

**UNION COUNTY
BOARD OF COMMISSIONERS**

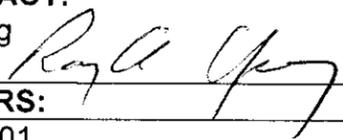
ACTION AGENDA ITEM ABSTRACT

Meeting Date:

Action Agenda Item No. 4/4a
(Central Admin. use only)

SUBJECT: Contract Renewal

DEPARTMENT: Social Services **PUBLIC HEARING:** No

<p>ATTACHMENT(S):</p> <ul style="list-style-type: none">- Agreement with HomeCare Management Corp.- Certification of Drug-Free Workplace- Conflict of Interest Statement- Certification of No Overdue Taxes- Certification Regarding Lobbying- Certification Regarding Lower-Tier Covered Transactions- Business Associate Addendum- Notice of Reporting and Audit Requirements	<p>INFORMATION CONTACT: Roy A. Young </p> <hr/> <p>TELEPHONE NUMBERS: (704) 296-4301</p>
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DEPARTMENT'S RECOMMENDED ACTION: Request approval of proposed agreement.

BACKGROUND: Union County DSS has contracted for a number of years with HomeCare Management Corporation for staffing services. HomeCare is an excellent company and provides prompt services with very capable staff.

FINANCIAL IMPACT: None. The estimated contract costs have not changed from the previous fiscal year. The only change to the agreement is the mileage rate.

Legal Dept. Comments if applicable: _____

Finance Dept. Comments if applicable: _____

Manager Recommendation: _____

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF UNION

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2006, by and between UNION COUNTY, a political subdivision of the State of North Carolina, whose address is 500 N. Main Street, Monroe, N.C. 28112, acting through the Union County Department of Social Services, hereinafter referred to as "Union," and HOMECARE MANAGEMENT CORPORATION, 315 Wilkesboro Blvd. NE, Suite 2-A, Lenoir, NC 28645, hereinafter referred to as "HMC."

WITNESSETH

WHEREAS, the Union County Department of Social Services, hereinafter "Agency," has identified services to be provided and funded through the Title IV-E Waiver; and

WHEREAS, the Agency has further identified Work First, Child Welfare, Interpreting Services, and other support services that are eligible for funding from State Child Protection Services, 100% Federal TANF, and other federal and State funds; and

WHEREAS, at the present time Agency does not intend to employ the staff required by the other funding sources; and

WHEREAS, Union desires that HMC provide HMC personnel to assist Agency in meeting these needs; and

WHEREAS, HMC is willing to provide such services.

Now, therefore, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto do each contract and agree with the other as follows:

1. JOBS TO BE PERFORMED. Upon request by the Director of Agency, hereinafter the "Director," or his designee, HMC shall provide the services of HMC employees for use by Agency in satisfying the following duties:

- ▶ Agency Performance Review and Evaluation
- ▶ In-home services to improve parenting and home management
- ▶ Job retention and follow-up to Work First Families who become employed
- ▶ Assistance in reviewing, assembling budget information and cost projections during the budget process

- ▶ Error prevention services for intake cases in Medicaid, Food Stamps, and Health Choice
- ▶ General interpreter services for Intake and Assessment services for Spanish-speaking families
- ▶ English to Spanish translation services targeted to forms, notices, posters, etc...
- ▶ Assessment services for job readiness and assistance with Work First employment services
- ▶ Recruitment and training for prospective foster and adoptive parents
- ▶ Child welfare services, including Child Protective Services (CPS) Intake, CPS investigations, CPS Case Management/Case Planning, and Foster Care.
- ▶ Program Training

The employees so provided by HMC shall be hereinafter referred to as the "HMC employees." Although HMC shall retain sole authority to hire and terminate individuals who serve as HMC employees, Agency may require replacement of a given HMC employee upon providing to HMC a written notice outlining deficiencies in job performance or personal conduct. The HMC employees shall perform those job duties identified to HMC by the Director or his designee. Union shall provide for use by the HMC employees, as needed, the following: personal computer, printer, cubicle space, office furniture and supplies, and telephone and fax machine access.

