
5. A total of one non-voting seat will be made available to allow for direct input from participating consumer advocacy organizations. The D.D. Council, SACK, Families Together, and the DRC will work in partnership to select a representative to serve in this capacity. The above stated consumer advocacy organizations will designate an alternate representative to attend meetings in the absence of the primary representative. Priority should be given to allow for direct representation by individuals who are eligible for MR/DD services in Kansas.

APPENDIX G
Statewide Quality Oversight Committee

The role of the State Quality Oversight Committee will be:

1. To examine issues related to appropriate oversight of MR/DD services being provided to individuals and families, consistent with the management of quality enhancement/quality assurance requirements of KAR 30-64-26 and KAR 30-64-27 and of the mission of SRS.
2. To work in partnership with concerned stakeholders representing community service providers, consumer advocacy groups and other interested parties to ensure that processes for system quality oversight are coordinated effectively and to minimize duplication of functions.
3. To annually review and recommend revisions to the DBHS/CDDO contract as it relates to quality enhancement/quality assurance issues.
4. Each CDDO will appoint a representative and an alternate to participate in the Statewide Quality Oversight Committee.
5. CDDO members will select a chairperson to work in collaboration with DBHS/CSS to organize an agenda, designate a keeper of minutes, and direct each meeting.
6. Meetings will take place quarterly or more often based on a consensus of members. Consideration should be given to varying the meeting place throughout the State to facilitate attendance by on-CDDO stakeholders and SRS Field Staff.
7. Each Agenda will allow time for input from non-CDDO stakeholders concerning any current or previous agenda item.
8. The Committee will provide feedback to CDDOs, SRS and other stakeholders on at least a quarterly basis.
9. The committee will pursue the following topic areas or others for the purpose of creating recommendations that may be acted upon by DBHS/CSS and CDDO leaders:
 - a. The current process for ensuring that each individual who utilizes MR/DD services funded through this contract receives quality services.
 - b. Education concerning the licensing process and how it is being utilized across the state.
 - c. Clarification of quality oversight roles between individuals, community service providers, CDDOs and SRS Field Staff to enhance efficiency and communication.

- d. Expectations and purposes of the Person Centered Support Plan.
 - e. Other areas of interest.
10. A total of one non-voting seat will be made available to allow for direct input from participating consumer advocacy organizations. The Developmental Disabilities Council, the Self Advocacy Coalition of Kansas, Families Together and the Disabilities Rights Center will work in partnership to select a representative to serve in this capacity. The above stated consumer advocacy organizations will designate an alternate representative to attend meetings in the absence of the primary representative. Priority should be given to allow for direct representation by individuals who are eligible for MR/DD services in Kansas.