In its performance of services pursuant to this Agreement, HMC shall comply with all laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction. By way of illustration and not limitation, HMC shall comply with the following: (1) the terms of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and all requirements imposed by or pursuant to the regulations of the Department of Health and Human Services which prohibit discrimination against persons with disabilities in employment and in the operation of programs and activities receiving federal funds; and (2) Title VI and VII of the Civil Rights Act of 1964 and all requirements imposed by or pursuant to the regulations of the Department of Health and Human Services issued pursuant to those titles. HMC shall take necessary steps for corrective action, as negotiated within a corrective action plan, for any items found to be out of compliance with federal and State laws, regulations, standards, and/or the terms of this Agreement.

HMC shall maintain books, records, documents, and other evidence and accounting procedures which reflect all direct and indirect costs expended pursuant to this Agreement. HMC shall retain all books, records, and other documents relevant to this Agreement for a period of not less than five (5) years after final payment or until all audits continued beyond this period are completed. HMC agrees to comply with the audit requirements outlined in N.C.G.S. § 143-6.2 9

and 9 N.C.A.C. Subchapter 3M.0205 (see Attachment L). If Federal funds are involved, Contractor also agrees to comply with the audit requirements of OMB Circular A-133. HMC shall retain all books, records, and other documents relevant to this Agreement for a period of not less than three years after final payment or until all audits continued beyond this period are completed. Federal auditors and any persons authorized by the Division of Social Services or Agency shall have the right to examine any of these materials. In the event HMC dissolves or otherwise goes out of existence, records produced pursuant to this Agreement shall be turned over to Agency.

2. TERMS OF PAYMENT. The actual rate(s) of pay shall be as mutually agreed by HMC and the Director. HMC shall provide to the HMC employees those benefits for which the HMC employees are eligible in accordance with the established personnel policies of HMC. For purposes of this Agreement, "full-time" shall be defined as 40 hours per week.

Union shall pay HMC each month an amount equal to the actual combined salaries of the HMC employees for such month, as approved by the Director, plus 36% of the combined salaries to cover operating expenses, employee benefits, and any other expenses related to the provision of services pursuant to this Agreement, exclusive only of travel as indicated below. Notwithstanding any other provision of this Agreement to the contrary, the total amount paid by Union shall not exceed \$75,000 per month without written amendment hereto. Union shall also pay for the actual costs for out-of-county subsistence and travel for the HMC employees at the rate of 44.5 cents per mile, provided that such travel has been approved in advance by the Director or his designee, and provided further that the total amount expended pursuant to this Agreement for subsistence and travel expenses shall not exceed \$15,000 per year without written amendment hereto.

HMC shall invoice Union by the fifth day of each month for services provided the preceding month. Union shall pay the verified invoice amount within ten (10) days of receipt of invoice by Union's Finance Office. HMC's federal identification number is 561852505. All payments shall be conditioned upon appropriation by the Funding Sources identified in Section 20, below, of sufficient funds for each request for services.

3. FEDERAL, STATE, AND LOCAL PAYROLL TAXES. Neither federal, nor state, nor local income tax nor payroll tax of any kind shall be withheld or paid by Union on behalf of HMC or the employees of HMC. Employees of HMC shall not be treated as an employee of Union with respect to the services performed hereunder for federal or state tax purposes.

4. NOTICE TO HMC REGARDING ITS TAX DUTIES AND LIABILITIES. HMC understands that HMC is responsible to pay, according to law, income tax on behalf of its employees and HMC agrees to pay such taxes.

5. INSURANCE. At HMC's sole expense, HMC shall procure and maintain until termination of this Agreement the following insurances with insurers licensed in North Carolina and rated A-VII or better by A.M. Best:

- A. WORKERS' COMPENSATION – Statutory – covering all operations and all locations involved in this Agreement, and including Employer’s Liability with limits not less than \$500,000 each accident bodily injury and \$500,000 each employee by disease.
- B. COMMERCIAL GENERAL LIABILITY – covering all operations and all locations involved in this Agreement, including the following coverage:

\$ 2,000,000 General Aggregate
 \$ 5,000 Medical Expense Limit
 \$ 1,000,000 Personal and Advertising Injury Limit
 \$ 1,000,000 Each Occurrence
 \$ 2,000,000 Products/Completed Operations Aggregate
 \$50,000 Fire Damage Legal Liability Limit

If this Agreement involves installation, renovation, or construction on existing County property other than Public Works projects, HMC shall maintain products and completed operations insurance covering all operations and locations involved in this Agreement for a period of three (3) years following termination of the Agreement. If this Agreement is for work or service involving explosion, collapse or underground hazards, the “XCU” exclusion of the policy shall be eliminated and the Certificate(s) must show that “XCU” is covered.

- C. COMMERCIAL AUTOMOBILE LIABILITY – covering all operations and locations involved in the contract, including the following coverage:
 (1) Hired Automobiles (2) Non-Owned Automobiles
 Policy shall provide limits of not less than \$1,000,000 Combined Single Limit.
- D. PROFESSIONAL LIABILITY (errors and omissions) in the amount of at least \$1,000,000 per occurrence.

STANDARD INSURANCE REQUIREMENTS

All policies and certificates of insurance of HMC and/ or subcontractor shall contain the following clauses:

- A. Insurers shall have no right of recovery or subrogation against Union (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.
- B. The insurance companies issuing the policy or policies shall have no recourse against Union County (including its agents or employees) for payment of any premiums or for assessments under any form of policy.

- C. Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the risk of, HMC.
- D. Insurance procured by HMC shall not reduce nor limit HMC's contractual obligation to indemnify and defend Union County for claims made or suits brought which result from or are in connection with the performance of this Agreement.
- E. All required certificates shall bear an authorized representative's original signature. In the event HMC receives Notice of Cancellation of Insurance required pursuant to this Agreement, HMC shall immediately cease performance of all services and shall provide Notice to Union County's Legal/Risk Management personnel within twenty-four (24) hours.
- F. The following must appear on each certificate of insurance:

Under the Certificate Holder section:

Union County
500 N. Main Street, Suite 835
Monroe, NC 28112
Attn: Risk Manager

Additionally, in the space (Description of Operations/Locations) on the certificate of insurance, it must be noted as follows:

Name of County Department or Agency _____

UNION COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED UNDER HMC'S GENERAL LIABILITY INSURANCE PER ATTACHED POLICY ENDORSEMENT FORM

ADDITIONAL REQUIREMENTS

Before commencement of any work, event, or performance, HMC shall provide to the Union County Risk Manager certificates of insurance and additional insured endorsements in satisfactory form as evidence of the insurances required above.

All certificates of insurance must provide that the policy or policies shall not be changed or canceled until at least ten (10) days prior written notice has been given to the Union County Risk Manager.

If HMC is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, HMC shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and

provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of services. Insurance limits for subcontractors may be varied by Union County's Risk Manager, in his sole discretion, to reflect the lesser risk presented by some subcontractors. Such variances, if any, will require documentation between the County's Risk Manager and HMC or their insurance representative.

6. FRINGE BENEFITS. HMC shall comply with the workers' compensation law concerning HMC and the employees of HMC. Because HMC is engaged in HMC's own independently established business, neither HMC nor the employees of HMC are eligible for, nor shall they participate in, any employee pension, health or other fringe benefit plan of Union.

7. NON-WAIVER. The failure of either party to exercise any of its rights under this agreement for a breach thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.

8. NO AUTHORITY TO BIND UNION. Neither HMC nor employees of HMC have authority to enter into contracts or agreements on behalf of Union. This agreement does not create a partnership or any form of agency between the parties.

9. DECLARATION BY INDEPENDENT CONTRACTOR. HMC declares that HMC has complied with all federal, state and local laws regarding business permits, certificates and licenses that may be required to carry out the work to be performed under this agreement.

10. CHOICE OF LAW. This agreement shall be construed and enforced in accordance with the laws of the State of North Carolina. The parties to this agreement confer exclusive jurisdiction of all disputes arising hereunder upon the General Courts of Justice of Union County, North Carolina.

11. ENTIRE AGREEMENT. This is the entire agreement of the parties.

12. SEVERABILITY. If any part of this agreement shall be held unenforceable, the rest of this agreement will nevertheless remain in full force and effect.

13. AMENDMENTS. This agreement may be supplemented, amended or revised only in writing by agreement of the parties.

14. TERM AND TERMINATION. This agreement shall commence July 1, 2006, and extend until June 30, 2007, and shall thereafter renew automatically for subsequent one-year terms; provided that either party may terminate this Agreement at any time without cause upon not less than 30 days notice to the other party at the addresses indicated herein. This agreement shall commence July 1, 2004, and extend until June 30, 2006; provided that either party may terminate this Agreement at any time without cause upon not less than 30 days notice to the other party at the addresses indicated herein. Union may terminate this Agreement with less than 30 days notice in the event HMC violates any applicable law, terms of this Agreement, or established standards concerning the provision of services pursuant to this Agreement. Union

may terminate this Agreement without notice in the event State or federal reimbursement is not available or continued at a level sufficient to allow for the continuation of this Agreement. In the event of termination not due to default by HMC, Union shall pay for all services satisfactorily performed prior to termination.

15. INDEMNIFICATION. HMC agrees to protect, defend, indemnify and hold Union, Agency, their officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this agreement and/or the performance hereof that are due to the negligence of HMC, its officers, employees, subcontractors or agents. HMC further agrees to investigate, handle, respond to, provide defense for, and defend the same at its sole expense and agrees to bear all other costs and expenses related thereto.

To the extent permitted by applicable law, Union agrees to protect, defend, indemnify and hold HMC, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this agreement and/or the performance hereof that are due to the negligence of Union, its officers, employees, or agents. To the extent permitted by applicable law, Union further agrees to investigate, handle, respond to, provide defense for, and defend the same at its sole expense and agrees to bear all other costs and expenses related thereto.

16. CONTRACT DOCUMENTS. The Agreement shall consist of the following documents, which are attached and incorporated herein by reference.

- This Agreement
- Attachment C: Certification Regarding Drug-Free Workplace
- Attachment D: Conflict of Interest (N/A to governmental entities)
- Attachment E: No Overdue Taxes (N/A to governmental entities)
- Attachment G: Federal Certification Regarding Lobbying
- Attachment H: Federal Certification Regarding Debarment
- Attachment I: HIPAA Business Associate Addendum
- Attachment L: State Reporting and Auditing Requirements

17. TAX ID NO. HMC's Tax Identification No. is 56-1852505.

18. FISCAL YEAR. HMC's Fiscal Year End Date is December 31.

19. STATUS. HMC is a Private, for Profit Corporation.

20. FUNDING. The total amount paid by Union to HMC under this contract shall not exceed \$878,750. This amount consists of:

Federal funds

State funds

County funds

21. REVERSION OF FUNDS. In the event that any funds provided to HMC pursuant to this Agreement are not expended or earned by HMC prior to the termination of this Agreement, such funds shall revert back to Union.

22. ASSIGNMENT OR SUBCONTRACT. HMC may not assign or subcontract this Agreement to another party without Union's prior written consent. In the event of such assignment or subcontract, (a) HMC shall not be relieved of any of the duties and responsibilities under this Agreement; and (b) HMC agrees to abide by the standards contained in this Subchapter, and to provide all information to allow Union to comply with these standards.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed, this the day and year first above written.

ATTEST: UNION COUNTY

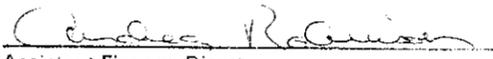
By: _____ BY: _____
Clerk to the Board County Manager

ATTEST: HOMECARE MANAGEMENT CORPORATION

BY: _____ BY: _____

APPROVED AS TO LEGAL FORM 

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.


Assistant Finance Director 6/26/06

**Attachment C:
CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

- I. By execution of this Agreement the Contractor certifies that it will provide a drug-free workplace by:
- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - B. Establishing a drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Contractor's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - C. Making it a requirement that each employee be engaged in the performance of the agreement be given a copy of the statement required by paragraph (A);
 - D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the agreement, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
 - E. Notifying the County within ten days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction;
 - F. Taking one of the following actions, within 30 days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).

- II. The site(s) for the performance of work done in connection with the specific agreement are listed below:

1. Union County Department of Social Services,
(Street address)

1212 W. Roosevelt Blvd. Monroe, NC 28110,
(City, county, state, zip code)

2. _____
(Street address)

(City, county, state, zip code)

Contractor will inform the County of any additional sites for performance of work under this agreement.

False certification or violation of the certification shall be grounds for suspension of payment, suspension or termination of grants, or government-wide Federal suspension or debarment (Section 4 CFR Part 85, Section 85.615 and 86.620).

Signature

Title

Contractor Agency/Organization

Date

(Certification signature should be same as Contract signature.)

Attachment D:
CONFLICT OF INTEREST

Instructions: A conflict of interest policy must be attached to the Agreement, pursuant to N.C.G.S. § 143-6.2, before any State department or agency may disburse state funds. **This document is intended as an aid to assist nongovernmental organizations in establishing a conflict of interest policy. It is not intended to be used verbatim, but rather to serve as a template for nongovernmental organizations as they craft their individual conflict of interest policy. Each organization that chooses to use this template should take care to make changes that reflect the individual organization.** This example includes definitions of what is considered unacceptable, and the consequences of any breaches thereof.

Conflict of Interest Defined:

A conflict of interest is defined as an actual or perceived interest by a (Board member/officer/employee) in an action that results in, or has the appearance of resulting in, personal, organizational, or professional gain. A conflict of interest occurs when a Board member/officer/employee has a direct or fiduciary interest in another relationship. A conflict of interest could include:

- Ownership with Board member, officer, or an employee where one has supervisory authority over the other or with a client who receives services.
- Employment of or by a Board member, officer, or employee where one has supervisory authority over the other or with a client who receives services.
- Contractual relationship with a Board member, officer, or an employee where one has supervisory authority over the other or with a client who receives services.
- Creditor or debtor to a Board member, officer, or an employee where one has supervisory authority over the other or with a client who receives services.
- Consultative or consumer relationship with a Board member, officer, or an employee where one has supervisory authority over the other or with a client who receives services.

The definition of conflict of interest includes any bias or the appearance of bias in a decision-making process that would reflect a dual role played by a member of the organization. An example, for instance, might involve a person who is both an employee and a Board member, or a person who is an employee and who hires family members as consultants.

Employee Responsibilities:

It is in the interest of the organization, individual employees, officers, and Board members to strengthen trust and confidence in each other, to expedite resolution of problems, to mitigate the effect and to minimize organizational and individual stress that can be caused by a conflict of interest.

Employees are to avoid any conflict of interest, even the appearance of a conflict of interest. This organization serves the community as a whole rather than only serving a special interest group. The appearance of a conflict of interest can cause embarrassment to the organization and jeopardize the credibility of the organization. Any conflict of interest, potential conflict of interest, or the appearance of a conflict of interest is to be reported to your supervisor immediately. Employees are to maintain independence and objectivity with clients, the community, and organization. Employees are called to maintain a sense of fairness, civility, ethics and personal integrity even though law, regulation, or custom does not require them.

Acceptance of Gifts:

Employees, officers, Board members and members of their immediate families, are prohibited from accepting gifts, money or gratuities from the following:

**Attachment E:
OVERDUE TAXES**

Instructions: Contractor should complete this certification for all funds received. Contractor should enter appropriate data in the yellow highlighted areas. The completed and signed form must be provided to the Union County Department of Social Services.

To: County Department of Social Services

Certification:

We certify that the HomeCare Management Corporation does not have any overdue tax debts, as defined by N.C.G.S. 105-243.1, at the federal, State, or local level. We further understand that any person who makes a false statement in violation of N.C.G.S. 143-6.2(b2) is guilty of a criminal offense punishable as provided by N.C.G.S. 143-34(b).

Sworn Statement:

_____ [Name of President/Board Chairman] and
_____ [Name of a Second Corporate Officer, if any] being duly sworn,
say that we are the _____ [insert title(s)], respectively, of HomeCare
Management Corporation of _____ [City] in the State of _____ [Name of
State]; and that the foregoing certification is true, accurate and complete to the best of our
knowledge and was made and subscribed by us. We also acknowledge and understand that any
misuse of State funds will be reported to the appropriate authorities for further action.

[President/Board Chairman]

[Second Corporate Officer, if any]

Sworn to and subscribed before me on the day of the date of said certification.

(Notary Signature and Seal)

My Commission Expires: _____

**Attachment G:
CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federally funded contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form SF-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award document for subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) who receive federal funds of \$100,000.00 or more and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Signature

Title

Contractor Agency/Organization

Date

(Certification signature should be same as Contract signature.)

**Attachment H:
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS**

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of the fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant will provide immediate written notice to the person to which the proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, determined ineligible or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency of which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized in paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension, and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature Title

Agency/Organization Date

(Certification signature should be same as Contract signature.)

**Attachment I:
BUSINESS ASSOCIATE ADDENDUM**

This Agreement is made effective the ___ day of _____, 200___, by and between Union County Department of Social Services("Covered Entity") and HomeCare Management Corporation ("Business Associate") (collectively the "Parties").

1. BACKGROUND

- a. Covered Entity and Business Associate are parties to a contract entitled HomeCare Management Corporation (the "Contract"), whereby Business Associate agrees to perform certain services for or on behalf of Covered Entity.
- b. Covered Entity is an organizational unit of Union County (the "County") that has been designated in whole or in part by the County as a health care component for purposes of the HIPAA Privacy Rule.
- c. The relationship between Covered Entity and Business Associate is such that the Parties believe Business Associate is or may be a "business associate" within the meaning of the HIPAA Privacy Rule.
- d. The Parties enter into this Business Associate Addendum to the Contract with the intention of complying with the HIPAA Privacy Rule provision that a covered entity may disclose protected health information to a business associate, and may allow a business associate to create or receive protected health information on its behalf, if the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information.

2. DEFINITIONS

Unless some other meaning is clearly indicated by the context, the following terms shall have the following meaning in this Agreement:

- a. "HIPAA" means the Administrative Simplification Provisions, Sections 261 through 264, of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- b. "Individual" shall have the same meaning as the term "individual" in 45 CFR160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- c. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- d. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- e. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- f. Unless otherwise defined in this Agreement, terms used herein shall have the same meaning as those terms have in the Privacy Rule.

3. OBLIGATIONS OF BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- g. Business Associate agrees, at the request of the Covered Entity, to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526.
- h. Unless otherwise prohibited by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, available to the Covered Entity, for purposes of determining Covered Entity's compliance with the Privacy Rule.
- i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, and to provide this information to Covered Entity or an Individual to permit such a response.

4. PERMITTED USES AND DISCLOSURES

- a. Except as otherwise limited in this Agreement or by other applicable law or agreement, if the Contract permits, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract, provided that such use or disclosure:
 - 1) would not violate the Privacy Rule if done by Covered Entity; or
 - 2) would not violate the minimum necessary policies and procedures of the Covered Entity.
- b. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may use Protected Health Information as necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- c. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that:
 - 1) disclosures are Required By Law; or
 - 2) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- d. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- e. Notwithstanding the foregoing provisions, Business Associate may not use or disclose Protected Health Information if the use or disclosure would violate any term of the Contract or other applicable law or agreements.

5. TERM AND TERMINATION

- a. **Term.** This Agreement shall be effective as of the effective date stated above and shall terminate when the Contract terminates.
- b. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, at its option:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement and services provided by Business Associate, to the extent permissible by law, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 2) Immediately terminate this Agreement and services provided by Business Associate, to the extent permissible by law; or
 - 3) If neither termination nor cure is feasible, report the violation to the Secretary as provided in the Privacy Rule.
- c. **Effect of Termination.**
 - 1) Except as provided in paragraph (2) of this section or in the Contract or by other applicable law or agreements, upon termination of this Agreement and services provided by Business Associate, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - 2) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6. GENERAL TERMS AND CONDITIONS

- a. This Agreement amends and is part of the Contract.
- b. Except as provided in this Agreement, all terms and conditions of the Contract shall remain in force and shall apply to this Agreement as if set forth fully herein.
- c. In the event of a conflict in terms between this Agreement and the Contract, the interpretation that is in accordance with the Privacy Rule shall prevail. In the event that a conflict then remains, the Contract terms shall prevail so long as they are in accordance with the Privacy Rule.
- d. A breach of this Agreement by Business Associate shall be considered sufficient basis for Covered Entity to terminate the Contract for cause.

Contractor

Union County

SIGNATURE

SIGNATURE

**Attachment L:
NOTICE OF CERTAIN REPORTING AND AUDIT REQUIREMENTS**

Grantee shall comply with all rules and reporting requirements established by statute or administrative rules. For convenience, the requirements of 9 N.C.A.C. Subchapter 3M.0205 are set forth in this Attachment.

The applicable prescribed requirements are found in the Office of the State Auditor's Audit Advisory #ADV-2005-001, North Carolina General Statute 143-6.2 entitled "Use of State Funds by Non-State Entities" and Implementation of Required Rules, 09 NCAC 03M .0102 -0802, North Carolina Administrative Code, issued September 2005. The Office of State Auditor's Audit Advisory #ADV-2005-001, forms and additional policy statements are available on the State Auditor's Internet web site at www.ncauditor.net. From the home page select "Non Profits." Select the "Regulations" tab for the standards and the "Forms" tab to download forms as needed.

The Contractor's fiscal year runs from January to December.

Reporting Thresholds

There are three reporting thresholds established for grantees and subgrantees receiving State funds. The reporting thresholds are: (NOTE: threshold is based on total of state grants from all state entities.)

- (1) Less than \$25,000 – A grantee that receives, uses, or expends State funds in an amount less than twenty-five thousand dollars (\$25,000) within its first fiscal year must comply with the reporting requirements established by 9 N.C.A.C. Subchapter 3M including:
 - (A) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted; and
 - (B) An accounting of the State funds received, used, or expended.All reporting requirements shall be filed with the funding agency within six months after the end of the grantee's fiscal year in which the State funds were received.
- (2) \$25,000 up to \$500,000 – A grantee that receives, uses, or expends State funds in an amount of at least twenty-five thousand (\$25,000) and up to five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including:
 - (A) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted.
 - (B) An accounting of the State funds received, used, or expended; and
 - (C) A description of activities and accomplishments undertaken by the grantee with the State funds.All reporting requirements shall be filed with the funding agency within six months after the end of the grantee's fiscal year in which the State funds were received.
- (3) Greater than \$500,000 - A grantee that receives, uses, or expends State funds and in the amount greater than five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including:
 - (A) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted.
 - (B) An audit prepared and completed by a licensed Certified Public Accountant for the grantee consistent with the reporting requirement of this Subchapter; and
 - (C) A description of activities and accomplishments undertaken by the grantee with the State funds.All reporting requirements shall be filed with both the funding agency and the Office of the State Auditor within nine months after the end of the grantee's fiscal year in which the State funds were received.

Other Provisions
Reporting (06/06)

1. Unless prohibited by law, the costs of audits made in accordance with the provisions of 9 N.C.A.C. 3M.0205 are allowable charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in the Office of Budget and Management (OMB) Circular A-87. The costs of any audit not conducted in accordance with this Subchapter is unallowable and shall not be charged to State or Federal grants.
2. The audit requirements of 9 N.C.A.C. Subchapter 3M do not replace a request for submission of audit reports by grantor agencies in connection with requests for direct appropriation of state aid by the General Assembly.
3. Notwithstanding the provisions of 9 N.C.A.C. Subchapter 3M, a grantee may satisfy the reporting requirements of Part (a)(3)(B) of this Rule by submitting a copy of the report required under the federal law with respect to the same funds.
4. All grantees and subgrantees shall use the forms of the Office of State Budget and Management and the Office of the State Auditor in making reports to the awarding agencies and the Office of the State Auditor.

Equipment Purchased with Contract Funds:

Title to equipment costing in excess of \$500.00 acquired by the Contractor with funds from this contract shall vest in the Contractor, subject to the following conditions.

- A. The Contractor shall use the equipment in the project or program for which it was acquired as long as needed. When equipment is no longer needed for the original project or program or if operations are discontinued, or at the termination of this contract the Contractor shall contact the Division for written instructions regarding disposition of equipment.
- B. With the prior written approval of the Division, the Contractor may use the equipment to be replaced as trade-in against replacement equipment or may sell said equipment and use the proceeds to offset the costs of replacement equipment.
- C. For equipment costing in excess of \$500.00, equipment controls and procedures shall include at a minimum the following:
 1. Detailed equipment records shall be maintained which accurately include the:
 - a. Description and location of the equipment, serial number, acquisition date/cost, useful life and depreciation rate;
 - b. Source/percentage of funding for purchase and restrictions as to use or disposition; and
 - c. Disposition data, which includes date of disposal and sales price or method used to determine fair market value.
 2. Equipment shall be assigned a control number in the accounting records and shall be tagged individually with a permanent identification number.
 3. Biennially, a physical inventory of equipment shall be taken and results compared to accounting and fixed asset records. Any discrepancy shall immediately be brought to the attention of management and the governing board.
 4. A control system shall be in place to ensure adequate safeguards to prevent loss, damage, or theft of equipment and shall provide for full documentation and investigation of any loss or theft.

5. Adequate maintenance procedures shall be implemented to ensure that equipment is maintained in good condition.
 6. Procedures shall be implemented which ensure that adequate insurance coverage is maintained on all equipment. A review of coverage amounts shall be conducted on a periodic basis, preferably at least annually.
- D. The Contractor shall ensure all subcontractors are notified of their responsibility to comply with the equipment conditions specified in this section.